

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

JUN 18 2013

S.C. Supreme Court

ERIC J. RIDEL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000252

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

The State,)

PLAINTIFF,)

TRANSCRIPT OF RECORD
C/A #: 2006-GS-43-330

v.)

Eric John Ridel,)

DEFENDANTS.)

SUMTER COUNTY COURTHOUSE
June 5, 2007

BEFORE:

HONORABLE GEORGE C. JAMES, JR., PRESIDING JUDGE.

APPEARANCES:

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Third Circuit Solicitor
Catherine Fant, Esquire
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Jack Howle, Esquire
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TAKEN BY MELISSA R. WINFIELD
CERTIFIED VERBATIM REPORTER

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HEARING

8

1 The Bailiff: Your Honor, we have all the jurors and alternates present in the
2 courtroom.

3 The Court: Thank you, sir. Ms. Edwards and Ms. Mitchell, you two ladies
4 are the only ones that do have an assigned seat. So, the rest of you until a foreperson
5 is selected I will ask you as you come in and out of the courtroom, sometimes jurors
6 can be a little bit territorial they've had that seat for an hour and they're going to get
7 that seat again. During the course of this trial try not to do that. Go down as far as
8 you can so that other people won't have to climb over you. In the other courtroom it
9 probably wouldn't be a problem but we're in a slightly smaller jury box and it is a
10 problem. All right. Mr. Bradley, you can swear the jury.

11 Mr. Bradley: Thank you, sir. Ladies and gentlemen of the jury, please stand
12 and raise your right hand and be sworn.

13 (Jurors comply)

14 Mr. Bradley: The State of South Carolina, County of Sumter, in the Court of
15 General Sessions, State of South Carolina vs. Eric John Ridel, Docket Number 2006-
16 GS-43-330, you shall well and truly try and true deliverance made between the State
17 of South Carolina and the Defendant, Eric John Ridel, whom you shall have in charge
18 and a true verdict give according to the evidence so help you God. Please respond by
19 saying I will.

20 Jurors: I will.

21 Mr. Bradley: Thank you. You may be seated.

22 The Court: All right. Ladies and Gentlemen, you've now been sworn as
23 jurors in this particular case and again this is State of South Carolina vs. Eric John
24 Ridel. When we qualified you to serve as jurors in this case I announced to you the
25 content of the indictment which you will here reference to in this case perhaps from

HEARING

9

1 time to time. I can tell you, however, that the indictment is not evidence. It is a
2 simply a charge. It's a piece of paper that has charges on it. Mr. Ridel has entered a
3 plea of not guilty to those counts on this indictment and again the counts are Number
4 One for Murder and Number Two for Failure to Stop for a Blue Light resulting in
5 death. Again, Mr. Ridel has entered a plea of not guilty to both of those charges and
6 he is presumed innocent unless and until his guilt is established beyond a reasonable
7 doubt. The elements of the two crimes for which he has been charged will be
8 explained to you later. Also, the meaning of the term beyond a reasonable doubt will
9 be explained to you later as well. I don't know how many of you have ever taken
10 part as jurors before. I don't know if any of you have ever been involved as a party
11 or witness or in anyway connected to the criminal justice system but I will tell you
12 that the trial that will be held before you will not be like you see on television drama
13 shows. It is not like that. We have a book, we have several books obviously, but in
14 this navy blue book we have a lot of rules. We have the rules of criminal procedure
15 that take up part of this book and we have the rules of evidence that take up another
16 part of this book and the lawyers here, Mr. Jackson, Ms. Fant and Mr. Howle they
17 know the books and they know the rules of evidence so don't expect a lot of
18 theatrics, don't expect a lot of fireworks because the lawyers will do their jobs and
19 they will present the evidence to you in an orderly, thorough and proper manner. A
20 lot of what you see on television is quite frankly nonsense and it doesn't happen that
21 way anyway in the real world.

22 From time to time during this trial you will hear perhaps some of the
23 lawyers say, Your Honor, I object. And the other lawyer will want to respond to that
24 objection. Typically, there arises in instances where one party or the other thinks their
25 particularly piece of evidence is admissible and therefore that side is trying to get the

HEARING

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1 evidence in and the other side may have an equally valid reason in his or her mind for
2 thinking that the evidence is not admissible and that's why we have the rules of
3 evidence because they allow me to listen to what the attorneys have to say and listen
4 to what the possible testimony or evidence is and then make a ruling and so in that
5 regard if a lawyer objects that lawyer is not trying to purposely hide something from
6 you that should justifiably come in front of you. By the same token, if I sustain the
7 objection and keep the evidence out that does not mean that the lawyer that was
8 trying to get the evidence in has an equally bad faith reason for trying to basically put
9 one over on you. It's just that there are some times good faith honest reasons for
10 disagreement on a particular piece of evidence and the interruption of a rule of
11 evidence. Necessarily, during the course of the trial, it may be necessary for me to
12 send you to your jury room so that we can discuss extensively what the lawyers want
13 to argue or put on the record about the particular evidence or other point they want
14 to discuss in front of me. The simple reason for that is is that we have in these books
15 rules of law. You are the judges of the facts and I am the judge of the law. The best
16 example that I can give you is that when you retire at the end of this case to deliberate
17 back in your jury room, none of us will go with you. The lawyers want go with you, I
18 want go with you, the bailiffs want go with you, nobody in this courtroom will go
19 with you except the jurors that are in this case and that's because you are the judges
20 of the facts. By the same token, if we have to debate and argue a point of law since
21 you are not the judges of the law, you may have to leave the room. Lots of times we
22 may be able to do it right over here and as long as we can keep a record of it that's
23 the way we do it to cause as little disturbance as possible.

24 Keeping in mind that you are the judges of fact, it's going to be necessary for
25 you to listen to what witnesses have to say. The witnesses will be sitting in this chair

HEARING

11

1 right down to my right and you may say well, gosh, I've never been on a jury before,
2 never been in a court room before how in the world can you expect me to determine
3 what the truth is. Well, to put you at ease all you do it use your good fashion
4 common sense because whether your realize it or not every day when you evaluate
5 whether or not to believe what somebody says you are evaluating that person's
6 credibility. Well, how do you do that? You can do it in one of numerous ways. How
7 does the person appear on the witness stand? Is the person hesitate or straight
8 forward in answering the questions? Does the person look at ease? Was the person's
9 testimony consistent or inconsistent with another witness's testimony or is that
10 testimony consistent or inconsistent with what the very same witness had to say on a
11 prior occasion. Is there a reason for that witness to be bias or prejudice for or against
12 one said or the other? So, again, you use your common sense in determining whether
13 or not to be believe somebody. It is especially important that you perform your duty
14 of determining the true facts of this case conscientiously because ordinarily there is no
15 way to correct an erroneous determination of the facts by a jury. If it gives you any
16 reason to hope just fall back on the two words that I just mentioned to you earlier,
17 common sense. That's all you have to do.

18 I'm going to tell you from time to time that you cannot discuss this case at all
19 until I tell you that you can. For example, when you go home this evening somebody
20 in your family may be dying to know what you've been doing here all day. Somebody
21 in your family may not believe where you've been all know for all I know. What I
22 mean by this is when you go home and you're asked about what you're doing, you
23 can tell somebody that you've been picked on a jury but don't tell them what the case
24 is about. Even when you are in your jury room when you return in the morning or
25 back there on a break you cannot discuss this case even among yourselves because

HEARING

12

1 you cannot begin to form or express opinions until you have heard everything. And by
2 everything I mean until all the evidence is in, the arguments by counsel have been
3 completed and until I have instructed you on the law. As I indicated to you
4 preliminarily at the end you will have to accept the law as I give it to you and not base
5 your decision on what you think the law is what you think it should be. Keep an open
6 mind until you have heard everything. Keep in mind that the State of South Carolina
7 is entitled to and expects and the Defendant is entitled to and expects a fair and
8 impartial jury to decide this particular case.

9 Again, the evidence is going to be presented to you in the form of testimony
10 from witnesses. In the form of exhibits that you will see and perhaps hear and again
11 when you leave this courtroom at the end of the case and after you've heard the
12 charge on the law you will have everything you need to decide this case. The word
13 verdict comes from the Latin word veridicto, which means to speak the truth and
14 that's all the parties desire for your verdict to do in this particular case.

15 All right. I will also ask you ladies and gentlemen, in case I forget to at the
16 end of the day, that if there are any accounts of this trial in the newspaper or on the
17 television I'm going to ask you to refrain from watching or reading anything about it.
18 Because again what you base your decisions on in this particular case is what you hear
19 in this courtroom and not what you hear outside of the courtroom. I may from time
20 to time make an inquiry as to whether you have had any third party access to matters
21 that are outside of this courtroom.

22 All right, any objections Mr. Jackson or Mr. Howle to any of my
23 remarks to the jury?

24 Mr. Jackson: No, sir.

25 Mr. Howle: None, Your Honor.

HEARING

13

1 The Court: All right. Ladies and Gentlemen, the trial is going to
2 progress in this way. The State of South Carolina and the Defendant have the right,
3 under our rules, again they are in this little blue book, to present opening statements
4 to you. What the attorneys say to you is not evidence. The evidence, again, comes to
5 you in different forms. So, again, the attorneys statements to you are not evidence.
6 This is not an opportunity for argument by the lawyers it's an opportunity for them to
7 tell you what they think the evidence is going to show in this particular case. After
8 that the State of Carolina can present its case. After that, if the Defendant so chooses,
9 can present evidence and then after that the State can present evidence in reply.

10 Okay. Mr. Jackson.

11 MR. JACKSON: Thank you, Your Honor. May it please the Court?

12 The Court: Yes, sir.

13 Mr. Jackson: Mr. Conner, Ladies and gentlemen of the jury, on May
14 the 16th of 2005, May the 16th, 2005 some two years ago, the day began as a beautiful
15 spring day and Senior Trooper Jonathan Parker with the South Carolina Highway
16 Patrol reported for work that day for headquarters of the Highway Patrol office here
17 in Sumter. His supervisor was First James Sinclair. They began to do paperwork.
18 That's what they were doing that morning. And it was a peaceful day in Sumter
19 County and things were going along in the ordinary course of business and you were
20 doing whatever you did in your life that day. But down in Walterboro, South Carolina
21 about the same time, that would be Colleton County, Eric Ridel, who sits right over
22 here, made the decision to commit an armed robbery and that choice he made, that
23 decision he made put into play a series of events that would turn an otherwise
24 beautiful spring day into something very ugly. While Trooper Parker was doing his
25 paperwork in Sumter, Eric Ridel committed armed robbery of a convenience store

HEARING

14

1 next to I-95 down in Walterboro. He got on I-95 and he headed north in our direction
2 towards Clarendon County and the law enforcement officers in Walterboro sent out a
3 BOLO. That's a be on the look out. It's a radio transmission that tells neighboring
4 counties this happened. He's headed in your direction and because of the BOLO some
5 officers from the Clarendon County Sheriff's Department set up just outside of
6 Summerton on I-95 thinking he may come up and he did and they tried to stop him
7 and he wouldn't stop and they pursued the robber.

8 Meanwhile back in Sumter at the headquarters of the highway patrol,
9 First Sargent Sinclair, Senior Trooper Jonathan Parker are still doing paperwork.
10 They get the BOLO. They hear what's going on. They decide that it's their
11 responsibility to help and so Trooper Parker leaves first. First Sargent Sinclair leaves
12 shortly thereafter and they head up 378 towards Turbeville and get to Dabbs
13 crossroads and turn right and head up 527. Meanwhile back on I-95, Eric Ridel is
14 leading the officers north on 95 towards 527. He gets off on 95 and goes towards 378
15 where Jonathan Parker has gotten off of 378 and is headed towards 95 and the officer
16 knows about where he is from the radio traffic and he does a U-turn and pulls off the
17 side of the road to signal Ridel to stop. Officers behind him, officers in front of him
18 and Ridel keeps coming and a beautiful spring day turned ugly. When Eric Ridel ram
19 the trooper's car from the rear killing him. From these facts, the State of South
20 Carolina has charged Eric Ridel for failure to stop for a blue light resulting in death
21 and for the crime of murder. My job is to put witnesses on this stand. To give you the
22 evidence, to give you the information that you need to make a decision as to whether
23 or not he's guilty and we intend to do that. And after I offer the witnesses to you, I
24 submit to you that the evidence itself will prove that he is guilty beyond a reasonable
25 doubt for failure to stop for a blue light. The testimony itself will do that. The words

HEARING

15

1 alone from the officers and private witnesses testify will convict him of failure to stop
2 for a blue light resulting in death. But remember the old adage, actions speak louder
3 than words and while I think the words of these officers will convict him of the failure
4 to stop for a blue light resulting in death, his actions are what will convict him of
5 murder. The wanton, reckless, extreme reckless disregard for the safety of others. The
6 extreme danger that he put people's lives in as he went down that interstate. These
7 things, these actions, his choices will convict him of murder. Actions speak louder
8 than words. My name is Kelly Jackson and I'm your Solicitor. This is Catherine Fant
9 and she'll be trying this case along with me. It's an honor for me to represent Senior
10 Trooper Jonathan Parker in this case. His widow, Susan Parker and his family. We
11 look forward to you, we look forward to your deliberations, we thank you for your
12 attention, and we'll be back with our case.

13 THE COURT: All right, Mr. Jackson, Mr. Howle.

14 MR. HOWLE: Your Honor, Mr. Jackson, Ms. Fant. Ladies and
15 gentlemen of the jury, my name is Jack Howle. I'm the Chief Public Defender for
16 Sumter County and I represent Eric Ridel. Now the Judge has already told you that
17 when we stand up here what we say is not evidence. The indictment itself is not
18 evidence. It does kind of give you a road map as to where things are going. But at the
19 same time this indictment which has listed these two charges as Mr. Kelly Jackson
20 says, "actions speak louder than words" but also words in a definition which is the law
21 and the Judge will instruct you if you follow the law. Now, I'm going to tell you
22 something that may surprise you. I agree with a lot of what Mr. Kelly Jackson says.
23 This incident happened down in Walterboro. There was a chase on the interstate.
24 There are blue lights and there's a wreck at the end where his car runs into that of the
25 trooper that's parked on the side of the road. Mr. Jackson said as he got up to that

HEARING

16

1 part of what happened that Mr. Ridel just kept coming and he just kept coming. Well,
2 the evidence may convince you that on that one charge of failure to stop for a blue
3 light and death resulting, you may be convinced that's correct but the murder charge.
4 This is not the case that you can just get angry because there was a senseless loss of
5 life. There's no question about that but that doesn't make it murder. The indictment
6 says Eric John Ridel did in Sumter County on or about May 16, 2005 feloniously,
7 willfully, and then goes on. Willfully. Yes it was a reckless act but I submit to you that
8 you're not going to hear any evidence that shows that Eric Ridel riding down the road
9 whether he's trying to run from police because of an offense or not, just willfully
10 decided to run into the back of this officer's car and kill him. If you're not stopping
11 for a blue light, fine. The death resulted in that, fine. But it's not murder. One of the
12 things the Judge will instruct you when we get to the end is that as you deliberate you
13 got to believe beyond a reasonable doubt that a particular thing happened. And like I
14 say, please do not just get caught up in the emotion because it was a senseless loss of
15 life. But that does not just make it murder and if you follow the definitions of the law
16 and the instructions the Judge will give you at the end, and you compare that along
17 with the evidence that you heard, I'm equally convinced that you will not find that
18 Eric Ridel committed murder on that day. Thank you very much.

19 THE COURT: Thank you, Mr. Howle. All right, ladies and gentlemen,
20 I know that this is a very short time we're going to take a break. We're going to take
21 a break for about five minutes. We have to take care of some very, very brief
22 scheduling matters. We're going to try to make sure that we fill up the remainder of
23 the day with witnesses who may have to depart quicker than we would have thought
24 and also allow the attorneys to mark some exhibits that haven't been marked. So lets
25 take a break for about five minutes. When you come back in the jury room please feel

HEARING

17

1 free to bring your refreshments with you. Just don't...try not spill it in the jury box or
2 on your fellow jurors. Do not discuss the case in jury room and we will have you back
3 out in about five or six minutes. Thank you very much.

4 (Jurors break 4:02 p.m.)

5 THE COURT: All right. Let's get back together in about five minutes
6 and, of course, as discussed in chambers, the reason for stopping at this point is to
7 allow the folks from Columbia to leave and if you haven't marked any of your exhibits
8 that need to be marked, go ahead and do that please.

9 MR. JACKSON: Thank you.

10 THE COURT: All right.

11 (Court Break taken - Court back on 4:06 p.m.)

12 THE COURT: All right. The State ready?

13 MR. JACKSON: Yes, Sir.

14 THE COURT: Defense?

15 MR. HOWLE: Yes, Sir. Just one clarification. We talked about in
16 Limine motions that had been ruled on one way or the other and obviously on the
17 preserve for so long. Since...and I do not like...I don't object if I can help it to open
18 arguments. When he referred to the armed robbery and you'd already said it would
19 come in but I want the Court to give...

20 THE COURT: You objected to ...

21 MR. HOWLE...my objection was running at least through that until a
22 witness takes the stand.

23 THE COURT: Relatively a new case recognize that you wouldn't have
24 to object in case and not even if the testimony if it's the first person Mr. Jackson puts
25 up it's certainly not going to offend me at the time you think it's appropriate to object.

HEARING

18

1 MR. HOWLE: Well, I don't like to object just to hack things up and
2 especially in open arguments it's the worst time to object.

3 THE COURT: All right.

4 MR. HOWLE: But I just wanted to make it for the record.

5 THE COURT: Okay. All right, we ready for the jury otherwise?

6 MR. HOWLE: Yes, Sir.

7 MR. JACKSON: Yes.

8 THE COURT: You can bring them in.

9 (Jurors back in courtroom at 4:08 p.m.)

10 BAILIFF: Your Honor, we have all jurors and alternates present in the
11 Courtroom.

12 THE COURT: All right. Thank you, ladies and gentlemen. All right,
13 Mr. Jackson, you can call your first witness.

14 MR. JACKSON: Thank you, Your Honor. The State calls Investigator
15 Angela McAllister Stallings.

16 CLERK: Place your left hand on the Bible and raise your hand right.
17 State your name please.

18 MS. STALLINGS: Angela McAllister Stallings.

19 CLERK: Do you solemnly swear and affirm your testimony to the
20 Court will be the truth, the whole truth, and nothing but the truth so help you God?

21 MS. STALLINGS: Yes, Sir.

22 CLERK: Please watch your step. Please state your full name and spell
23 your last name for the record.

24 MS. STALLINGS: Angela McAllister Stallings. S-T-A-L-L-I-N-G-S.

25 DIRECT EXAMINATION BY MR. JACKSON

HEARING

19

- 1 Q: Investigator Stallings, where do you live?
- 2 A: In Colleton County.
- 3 Q: All right. What town is Colleton County?
- 4 A: Walterboro, South Carolina.
- 5 Q: And how long have you been in Walterboro?
- 6 A: Since '96.
- 7 Q: Who do you work for over there?
- 8 A: The Colleton County Sheriff's office.
- 9 Q: And how long have you been with the Sheriff's Department?
- 10 A: With the Sheriff's office since 2001.
- 11 Q: Have any law enforcement experience other than that?
- 12 A: Yes, Sir.
- 13 Q: And who is that?
- 14 A: The Walterboro Police Department.
- 15 Q: And how long were you with them?
- 16 A: From '98 to 2001.
- 17 Q: Back in 2005 you were with the Sheriff's Department?
- 18 A: Yes, sir.
- 19 Q: And what position did you have in 2005?
- 20 A: I was detective in the Investigation Unit.
- 21 Q: Were you working on May 16, 2005?
- 22 A: Yes, Sir.
- 23 Q: And what day of the week was that if you recall?
- 24 A: That was a Monday.
- 25 Q: Monday.

HEARING

20

- 1 A. Yes, Sir.
- 2 Q. Did you get called out to the Circle C convenience store?
- 3 A. Yes, I did.
- 4 Q. And what time did you get called out?
- 5 A. The initial call came in at approximately 10:16. Initial officers responded and
- 6 requested an investigator. I arrived on scene at approximately 10:45.
- 7 Q. And what was the nature of the call?
- 8 A. An armed robbery.
- 9 Q. And when you got there did you find out that an armed robbery had actually
- 10 occurred?
- 11 A. Yes, Sir.
- 12 Q. Did you talk to the sales clerk who was the victim?
- 13 A. I did.
- 14 Q. And did you interview the officer that was over the scene?
- 15 A. Yes, Sir.
- 16 Q. And was there a man in the parking lot that got a description of the vehicle?
- 17 A. Yes, Sir.
- 18 Q. All right. After you spoke to those folks, were you able to get a description of
- 19 the suspect?
- 20 A. Yes, Sir.
- 21 Q. And were you able to get a description of his clothing?
- 22 A. Yes, Sir.
- 23 Q. And were you able to get a description of the getaway car?
- 24 A. Yes, Sir.
- 25 Q. And would you tell the jury what that information would be?

HEARING

21

1 A. Yes, Sir. From the information that we gathered the suspect was a white male,
2 he was described to be approximately 5'7 to 5'9 in height, 130 to 140 pounds.
3 He was wearing a black letterman jacket with brown sleeves. He had on a ball
4 cap with red lettering and blue jeans. He also had on some glasses and the
5 vehicle that he left the scene in was a Burgundy in color, two-door from the
6 witnesses they believed it was possibly a Ford Thunderbird and they also
7 believed it had Connecticut tags.

8 Q. What do you do with that type of information?

9 A. That information is then given to our dispatch department and then they give a
10 BOLO over the radio to local agencies as well as a teletype through NCIC.

11 Q. And tell the folks on the jury what a BOLO is?

12 A. It is a...BOLO means "be on the look out". It advises other agencies of the
13 incident that takes place in your jurisdiction for them to be aware of what's
14 taking place and be on the lookout for the suspect.

15 Q. And the suspect in this case was Eric Ridel?

16 A. Yes, Sir.

17 Q. And you sent out that information?

18 A. Yes, Sir.

19 Q. Which direction did he leave?

20 A. From the incident location which is located on Highway 61. He went
21 northbound on I-95.

22 Q. And how close would Circle C be to I-95?

23 A. You can see Circle C from the interstate.

24 Q. And was Eric Ridel later caught and brought back to Walterboro?

25 A. Yes, Sir.

HEARING

22

1 Q. All right. Was he the only one in the car that day?

2 A. Yes, Sir.

3 Q. And driving the car?

4 A. Yes, Sir.

5 Q. Did he ultimately plead guilty to the armed robbery?

6 A. Yes, Sir, he did.

7 Q. All right. Investigator, that's all the questions that I have for you. If Mr.
8 Howle has anything, please answer.

9 A. Okay.

10 THE COURT: Mr. Howle.

11 MR. HOWLE: Thank you, Your Honor.

12 CROSS EXAMINATION BY MR. HOWLE

13 Q. Ms. Stallings, I think you said the individual who came in was wearing a ball
14 cap and a leather jacket with brown sleeves with very distinctive clothing?

15 A. Yes, Sir.

16 Q. Unusual for someone to come in to rob a store and have things that would be
17 that easy to identify?

18 A. I guess it depends on the person themselves, you know, what they're wearing.
19 I don't know, you know, if it was more of an opportune moment than, you
20 know, I'm not sure.

21 Q. But it wasn't a blend, blend-in type...you won't really recognize me if I get
22 into a crowd type outfit? You'd say that?

23 A. Not for that time of the year, no, Sir. It was May so it was warm so him
24 wearing a jacket I would believe would be odd. Yes, Sir.

25 Q. Thank you. I have no further questions.

HEARING

23

1 THE COURT: Mr. Jackson, re-direct?

2 MR. JACKSON: No, Sir, Your Honor, but at this point we would like
3 to approach the bench.

4 THE COURT: All right.

5 (Attorneys approach the bench)

6 THE COURT: All right, Mr. Jackson.

7 MR. JACKSON: Thank you.

8 RE-DIRECT BY MR. JACKSON

9 Q. Investigator Stallings, now Mr. Howle asked you about some questions about
10 whether or not he had on a jacket and wearing a ball cap. You all were able to
11 view the video of the robbery before you send out the BOLO alert?

12 A. Yes, Sir.

13 Q. So your description was complete?

14 A. Yes, Sir.

15 Q. And accurate?

16 A. Yes, Sir.

17 Q. And he is the man who plead to the armed robbery?

18 A. Yes, Sir.

19 Q. Thank you.

20 THE COURT: Any re-cross, Mr. Howle, on that point?

21 MR. HOWLE: No, Your Honor.

22 THE COURT: All right, thank you, ma'am, you may step down. Mr.
23 Jackson, would you like for this witness to remain?

24 MR. JACKSON: Your Honor, she could be excused. I believe they
25 may need her back in Colleton County.

HEARING

24

1 THE COURT: Mr. Howle, do you have any objection to that?

2 MR. HOWLE: None, Your Honor.

3 THE COURT: All right. Thank you, ma'am. You can leave if you like
4 or stay if you like. You can call your next witness, Mr. Jackson.

5 MR. JACKSON: Your Honor, the State calls Mack Kennedy.

6 CLERK: Place your left hand on the Bible and raise your right hand
7 and state your name please.

8 MR. KENNEDY: Harold Mack Kennedy, III.

9 CLERK: You solemnly swear and affirm the testimony you are about
10 to give to be the truth, the whole truth, and nothing but the truth so help you God?

11 MR. KENNEDY: Yes, Sir.

12 CLERK: Have a seat. Please watch your step. State your full name and
13 spell your last name for the record.

14 MR. KENNEDY: Harold Mack Kennedy, III. K-E-N-N-E-D-Y.

15 DIRECT EXAMINATION BY MR. JACKSON

16 Q. Mr. Kennedy, where do you live?

17 A. Clarendon County, South Carolina.

18 Q. Are you married?

19 A. No, Sir.

20 Q. Where do you work?

21 A. At Clarendon County Sheriff's office.

22 Q. How long have you been with the Sheriff's Department?

23 A. Just over five years.

24 Q. And what positions have you held since you've been there?

25 A. Patrol Deputy and now Narcotics Investigator.

HEARING

25

- 1 Q. All right. As a Patrol Deputy what were some of your responsibilities and
2 some of your duties?
- 3 A. Check property, answer any calls for service, things like that.
- 4 Q. And back on May the 16th of 2005, were you working that day?
- 5 A. Yes, Sir, I was.
- 6 Q. And what was your position then?
- 7 A. I was a Patrol Deputy.
- 8 Q. All right. Now as a Patrol Deputy do you monitor radios?
- 9 A. Yes, Sir.
- 10 Q. And what are some things that a Patrol Deputy would do?
- 11 A. Answer calls for service, stop cars for traffic violations, check property.
- 12 Q. Were you working that morning?
- 13 A. Yes, Sir.
- 14 Q. And did you get a BOLO?
- 15 A. Yes, Sir, I did.
- 16 Q. And who dispatched the BOLO over your radio system?
- 17 A. I don't particularly recall which dispatcher it was but...
- 18 Q. Would it be Clarendon County Sheriff's Department?
- 19 A. Yes, Sir, Clarendon County Sheriff's office.
- 20 Q. All right, and let me show you State's Exhibit 1 and ask you what this is.
- 21 A. Is a recorded BOLO given out by our dispatcher.
- 22 Q. All right, and this would be the BOLO that came out that particular day?
- 23 A. Yes, Sir.
- 24 Q. All right, Sir.
- 25 MR. JACKSON: Now at this time I move into evidence and allow it

HEARING

26

1 to be publish to the jury.

2 MR. HOWLE: Your Honor, this is the same film that we already...

3 THE COURT: Film or audio?

4 MR. HOWLE: I mean audio that we've reviewed earlier.

5 THE COURT: All right, State's Exhibit 1 is into evidence without
6 objection.

7 (State's Exhibit Number One was put into evidence)

8 Q. While he's cuing that up Mack, about what time do you recall this BOLO
9 came out?

10 A. Approximately 11:00 a.m.

11 Q. And where were you then? What were you doing then?

12 A. I was in the home branch area just checked on a suspicious vehicle.

13 Q. Were you by yourself in your car?

14 A. Yes, Sir.

15 Q. All right.

16 (Tape played for jury - State's Exhibit 1)

17 Q. And that's the BOLO that came out that day?

18 A. Yes, Sir.

19 Q. All right. Now, the radio communication right there at the end those folks
20 calling in, what was that?

21 A. Those are anyone that heard the BOLO come out they were acknowledging
22 dispatch they received it.

23 Q. So that's just folks out on the road telling dispatch we heard it?

24 A. Yes, Sir.

25 Q. All right, and you were one of those?

HEARING

27

- 1 A. Yes, Sir.
- 2 Q. And your call sign would be?
- 3 A. Car 15.
- 4 Q. Car 15?
- 5 A. Yes, Sir.
- 6 Q. And we heard car 15 and that simply means you heard the BOLO?
- 7 A. Yes, Sir.
- 8 Q. All right. When you heard that BOLO what did you do then?
- 9 A. Myself and Investigator Avant we went out to I-95 about approximately...
- 10 THE COURT: Excuse me, cock that microphone towards...there you
- 11 go.
- 12 A. Myself and Investigator Avant went out to I-95 about approximately 113 mile
- 13 marker, sat in the median to see if we saw the suspect.
- 14 Q. Where would 113 be in relation to the Summerton exit down there?
- 15 A. It would be a couple miles north of the Summerton exit.
- 16 Q. And when you say that you and Todd Avant. Were you all in the same vehicle
- 17 or did you work two different ...
- 18 A. No, Sir.
- 19 Q. ...vehicles?
- 20 A. Two different vehicles.
- 21 Q. All right, and where did you set in the median?
- 22 A. Right up...I'm trying to think of the road that goes over so...the overpass right
- 23 over at I-95 right up under the overpass.
- 24 Q. Okay, so both of you were there in two different vehicles?
- 25 A. Yes, Sir.

HEARING

28

1 Q. Now, tell them what kind of car you were driving that day? Was it marked or
2 unmarked car?

3 A. I was driving a marked Crown Victoria.

4 Q. And describe the markings on the Clarendon County Sheriff's Department's
5 marked cars?

6 A. It's white in color and it's got a blue and gold lettering of the Sheriff's office
7 and a badge on the side and blue lights on the top.

8 Q. Any other lights on it?

9 A. No, Sir.

10 Q. Equipped with siren?

11 A. Yes, Sir.

12 Q. Now this is a basic squad car that anybody would see?

13 A. Yes, Sir.

14 Q. All right. How about Todd Avant? What does he drive?

15 A. He drives an unmarked two-door white Blazer. It has I think lights in the front
16 and back and I think wig wag headlights.

17 Q. A what?

18 A. Makes the headlights alternate flashing.

19 Q. And that was a wig-wag?

20 A. Yes, Sir.

21 Q. All right. Did the car matching the description of the BOLO come up 95?

22 A. Yes, Sir.

23 Q. And it was traveling north in your direction?

24 A. Yes, Sir.

25 Q. All right. Tell the folks on the jury what you saw and what you did.

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HEARING

29

- 1 A. I saw a Burgundy color two-door vehicle with Connecticut plates come by
2 approximately 80-85 miles an hour. Myself and Mr. Avant then pulled out
3 behind the vehicle. As I was catching up with the vehicle I ran the tags. The
4 vehicle was in the right hand lane, changed lanes into a fast lane. I activated
5 my blue lights and siren and he increased the speed and began to pursue there.
- 6 Q. All right. Let me stop for a minute. When he came by, did you get a good look
7 at him?
- 8 A. Yes, Sir.
- 9 Q. And what was he doing?
- 10 A. He looked right back at us.
- 11 Q. He looked right back at you all?
- 12 A. Yes, Sir.
- 13 Q. And did you see him?
- 14 A. Yes, Sir.
- 15 Q. And did you immediately get in behind him?
- 16 A. Yes, Sir. We had to, of course, wait for some traffic to clear and we come out
17 right behind him.
- 18 Q. Okay, and then later on you said you put your blue lights and siren?
- 19 A. Yes, Sir.
- 20 Q. All right. Did you call anything into dispatch at that time?
- 21 A. I called in his tags, the Connecticut, and advised them we were behind that
22 vehicle.
- 23 Q. All right.
- 24 A. The BOLO.
- 25 Q. The vehicle from the BOLO?

HEARING

30

1 A. Yes, Sir.

2 Q. All right. Go ahead and tell them what happened.

3 A. Like I said, he then increased his speed. We began traveling northbound on I-
4 95 at a speed of approximately 100, 105 miles per hour. Some where around
5 the 117, 116 mile marker he slammed on brakes in front of me. Then I...then
6 he increased his speed right back again about 100 miles an hour.

7 Q. Let me stop you there. You say he slammed on his brakes in front of you?

8 A. Yes, Sir.

9 Q. All right. How far behind him are you?

10 A. A couple hundred yards...

11 Q. Let's say if we were in this room. If you're driving your car, where is the
12 rearend of his?

13 A. After he slammed on brakes or...I mean...

14 Q. Right before he slammed on brakes.

15 A. From...

16 Q. And you're ...

17 A. Probably from here to the wall or a little farther just assuming.

18 Q. Okay, and he slammed on the brakes in front of you?

19 A. Yes, Sir.

20 Q. Did you see the brake lights?

21 A. Yes, Sir.

22 Q. And then what did you do?

23 A. I hit my brakes and try to avoid running into the back of him.

24 Q. And were you able to avoid that?

25 A. Yes, Sir, I was.

HEARING

31

1 Q. All right. Go ahead then, please, sir.

2 A. He then increased his speed again about around 100 miles an hour. We're still
3 traveling northbound. We get to around 128 mile marker two eighteen
4 wheelers are side by side in both lanes. I guess they were trying to help us.
5 They seemed to be trying to stop the pursuit. They...he passed them on the left
6 hand shoulder road between them and a guard rail. Then the eighteen wheelers
7 moved, I caught back up with him around the 130 mile marker when I caught
8 up with him he shot across the median. At around the 132 mile marker he
9 started traveling the northbound and southbound lanes. Went up the wrong
10 way of the on-ramp on the interstate got on Highway 527 traveling towards
11 Sumter County. At that point I wasn't able to get off of the interstate at that
12 time and then Chief Randy Garrett who was behind me in the chase he became
13 the primary pursuit unit.

14 Q. All right. Let me stop you right there and back up. We went from about the
15 116 or 117 to the 128. Go back to about the 116 and 117 when the brakes
16 came on. As you're traveling up the interstate, what's at the 119 mile marker?

17 A. That's Highway 261 Jerry's Truck Stop.

18 Q. It's called Jerry's Truck Stop?

19 A. Yes, Sir.

20 Q. On the way to the lake. All right. Did anybody join in the chase there?

21 A. Yes, Sir. I think after we passed by some other deputies came in behind us.

22 Q. They would have come from where?

23 A. From the Sheriff's office.

24 Q. And it's off of 95?

25 A. Yes, Sir, it's off 261.

HEARING

32

- 1 Q. So you're the lead vehicle at 119 and who is behind you?
- 2 A. Investigator Avant still.
- 3 Q. He'd behind you since 113?
- 4 A. Yes, Sir.
- 5 Q. And so you're all were coming up...his lights on?
- 6 A. Yes, Sir.
- 7 Q. All right. You're all on the interstate and who comes in behind you?
- 8 A. I think Investigator David Robinson and Chief Randy Garrett and some other
- 9 investigators from the Sheriff and my sheriff's office. I don't recall exactly
- 10 who they were right now.
- 11 Q. So those folks are behind you and your behind Ridel?
- 12 A. Yes, Sir.
- 13 Q. All right, and then you proceed up, I think you said, at the 128 mile marker
- 14 and what happened there?
- 15 A. Yes, Sir. Around...that's where two eighteen wheelers were in both lanes of
- 16 travel.
- 17 Q. Kind of blocking him?
- 18 A. Just kind of blocking him and he passed them on the left hand side of the road
- 19 between the truck and the guard rail on the shoulder of the highway on some
- 20 grass.
- 21 Q. And the eighteen wheelers or semi's cleared out and you were able to get on
- 22 through?
- 23 A. Yes, Sir.
- 24 Q. And tell them again what happened when you got close to the 527
- 25 interchange.

HEARING

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1 A. He went across the median there, cut across the median, and came up on the
2 southbound side of the interstate and was traveling northbound in the
3 southbound lane. He then exited off onto the on-ramp traveling the wrong
4 way. Went up and got on Highway 527 and headed towards Sumter County.

5 Q. All right. Did you lose him right there?

6 A. I did, yes, Sir.

7 Q. And how did you get on to 527?

8 A. I went up the wrong way on the ramp on the northbound side and then I
9 turned back on 527.

10 Q. Okay, and you traveled the same direction he did?

11 A. Yes, Sir.

12 Q. All right. Tell the ladies and gentlemen of the jury what happened down there
13 on 527.

14 A. As I turned on 527 again traveling towards him, I heard Chief Randy Garrett
15 on the radio and say there's been a collision and sent everybody that we had.
16 Fire, EMS, Rescue, me, I think Investigator Avant, Investigator Robinson
17 were all behind Chief Garrett and we pulled up to the scene my self and
18 Investigator Robinson pulled up about the same time. There was debris every
19 where in the roadway. I saw Chief Garrett when I got out of my car I saw
20 Chief Garrett down the highway a little ways. Myself and Investigator
21 Robinson then headed towards him. Chief Garrett stopped me in the roadway
22 and told me the trooper was still in the car to come help him. So I turned
23 around and went back and grabbed my fire extinguishers to go help Chief
24 Garrett and try to get the trooper out of the car with all the other deputies.

25 Q. Did you ever go down where the suspect was taken into custody?

HEARING

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1 A. I did.

2 Q. Were you all able to get the fire out?

3 A. No, Sir, were not.

4 Q. Let me ask you this. Back to the eighteen wheeler. When he went to the left
5 and went around, did you see brake lights come on?

6 A. No, Sir.

7 Q. Okay, when he left to go through the median northbound and southbound
8 traffic, did you see his brake lights come on?

9 A. No, Sir.

10 Q. But you saw them come on when he jammed on the brakes to get you to run
11 into him?

12 A. Yes, Sir.

13 Mr. Jackson: Your Honor, if I could have permission for the witness to
14 come down. I want him to look at this map.

15 THE COURT: All right. It's a map?

16 MR. JACKSON: Yes, Sir.

17 THE COURT: Mr. Howle, you can stand anywhere you'd like and
18 proceed.

19 MR. HOWLE: Thank you, Your Honor.

20 Q. If you would how about draw...tell the ladies and gentlemen of the jury point
21 at this at map if you would.

22 A. This is Interstate 95, 113.

23 Q. He needs to see right back there. Turn your back.

24 A. Interstate 95 this is around 113 mile marker where myself and Investigator
25 Avant were in pursuit. There's 119 where Jerry's Truck Stop and everything

HEARING

35

1 is. Right here is about the 128 is where the eighteen wheelers were and where
2 he passed them

3 THE COURT: Mr. Jackson, make sure the court reporter can hear
4 him.

5 MR. JACKSON: Yes, Sir.

6 A. All right. And here is 527. This is where he shot across the median and that
7 on-ramp, that off-ramp, he got on 527. That's the off ram here I came up on
8 527 get off and turned around to get on 527.

9 Q. All right. If you would how about put a line about where the 113 mile marker
10 is and write 113.

11 (Witness complies)

12 Q. And that's where the chase started?

13 A. Yes, Sir.

14 Q. All right. If you would just write the word "Start".

15 (Witness complies)

16 Q. And about where were you when he slammed on his brakes?

17 A. Right here at 116, 117.

18 Q. All right. Put a line in there and just write the word "Brakes".

19 (Witness complies)

20 Q. About where were you again when he pulled the trick with the eighteen
21 wheelers?

22 A. Right here.

23 Q. All right. Just write...put a line and write "Eighteen wheelers".

24 (Witness complies)

25

HEARING

36

- 1 Q. That's fine. Now, let me get...are these the on/off ramps right here?
- 2 A. Yes, Sir.
- 3 Q. All right. Draw for the jury in red the route he took.
- 4 (Witness complies)
- 5 Q. He went right up here?
- 6 A. Yes, Sir.
- 7 Q. All right. Put on the outside. And then he turned left and went this way?
- 8 A. Yes, Sir.
- 9 Q. All right. Skinner Road...would this be Skinner Road?
- 10 A. Yes, Sir.
- 11 Q. All right. Tell them about the intersection of Skinner Road and 527. What's
- 12 important about that?
- 13 A. That's where Trooper Parker was sitting waiting on him to come by. That's
- 14 where Ridel slammed into him.
- 15 Q. All right. As you were coming up this way, were you talking to your dispatch?
- 16 A. Yes, Sir.
- 17 Q. What did you see the Defendant doing while he was driving the vehicle?
- 18 A. Well, he seemed to be reaching for something in the passenger seat. Kind of
- 19 reaching over there during the pursuit.
- 20 Q. And you could see that?
- 21 A. Yes, Sir.
- 22 Q. All right. Did you call that in?
- 23 A. Yes, Sir, I did.
- 24 Q. Okay, and why would you...why would that be important?
- 25 A. He's a robbery suspect. He might have a weapon.

HEARING

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1 Q. All right. On past this, was there anybody past this in case he went on up 95?

2 A. I believe dispatch advised there was a trooper at the rest area at the 140 or
3 something mile marker and also Chief Gray was stationed at the 135.

4 Q. All right. Put a little "X" where Chief Gray was. Put a circle and put a "G" in
5 it for "Gray".

6 (Witness complies)

7 Q. All right, and he...that's about where the Compass Restaurant is?

8 A. Yes, Sir.

9 Q. All right, and go up there if you would and mark where the trooper was?

10 A. Rest area.

11 Q. He was at that rest area?

12 A. Yes, Sir.

13 Q. All right. Let's make sure that...you got him on both sides?

14 A. Yes, Sir.

15 Q. South and north? Which one...where was he? Is he the one on the southbound
16 traffic or northbound traffic?

17 A. Northbound traffic.

18 Q. Okay, so that would be over here?

19 A. Yes, Sir.

20 Q. Okay, and why would they be stationed down the road?

21 A. Chief Gray had stop sticks there to deflate the tires of the suspect vehicle to
22 try to end the chase there he was going to put stop sticks at 135.

23 Q. So it's safe to say you're not just pursuing you're trying to contain it?

24 A. Yes, Sir.

25 Q. All right. Now if you would tell them and you could use the map if it helps

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HEARING

38

1 you. What's the distance of the pursuit from say here to where he got off on
2 95?

3 A. Approximately nineteen miles.

4 Q. Nineteen miles?

5 A. Yes, Sir.

6 Q. And approximately what's the distance from the intersection of 95 and 527
7 and Skinner Road/527 where the collision was?

8 A. Approximately three miles.

9 Q. So that chase and that pursuit would be over twenty-two miles?

10 A. Yes, Sir.

11 Q. And what would be the time?

12 A. Maybe approximately ten to fifteen minutes. Maybe twelve, twelve minutes, I
13 believe.

14 Q. All right, when you got off of 95 onto 527 did Randy Garrett call anything into
15 you?

16 A. He said that he'd stay behind the suspect until I was able to catch back up with
17 him.

18 Q. And so did you ever catch back up with him?

19 A. Yes, Sir.

20 Q. All right, Sir. You can go ahead and take your seat now.

21 THE COURT: Is 2 in evidence or...

22 MR. JACKSON: I move 2 in evidence if it is not.

23 THE COURT: Mr. Howle?

24 MR. HOWLE: I have no objection.

25 THE COURT: All right, Number 2 is the map, is that correct, Mr.

HEARING

39

1 Jackson?

2 MR. JACKSON: That's correct, Your Honor.

3 THE COURT: State's Exhibit 2 is in evidence without objection.

4 (State's Exhibit Number 2 is in evidence)

5 Q. All right, Mr. Kennedy, the dispatch radio transmission, that type stuff,
6 that's recorded by your dispatch in Clarendon County?

7 A. Yes, Sir.

8 Q. And you have the recording of the radio traffic from the time you got behind
9 him until the time you took him into custody?

10 A. Yes, Sir.

11 Q. All right, Sir. State's Exhibit Number 3.

12 A. Yes, Sir.

13 MR. JACKSON: Your Honor, we would move this into evidence at
14 this time and ask permission to publish it to the jury.

15 THE COURT: Mr. Howle?

16 MR. HOWLE: No objection, Your Honor.

17 THE COURT: All right, Number 3 is in evidence without objection.

18 (State's Exhibit Number 3 is in evidence)

19 MR. JACKSON: Your Honor, what I'd like to do and it may take a
20 little more time is let it play through and then come back and ask the witness questions
21 so we don't break it up.

22 THE COURT: All right.

23 MR. HOWLE: I don't mind it as long...I kind allow some leading here.
24 I just don't want it to be totally led when we get to that point.

25 THE COURT: All right, Mr. Jackson, Mr. Howle warned you.

HEARING

40

1 MR. JACKSON: I understand, Your Honor.

2 (State's Exhibit 3 played for the jury)

3 Q. And that's when they say he's taken into custody?

4 A. Yes, Sir.

5 THE COURT: All right, Mr. Jackson, let me stop you for just a...ladies
6 and gentlemen, you can stand in place and stretch your legs a little bit. I know that if
7 you have a filling lunch you can stand and stretch a little. We'll take about thirty
8 seconds to stand in place if you'd like. If not, you can certainly remain seated. All
9 right, Mr. Jackson.

10 MR. JACKSON: Your Honor, just rewind that it will take just a
11 moment.

12 THE COURT: All right.

13 MR. JACKSON: We'll rewind it while they stretch.

14 THE COURT: Okay.

15 MR. JACKSON: Your Honor, can I check to see if it's loud enough?

16 THE COURT: Does anybody need the tape to be played any louder
17 other than the fact that some of it might be a bit scrambled. Is it loud enough for
18 everybody? If not, just raise your hand. Okay.

19 Q. Mack, I'll ask you some questions as we go through. Just explain what's going
20 on for the jury.

21 (Exam by Mr. Jackson as tape continues to play)

22 A. Okay.

23 Q. Who's calling that in?

24 A. Investigator Avant.

25 Q. That's you calling in the license plate?

HEARING

41

- 1 A. Yes, Sir.
- 2 Q. You're already that close behind him?
- 3 A. Yes, Sir.
- 4 Q. And what's he doing?
- 5 A. He's running from us.
- 6 Q. Okay. Not stopping?
- 7 A. Right.
- 8 Q. And when he says light him up you're to do what?
- 9 A. Activate my blue lights.
- 10 Q. You've got the blue lights on him?
- 11 A. Yes, Sir.
- 12 Q. And your siren?
- 13 A. Yes, Sir.
- 14 Q. You calling in speed?
- 15 A. Yes, Sir.
- 16 Q. What did he just say?
- 17 A. He said he just slammed on brakes trying not to run into the back of him.
- 18 Q. That's you broadcasting that again?
- 19 A. I was telling Todd that.
- 20 Q. You're approaching 119?
- 21 A. Yes, Sir.
- 22 Q. And that's Jerry's Truck Stop?
- 23 A. Yes, Sir.
- 24 Q. In Manning?
- 25 A. Yes, Sir.

HEARING

42

- 1 Q. Coming to 119?
- 2 A. Yes, Sir.
- 3 Q. And Todd behind you?
- 4 A. Yes, Sir.
- 5 Q. Other officers joined in at the 119?
- 6 A. Yes, Sir.
- 7 Q. What's the known exit?
- 8 A. The 122. The Alcolu Exit.
- 9 Q. Alcolu?
- 10 A. Alcolu/521.
- 11 Q. So, you're fixing to go through Poticaligo Swamp?
- 12 A. Yes, Sir.
- 13 Q. What's he telling you?
- 14 A. He's reaching for something.
- 15 Q. Reaching for something?
- 16 A. Yes, Sir.
- 17 Q. And you can see him doing that?
- 18 A. Yes, Sir.
- 19 Q. Who is that?
- 20 A. That's Investigator Avant.
- 21 Q. What is 1033?
- 22 A. Emergency. Hold all radio traffic except for radio traffic involving that chase.
- 23 Q. HP is highway patrol?
- 24 A. Yes, Sir.
- 25 Q. That would be the rest area?

HEARING

43

- 1 A. Yes, Sir.
- 2 Q. Who is that?
- 3 A. Investigator Avant.
- 4 Q. And what's he telling you?
- 5 A. He's telling me he's trying to get to me.
- 6 Q. Is he kind of lagging back now?
- 7 A. Yes, Sir. He's starting to fall behind.
- 8 Q. And everyone else is behind him?
- 9 A. Yes, Sir.
- 10 Q. These dead spaces is that because ...
- 11 A. Yes, Sir.
- 12 Q. What's he doing there?
- 13 A. He's cutting across the median.
- 14 Q. Who is that?
- 15 A. That's Chief Garrett.
- 16 Q. Telling you?
- 17 A. That he's...stay behind Todd in case I caught back up with him.
- 18 Q. Who is that?
- 19 A. Chief Garrett.
- 20 Q. Okay. Now you weren't actually close enough to see one car ram the other
- 21 were you?
- 22 A. No, Sir.
- 23 Q. Now who was that calling in that he was in custody?
- 24 A. Detective Robinson.
- 25 Q. You keep the video camera or did you have the camera to the dash of your car.

HEARING

44

1 at the time?

2 A. Yes, Sir, I did.

3 Q. Did you also have this chase on video?

4 A. Yes, Sir, I do.

5 Q. The video does it cover the entire chase or just a portion of it?

6 A. Just a portion it covers until he cut across the median onto 527 and then it
7 picks back up at the wreck scene when I get there.

8 Q. All right. I'm going to hand State's Exhibit 4. Is that the video of the chase?

9 A. Yes, sir.

10 MR. JACKSON: Your Honor, at this time we move this into evidence
11 and ask permission to publish it to the jury.

12 THE COURT: Mr. Howle?

13 MR. HOWLE: We have no objection, Your Honor.

14 THE COURT: All right, Number 4 is entered without objection and
15 how long is the actual tape, Mr. Jackson?

16 MR. JACKSON: It runs at fifteen minutes, Your Honor.

17 THE COURT: All right, fifteen minutes. Is there anyone on the jury
18 who needs to take a break at this time? All right. You can publish the tape, Mr.
19 Jackson.

20 (State's Exhibit Number 4 is in evidence)

21 THE COURT: Do you all have a pointer? Is he going to need a
22 pointer?

23 MR. JACKSON: Just a couple of things he'll need to point out, Your
24 Honor. He might can just do it with a stick. We just got to make sure we don't block
25 anybody. Everybody see that just nod.

HEARING

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1 Q. Is this the chase?

2 A. Yes, Sir.

3 Q. And there's no audio on this right?

4 A. No, Sir.

5 Q. All right, which car is this?

6 A. That's Eric Ridell.

7 Q. And you're behind him?

8 A. Yes, Sir.

9 Q. All right. Tell them about these figures and things down here.

10 A. This is the time and date, I put my lights and siren on.

11 THE COURT: Mr. Kennedy, make sure you speak loud enough for
12 not only the jury but the court reporter again. Thank you.

13 MR. KENNEDY: Yes, Sir.

14 Q. What happened there?

15 A. That's where he slammed on the brakes trying not to run into the back of him.

16 Q. This car over here. What happened to it?

17 A. He went...they ran off the right shoulder of the road.

18 Q. And that's what you called in on the radio?

19 A. Yes, Sir.

20 Q. All right, what's he doing there?

21 A. He's reaching when he's reaching for something in the passenger seat.

22 Q. Again?

23 A. Doing it again, yes, Sir.

24 Q. And again?

25 A. Yes, Sir.

THIRD JUDICIAL CIRCUIT

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HEARING

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1 Q. All right. Did that happen every now and then?

2 A. Yes, Sir.

3 Q. Is that what you were calling in?

4 A. Yes, Sir.

5 Q. And if you would as we go through let the jury know any landmarks as we
6 come up exits, Jerry's Truck Stop, that kind of stuff.

7 A. We're on to 118 now coming up on the 119 Jerry's Truck Stop area. This is
8 the 119 exit. Jerry's Truck Stop and that's Highway 261 where the bridge is.

9 Q. Right here.

10 A. Yes, Sir.

11 Q. Do you recall what time the clock stood when you started?

12 A. No, Sir, I don't.

13 Q. What's that exit?

14 A. That's off the exit Highway 521.

15 Q. What speed are getting to in this chase?

16 A. About 100 miles an hour. 105.

17 Q. What's the lowest speed there?

18 A. Got clocked about 90 miles an hour. He slammed on brakes, slammed his
19 brakes and started accelerating right there.

20 Q. Is this the Black River swamp area?

21 A. Yes, Sir.

22 Q. What about those eighteen wheelers?

23 A. The eighteen wheelers were blocking both lanes of travel while he was getting
24 ready to pass them on the left hand side of the road and almost hitting the guard rail
25 and the eighteen wheelers.

HEARING

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- 1 Q. And what exit are you approaching next?
- 2 A. 132, Highway 527.
- 3 Q. That's where he gets off?
- 4 A. Yes, Sir.
- 5 Q. This is the exit here?
- 6 A. Yes, Sir. That's the exit he got off of when he went off.
- 7 Q. If we watch the bridge what would we see?
- 8 A. Chief Garrett going across.
- 9 Q. Who?
- 10 A. Chief Garrett.
- 11 Q. And who you calling up the exit ramp now?
- 12 A. That's investigator Robinson and Investigator Avant.
- 13 Q. And which direction are you heading?
- 14 A. Towards Sumter County.
- 15 Q. You all actually are in Sumter County?
- 16 A. Yes, Sir. And that's Investigator Avant in front of me.
- 17 Q. In his unmarked ...
- 18 A. Blazer.
- 19 Q. Blazer and he's got lights going?
- 20 A. Yes, Sir.
- 21 Q. Okay. The same lights he had when you all initially started the chase?
- 22 A. Yes, Sir.
- 23 Q. Now when you get up towards the scene, tell them what's going on.
- 24 A. That's Investigator Robinson.
- 25 Q. What's the smoke?

HEARING

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- 1 A. That's from the collision. Trooper Parker's car and the suspect vehicle.
2 That's trooper, excuse me, Chief Garrett's vehicle there.
- 3 Q. Who's vehicle would this be here?
4 A. That's the suspect vehicle there.
- 5 Q. And back here on the right would be Johnathan Parker's vehicle?
6 A. Yes, Sir.
- 7 Q. What's going on down here?
8 A. That's where the suspect is.
- 9 Q. Is that you?
10 A. Yes, Sir.
- 11 Q. Okay. And these vehicles are doing what?
12 A. They're on fire, appear to be.
- 13 Q. All right. What's going down the road?
14 A. The suspect was going down here. That's Chief Garrett telling us that
15 Johnathan is still in the vehicle. Running back there to help him.
- 16 Q. And was there anything you all could do?
17 A. No. We had extinguishers but the fire was just too big, too hot.
- 18 Q. Was this one of the vehicle that was also in the pursuit?
19 A. There was...that was people getting off the on-ramp when I got on.
- 20 Q. Okay.
21 A. You can see the fire in the trees.
- 22 Q. That's actual flames up there?
23 A. Yes, Sir, from the vehicles.
- 24 Q. Who is this?
25 A. That's Chad Newman.

HEARING

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- 1 Q. What is he doing with the Defendant's car?
- 2 A. Checking to see if anybody is in the car.
- 3 Q. Is that Chief Garrett's car?
- 4 A. Yes, Sir.
- 5 Q. And the lights he had flashing?
- 6 A. Yes, Sir.
- 7 Q. Is that the Defendant's car on the left?
- 8 A. Yes, Sir.
- 9 Q. This vehicle right here. Was it involved in the pursuit?
- 10 A. Yes, Sir. That's Investigator Robinson's vehicle.
- 11 Q. Okay. Those are the flashing lights?
- 12 A. Yes, Sir.
- 13 Q. The direction you're heading now is where?
- 14 A. Back towards 378. Back where they apprehended the suspect.
- 15 Q. That's where they caught him?
- 16 A. Yes, Sir.
- 17 Q. Okay. That's all we can see from the tape?
- 18 A. Yes, Sir.
- 19 Q. Now Officer Kennedy, we heard you call in the tags on the radio transmission.
- 20 Did the tags come back belonging to this Ford Thunderbird?
- 21 A. No, Sir.
- 22 Q. They did not? Did you run the registration on this car?
- 23 A. Certain records check on the vehicle.
- 24 Q. Did come back registered to Eric Ridel?
- 25 A. No, Sir.

HEARING

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1 Q. From the video it's rather obvious that you are in very much in control of your
2 vehicle. How would you describe Eric Ridel's ability to control his vehicle?

3 A. About the same. He seemed to be somewhat in some control when he wanted
4 to be.

5 Q. Did he seem in control in what he was doing?

6 A. Yes, Sir.

7 Q. At any time during your pursuit, did Eric Ridel stop for your blue light or
8 siren?

9 A. No, Sir, he did not.

10 Q. Or any other officer that was out there?

11 A. No, Sir.

12 Q. Your Honor, that's all I have for this witness.

13 THE COURT: All right.

14 MR. JACKSON: I don't know if you want to wait until tomorrow.

15 THE COURT: Would you all come up here for just a minute?

16 MR. JACKSON: Yes, Sir.

17 THE COURT: Ladies and gentlemen, we're going to break for the day
18 and I'm going to ask you to be back in your jury room at 9:30 in the morning. We're
19 going to be back a good bit earlier than that to take care of any preliminary matters,
20 scheduling, and other things just before you arrive in the courtroom this afternoon
21 after you leave so don't think that you're going to go straight home because we won't
22 be. Do not discuss the case. This will be the second time of meeting that I'm instruct
23 you not to discuss the case. As I indicated to you earlier, it would be inappropriate for
24 you to do that. You have not heard all of the evidence. That won't be for some time.
25 Probably would not even tomorrow will all the evidence be in. Do not discuss the case

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1 with anyone. Don't even mention it to anyone even casually and if you happen to get
2 back in the morning before the balance of the panel gets back into the jury room,
3 don't begin to discuss among yourselves anything that's gone on in this courtroom at
4 all. Also, do not read any news accounts that there...then again, I don't even know if
5 there will be but if you happen to receive the local newspaper it probably would be
6 better even if you just devoted yourself to the sport section or the panorama section or
7 whatever they might call it. Now I don't know. Just do not read any news accounts. If
8 you have a habit of listening to the evening news or the morning news, don't listen to
9 any news accounts of this trial at all because again you're to base your decisions in
10 this case solely on what goes on in this courtroom. Have a nice evening. You are free to
11 go until 9:30 in the morning. If you have any questions about anything, your jury
12 service, the bailiffs will be happy to answer those for you.

13 (Jury dismissed for evening 5:35 p.m.)

14 THE COURT: All right, Officer Kennedy, I want to remind you that
15 you're still an active witness in this case. You are not permitted under our rules to
16 discuss your testimony in any fashion with anyone and that includes, of course, Mr.
17 Jackson, Ms. Fant, any of your fellow officers, or anyone else connected or
18 unconnected with this case. Cross examination will take place in the morning and
19 obviously you have other things you can talk about with these folks but nothing about
20 your testimony at all. All right, Sir.

21 MR. KENNEDY: Yes, Sir.

22 THE COURT: All right. Thank you, Sir. You may step down.

23 MR. KENNEDY: Thank you.

24 THE COURT: Mr. Jackson.

25 MR. JACKSON: Yes, Sir.

HEARING

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1 THE COURT: And Mr. Howle, is there anything you want to address
2 before we break for the day?

3 MR. HOWLE: No, Sir.

4 THE COURT: All right. One thing I wanted you to start thinking
5 about. The code...the blue light code Section 56-5-750(a) talks about the what I call
6 the standard failure to stop for a blue light. Subsection ©)(2) carries with it a
7 component of resulted in death and that I...there's a question in my mind there's a
8 U.S. Supreme Court case on it that asks the question but doesn't answer it whether or
9 not death and further violations of the law such as speeding, lane change, of that
10 nature, whether or not they are elements of the charged crime or whether or not there
11 are sentencing considerations so I'm going to give you advanced notice that I'd like
12 you to put on that. At least it would be relevant to what I charge the jury and we'll be
13 discussing that more but I wanted to give you some advanced notice but I'll be asking
14 for your input on that.

15 MR. HOWLE: Judge, you mean whether speeding itself is an element
16 of the crime?

17 THE COURT: Well, in other words 56-5-750(a) says, "that simple
18 failure to stop for a blue light or siren or both is a crime" and ©)(2) says that, "if
19 earlier violations of the law occur along with that and death results, there is a felony
20 punishable up to twenty-five years in prison". Now State versus Davidson, U.S.
21 versus Davis asks the question but it doesn't answer about whether or not the element
22 of resulting in death or the element of other violations of the law are elements of the
23 crime or whether or not there is simple sentencing considerations. That's my question
24 that you're going to have to answer at some point. I've got my own thoughts on it but
25 I want to get your thoughts at some point. It doesn't have to be tomorrow. It will

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1 probably some time Wednesday when we actually address it or whenever I charge it
2 for the jury. I just wanted to give you advanced notice.

3 MR. HOWLE: Thank you, Your Honor.

4 THE COURT: All right. Anything else?

5 MR. JACKSON: No, Sir.

6 THE COURT: Okay. Let's see. I've got ten after 9:00.

7 MR. JACKSON: Yes, Sir. 9:30 for the trial.

8 THE COURT: Thank you.

9 (Court Adjourned for today 5:40 p.m.)

10 (Tuesday, June 5, 2007)

11 THE COURT: All right. Thank you very much. Have a seat. Mr.
12 Jackson, Mr. Howle, you ready?

13 MR. JACKSON: Yes, Sir.

14 MR. HOWLE: Yes, Sir, Your Honor.

15 THE COURT: All right. You may begin. Do you all need this? Okay.

16 BAILIFF: Your Honor, we have all the jurors and alternate present in
17 the courtroom.

18 THE COURT: Thank you, Sir. Ladies and gentlemen, sorry for the
19 brief delay this morning. Hopefully if not today but tomorrow we may be in the larger
20 courtroom. I think they may have spoke to some business hopefully down there that
21 would have cause to reason to use that...I was talking to Judge Cochran about that a
22 few minutes ago. I know you're cramped there. We're going to try to get that done.
23 We're still proceeding with the State's case and Mr. Jackson, are you ready to call
24 your next witness?

25 MR. JACKSON: Your Honor, I believe we still have Mr. Mack

HEARING

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1 Kennedy on the stand.

2 THE COURT: All right. That's correct.

3 MR. JACKSON: Yes, Sir.

4 THE COURT: That's correct, that's correct.

5 MR. JACKSON: Can we recall Mr. Kennedy?

6 THE COURT: Cross examination. Mr. Kennedy, you're still under
7 oath.

8 BAILIFF: Watch your step, Sir.

9 THE COURT: And Mr Howle, you can cross examine the witness.

10 MR. HOWLE: Thank you, Your Honor.

11 CROSS EXAMINATION BY MR. HOWLE

12 Q. Officer Kennedy, on this particular day you indicated that you had heard
13 BOLO or whatever and you positioned yourself on the interstate, what mile marker
14 was that?

15 A. Number 113.

16 Q. 113?

17 A. Yes, Sir.

18 Q. Do you know how far that is from Walterboro?

19 A. No, Sir.

20 Q. Do you have a rough idea mileage wise how far it is?

21 A. Not off the top of my head. No, Sir.

22 Q. When did you start your pursuit? What time was it when you actually
23 started...saw the vehicle and you started pursuit?

24 A. It was around 11:45 or 11:47 I believe.

25 Q. Okay. I think the officer in Colleton who testified yesterday said she got the

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- 1 call about 10:16 that something happened in Walterboro.
- 2 A. Yes, Sir.
- 3 Q. So that's an hour and a half later?
- 4 A. Yes, Sir.
- 5 Q. Okay and the time of collision was around 12:00?
- 6 A. I think so, yes, Sir.
- 7 Q. So there were two hours roughly from something happened in Walterboro to
- 8 the collision, the pursuit was only about fifteen minutes?
- 9 A. Yes, Sir.
- 10 Q. That you were involved?
- 11 A. Yes, Sir.
- 12 Q. There was some radio communication where there was an indication that the
- 13 city and county. Is it normal to call out the city to do anything as far as
- 14 pursuits on the interstate?
- 15 A. Yes, Sir, anytime we have anything like that go on we always like to have
- 16 extra help.
- 17 Q. So city policeman go out on the interstate too?
- 18 A. Yes, Sir.
- 19 Q. Be in pursuits? When he...when the car passed you there was no, nobody
- 20 pursuing the car?
- 21 A. No, Sir.
- 22 Q. And you estimate the speed to be?
- 23 A. Around 80, 85 miles an hour.
- 24 Q. If you had been on the interstate and someone had passed you doing 85 would
- 25 you have turned the blue light and go on even without a BOLO?

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1 A. Yes, Sir.

2 Q. You made a statement that as you were pursuing following the car there were
3 several times that the individual appeared to be looking away and not looking
4 down the road.

5 A. He was reaching for something.

6 Q. Several times?

7 A. Yes, Sir.

8 Q. So his attention was diverted at times from the actual driving to...something
9 else was...

10 A. Yes, Sir, he was reaching or something in the passenger seat.

11 Q. One thing the Solicitor asked you about was whether or not the driver seemed
12 to be in control and first you said, "some control".

13 A. Yes, Sir.

14 Q. Were you referring to these times?

15 A. Yes, Sir.

16 Q. In looking at the video of the car it does go off the road several, a number of
17 times off the edge of the road.

18 A. Yes, Sir.

19 Q. So when you say, "in control" as much as you can be in control in going those
20 speeds?

21 A. Yes, Sir. He was in control of his vehicle.

22 Q. When he, when the vehicle crossed the median you were the lead pursuit
23 vehicle up to that point?

24 A. Yes, Sir.

25 Q. All right, and after that who was the lead pursuit?

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- 1 A. Chief Garrett.
- 2 Q. And he's with the City?
- 3 A. Yes, Sir.
- 4 Q. At any time during the pursuit itself, did you hear any radio transmissions or
- 5 indications that the chase itself had been called off?
- 6 A. No, Sir.
- 7 Q. One thing on the tape that was being played yesterday made some reference to
- 8 a strong armed robbery and a Bonneville tag. Was that supposed to be the
- 9 same pursuit or was that something totally unrelated to this?
- 10 A. That was...I ran the tags that were on that vehicle and they came back to a
- 11 Bonneville not the Ford Thunderbird.
- 12 Q. Okay. But someone on the other side said strong armed robbery?
- 13 A. Yes, Sir. I dispatched advised that it was strong armed.
- 14 Q. If you were pursuing someone and thought it was armed robbery and were
- 15 told whether it was erroneous or not it was strong armed robbery, do you
- 16 consider to continue to pursue it?
- 17 A. Yes, Sir.
- 18 Q. When the accident happened itself, you didn't see that collision?
- 19 A. No, Sir.
- 20 Q. So when you arrived on the scene the collision had already happened?
- 21 A. Yes, Sir.
- 22 Q. Thank you. I don't have any further questions, Your Honor.
- 23 THE COURT: Re-direct, Mr. Jackson.
- 24 MR. JACKSON: Just a few questions, Your Honor.
- 25 RE-DIRECT EXAMINATION BY MR. JACKSON

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1 Q. Mr. Howle asked you about the time on the pursuit. Regardless of your
2 memory that's on the label on the video isn't it?

3 A. Yes, Sir.

4 Q. And about the Defendant being in control of his car, is there any doubt in your
5 mind that he slammed on the brakes and you were right behind him and almost
6 ran that car off the side, was he in control then?

7 A. Yes, Sir, he was.

8 Q. And when he went around the eighteen wheelers, was he in control then?

9 A. Yes, Sir, he was in control.

10 Q. When he hit that median, was he in control then?

11 A. Yes, Sir.

12 Q. You didn't see him when he ran?

13 A. No, Sir.

14 Q. All right. Nobody called the chase off?

15 A. No, Sir.

16 MR. JACKSON: That's all the questions I have.

17 THE COURT: All right. Any re-cross, Mr. Howle, on that point only?

18 RE-CROSS EXAMINATION BY MR. HOWLE

19 Q. Just one question. He asked about the putting the brakes on. When you first
20 testified to that when he asked you that question you said two hundred yards
21 and then he kind of almost corrected you and then you said, "oh maybe from
22 here to the end of the room". Do you recall that?

23 A. Yes, Sir.

24 Q. So the brakes came on...

25 A. He wasn't that far ahead of me.

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1 Q. You say he was going 85, 100 miles an hour?

2 A. Yes, Sir.

3 Q. He put the brakes on. You had plenty...you had time to stop?

4 A. Yes, Sir.

5 Q. So it certainly wasn't a distance between here in the room?

6 A. No, Sir.

7 Q. Several hundred yards was probably more right?

8 A. Yes, sir.

9 MR. HOWLE: Nothing further, Your Honor.

10 THE COURT: All right. You may step down.

11 MR. JACKSON: Thank you, Your Honor. Your Honor could Mr.
12 Kennedy be excused?

13 THE COURT: All right. Thank you, Sir. You can be excused, Mr.
14 Kennedy.

15 MR. JACKSON: Your Honor, the State calls Chief Randy Garrett.

16 CLERK: Place your left hand on the Bible and raise your right hand
17 and state your name please.

18 MR. GARRETT: Randy L. Garrett, Jr.

19 CLERK: Do you solemnly swear or affirm the testimony to the Court
20 shall be the truth, the whole truth, and nothing but the truth so help your God?

21 MR. GARRETT: I do.

22 CLERK: Watch your step please. Please state your full name and spell
23 your last name for the record.

24 MR. GARRETT: Randy L. Garrett, Jr. G-A-R-R-E-T-T.

25 CROSS EXAMINATION BY MR. JACKSON

HEARING

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- 1 Q. Good morning, Chief.
- 2 A. Morning, Sir.
- 3 Q. Can you tell us where you live.
- 4 A. Manning, South Carolina, Sir.
- 5 Q. How long have you been in Manning?
- 6 A. Thirty three years, Sir.
- 7 Q. And tell us some of the jobs you've done in law enforcement while in the City
- 8 of Manning or in Clarendon County?
- 9 A. In the City of Manning I was with the...in the City of Manning in the late '70's.
- 10 Then I spent seventeen and a half years with the Clarendon County Sheriff's
- 11 office and been the police chief in the City of Manning now for nine years.
- 12 Q. What were some of your duties and responsibilities as chief police?
- 13 A. I have a lot of duties. Answering the phone, taking phone calls, complaints,
- 14 assisting my officers on serious calls, murder cases, burglary cases, anything
- 15 that calls for my duty.
- 16 Q. Were you working on May 16, 2005?
- 17 A. Yes, Sir, I was.
- 18 Q. And where were you that morning?
- 19 A. I was in my office.
- 20 Q. And did you hear a BOLO come over the radio?
- 21 A. Yes, I did, Sir.
- 22 Q. Do you know about what time you heard it?
- 23 A. I don't recall the exact time. I do remember the BOLO was given.
- 24 Q. All right, and what were your thoughts and what did you do to react to the
- 25 BOLO?

HEARING

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- 1 A. Normally when I'm in my office and I hear a BOLO go out, at the end of the
2 dispatch given the BOLO I listen for my officers who are on duty to see if
3 they've responded that they got the BOLO and each officer that was on duty
4 that morning responded that he had copied the BOLO.
- 5 Q. And that would be back on your dispatch, not necessarily the county it would
6 be heard?
- 7 A. Well, it's the county dispatchers but they dispatch both all the municipalities in
8 the county as well as the sheriff's office.
- 9 Q. All right, Sir. What's between the police department and the interstate?
- 10 A. We have on 261 we're about two and a half miles from the interstate.
- 11 Q. All right. What buildings or things are between you and the interstate?
- 12 A. We have schools.
- 13 Q. Which schools?
- 14 A. We have the Manning Elementary, Manning High School, and Manning Junior
15 High.
- 16 Q. All right. On May the 16th had school be in?
- 17 A. Yes, Sir.
- 18 Q. What were your thoughts about someone coming off the interstate on to 261?
- 19 A. We've had it occur in Manning before and our standard operating procedure in
20 the City of Manning all of our patrol cars are equipped with stop sticks, a tire
21 deflating devices that can stop vehicles who are being pursued by law
22 enforcement or running from law enforcement. Because of our schools and
23 locations three interchanges off the interstate have major highways that all
24 come into the city so our standard operating procedure is to proceed outside
25 of the city to...and put out our stop sticks to stop a pursuit that may come into

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1 the city.

2 Q. All right, Sir. Do you have other plans that you engage in when you hear
3 somebody is coming up the interstate to stop them from coming in other areas
4 of the city? Other directions?

5 A. Yes, Sir, we have I think the 115 exit off Interstate 95 is U.S. 301 which
6 comes into the city. The 119 exit on I-95 is South Carolina 261 and the 122
7 exit which is located in Alcolu that's U.S. 521. All major highways that come
8 into the city.

9 Q. If anybody gets off 95 on those is headed to Manning?

10 A. Yes, Sir.

11 Q. And that's where you are?

12 A. Yes, Sir.

13 Q. Now tell the ladies and gentlemen of the jury what you did having those
14 thoughts on your mind.

15 A. One of the officers on duty was in the office that day as well as myself when I
16 heard Investigator Avant come on the radio that they thought they were
17 behind the vehicle that had been involved in robbery in Colleton County.
18 Shortly after that I heard the call come out from Investigator Avant to telling
19 Mack to activate his blue lights. It wasn't a second or two after that Mack said
20 he's not stopping. I know it was myself and Sargent Donnie Groves who were
21 in the office when it came out he said he would take 301 and I told him I
22 would take 261.

23 Q. Is that what you all did?

24 A. Yes, Sir. We left the office. I proceeded out 261 toward the interstate, passed
25 the schools, and was going to deploy my stop sticks.

HEARING

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- 1 Q. Is that what we all know as Jerry's Truck Stop?
- 2 A. Yes, Sir.
- 3 Q. All right. Tell us what happened there?
- 4 A. I got passed the schools, got up to the red light which is right at Jerry's Truck
- 5 Stop which is just before the interchange itself, and I heard Deputy Kennedy
- 6 say he as going under the 119 which meant the pursuit was passing the exit.
- 7 Q. All right, and then what happened?
- 8 A. I noticed Investigator Robinson who is with the narcotics unit, he was in his
- 9 pick up truck, the sheriff's department equipped a pick truck, he started to get
- 10 on the interstate and I followed him.
- 11 Q. Now tell them what kind of car you were in?
- 12 A. I'm in a light gold colored Ford Crown Vic. That's a police package vehicle
- 13 and it's equipped with lights and the grille, windshield, back deck, side lights.
- 14 Q. Were your lights on?
- 15 A. Yes, Sir.
- 16 Q. All of them?
- 17 A. Yes, Sir.
- 18 Q. How about your siren?
- 19 A. Yes, Sir.
- 20 Q. Okay.
- 21 A. Got on the interstate. I followed him to the interstate. He...we then came up
- 22 behind Investigator Avant and Mr. Robinson stayed behind Investigator Avant
- 23 and I stayed behind Mr. Robinson and all this during the pursuit we were
- 24 monitoring the radio and listening to Deputy Kennedy.
- 25 Q. Okay, and Mack Kennedy was in the front of you all?

HEARING

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- 1 A. Yes, Sir.
- 2 Q. Everybody you're looking at has got on blue lights and siren?
- 3 A. Yes, Sir.
- 4 Q. Okay. Now describe the pursuit as you saw it for the jury?
- 5 A. As I'm listening, of course I'm behind Deputy Kennedy who is behind
- 6 Investigator Avant. Every now and then when we got on a straight stretch of
- 7 road looking ahead, I could see Deputy Kennedy's blue lights but he was
- 8 basically gaining and kind of leaving us behind. We were caught up in traffic
- 9 and, of course, I'm following two other deputies.
- 10 Q. Did there come a time when you all got so far back that it made you lose
- 11 ahead?
- 12 A. I think it was Investigator Avant who was on the radio that kept calling
- 13 Deputy Kennedy letting them know that they were hung up in traffic but they
- 14 were trying to get to them. I want to think it was around the 123 mile marker
- 15 after we passed Alcolu exit that the Investigator Avant came on the radio and
- 16 told Deputy Robinson and myself to pass him because he couldn't keep up.
- 17 Q. Now, as the convoy was going up the three of you all were kind of falling
- 18 behind?
- 19 A. That's correct, Sir.
- 20 Q. And that is why? Why is that?
- 21 A. The two investigators with the sheriff's office were basically driving pick up
- 22 trucks which are a lot slower than patrol cars.
- 23 Q. All right. So the vehicles you were following were slower than the one Mack
- 24 Kennedy was driving?
- 25 A. That's correct, Sir.

HEARING

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- 1 Q. And you mentioned something about traffic?
- 2 A. There were some traffic and I guess when people look in the mirror and see a
- 3 pick up truck they don't normally think as that being a law enforcement
- 4 vehicle so they hesitate before shifting lanes and getting out of the way.
- 5 Q. Okay, and that was happening?
- 6 A. That was happening, yes, Sir.
- 7 Q. Okay, you all had to get around that traffic to catch back up?
- 8 A. Yes, Sir.
- 9 Q. All right. What happened when...what mile marker did you say you moved
- 10 ahead?
- 11 A. Actually at the 123 Deputy Robinson and myself moved ahead of Investigator
- 12 Avant.
- 13 Q. Okay, and what happened after that?
- 14 A. We came into traffic again. Deputy Robinson was driving a F1 Ford pick up
- 15 truck. He was having the same problems that Investigator Avant was having in
- 16 his Blazer. People just weren't moving over for him. I think around the, it was
- 17 between the 124 and the 125 mile marker, Deputy Robinson moved to the
- 18 right lane and gestured for me to come around.
- 19 Q. And did you do so?
- 20 A. Yes, I did, Sir.
- 21 Q. All right, and what was the incentive to get move on over?
- 22 A. So that I could catch up with Mack so he would have, that's Deputy Kennedy,
- 23 he would have back up.
- 24 Q. He didn't have any back up at the time?
- 25 A. No, Sir.

HEARING

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1 Q. He was up there by himself?

2 A. By himself, yes, Sir.

3 Q. Okay. Were you able to catch up to him?

4 A. In about two and a half, right at three miles I caught up with him about the
5 128 mile marker.

6 Q. Okay. Continue to describe for them what you saw when you were
7 approaching the eighteen wheelers.

8 A. I caught up with Deputy Kennedy and because of listening and monitoring the
9 radio and listening to him talking about the suspect reaching and as well as his
10 driving habits, I stayed in the right lane, I stayed behind him but I stayed in the
11 right lane in case Deputy Kennedy had to make evasive action and stop, that
12 he would have a clear path and there wouldn't be a crash between the two of
13 us. We caught up with two eighteen wheelers who happened to be in the
14 number one and number two lanes side by side and as the suspect approached
15 he goes off into the grass on the left hand side and passes between the
16 guardrail and eighteen wheelers.

17 Q. And what was going through your mind?

18 A. I couldn't believe he was driving...I didn't believe he tried that. I've never seen
19 that maneuver before.

20 Q. What happened after that?

21 A. He eventually got around the eighteen wheelers and Deputy Kennedy and
22 myself had to wait for one of the eighteen wheelers to get ahead and shift back
23 to the right lane to allow us to pass.

24 Q. Did that happen?

25 A. Yes, it did, Sir.

HEARING

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1 Q. Okay, and then what happened?

2 A. As we started gaining back up on the suspect's vehicle again we were around
3 the 131 mile marker just before the 527 interchange. We had caught back up
4 with him because he got caught up in a little bit of traffic. There again I was in
5 the right lane, Deputy Kennedy was in the left hand lane coming up behind the
6 suspect vehicle and then he made another wild maneuver and crosses the
7 interstate going into the southbound lane of I-95 where he then crosses it and
8 goes up the entrance ramp the wrong way.

9 Q. What were your thoughts then?

10 A. I just couldn't believe he would make a maneuver like that at that speed. I
11 mean, at that time he was approximately running a hundred miles an hour or
12 better.

13 Q. The speed on 95. What's the posted speed limit on 95?

14 A. 70 miles an hour, Sir.

15 Q. So he exceeded that?

16 A. Absolutely.

17 Q. And you were able to exit off of 527. You were that far enough to make that
18 exit safely?

19 A. Yes, Sir. Deputy Kennedy had come up on some eighteen wheelers who were
20 in the right hand lane like I was when the suspect maneuvered across the
21 interstate and went up the entrance ramp. I was in the right hand lane and
22 coming up on the exit I just merged onto the exit ramp.

23 Q. What's the posted speed limit on 527?

24 A. It's a 55, Sir.

25 Q. It's 55?

HEARING

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- 1 A. Yes, Sir.
- 2 Q. Now, when you got on 527 tell us what happened then?
- 3 A. As I got on 527 and was crossing the interstate I could see the vehicle well
- 4 ahead of me. I then at that time radioed dispatch to let them know that he was
- 5 on 527 and headed towards Sumter County. I then, I think Mack called me on
- 6 the radio to let me know to be careful because he had been reaching for
- 7 something in the passenger seat and I then radioed Mack did I would keep him
- 8 in sight until he could catch up and take the pursuit back over.
- 9 Q. Okay, and go ahead and tell them what happened.
- 10 A. There's a couple curves on the road. The last curve before you get to what's
- 11 referred to as Dab's Crossroad 378 and 527 a long straight stretch there
- 12 before you get to that intersection. As we came out of that curve I'm still
- 13 gaining on him. As we got out of the curve and hit the straight stretch, the
- 14 suspect vehicle moved to the left hand lane, excuse me, and just driving in the
- 15 left hand lane.
- 16 Q. So when the straight stretch he's in the left hand lane...
- 17 A. Yes, Sir.
- 18 Q. ...and you were in the normal lane?
- 19 A. I'm in the right hand lane, yes, Sir.
- 20 Q. ...and you all were going down?
- 21 A. We're going down.
- 22 Q. Did some...do you know which direction you're traveling? Is that north? It
- 23 would be north on 527?
- 24 A. Yes, Sir, north.
- 25 Q. All right, so southbound traffic, again he gets in the southbound lane going

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- 1 north?
- 2 A. Yes, Sir.
- 3 Q. Did you all pass a couple of other cars that also came down?
- 4 A. That was...we did that prior to that last curve before the straight stretch.
- 5 Q. He didn't run them off the road?
- 6 A. No, Sir. He was in the right hand lane at that time.
- 7 Q. And when it was clear he did what?
- 8 A. Moved over.
- 9 Q. All right. You're approaching the intersection of Skinner Road?
- 10 A. Yes, Sir.
- 11 Q. And how far behind him are you?
- 12 A. Just having to guess, Sir, between one hundred and fifty, two hundred yards is
- 13 my best guess behind him.
- 14 Q. All right, and if you would tell the ladies and gentlemen...could you see blue
- 15 lights ahead of you?
- 16 A. Yes, Sir.
- 17 Q. And what did you see ahead of you out there at Skinner Road?
- 18 A. When I noticed the blue lights I at that time all I knew was a patrol car was
- 19 parked on the shoulder of the road.
- 20 Q. Okay. As you all are approaching?
- 21 A. Yes, Sir.
- 22 Q. Tell them what happened.
- 23 A. I knew it either had to be a trooper or a Sumter County deputy because we
- 24 had already entered Sumter County so I started to slow up because I knew
- 25 that unit could be the primary and take over the pursuit. As we were

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1 approaching the suspect vehicle was in the left hand lane, we're coming up on
2 a patrol car, and for no apparent reason he leaves the left hand lane, he goes
3 into the right hand lane, and he strikes the patrol car.

4 Q. And what happened, Sir.

5 A. It looks like a bomb going off. Debris is every where. The patrol car flies off
6 into the woods and the suspect vehicle is spinning, striking the trees on the
7 ditch bank.

8 Q. Did he ever apply his brakes or have his brake lights come on before the
9 impact?

10 A. No, Sir.

11 Q. Did a dog come across or a deer come across that would of make him swerve?

12 A. No, Sir.

13 Q. Was there plenty of room to avoid what happened?

14 A. Yes, Sir.

15 Q. Did you see any maneuvering to get around to avoid the squad car?

16 A. No, Sir.

17 Q. You were able to avoid everything?

18 A. Yes, Sir.

19 Q. And if you would tell them what happened after that?

20 A. I pulled up along the ditch bank right there at the edge of the woods and I go
21 to exit my patrol car and the first thing I do is look to the suspect vehicle. I
22 can see the suspect who apparently looks like he's unconscious, he's not
23 moving, he's not responsive so I immediately turn my attention to the patrol
24 car in the woods.

25 Q. What did you do after that?

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- 1 A. I started to jump across the ditch to go to the patrol car and I could see
2 something moving out of my peripheral vision on to my left. As I draw
3 attention to that and turn to the left the suspect is climbing out of the sun roof
4 of the car.
- 5 Q. And what did he do?
- 6 A. He slides across the roof of the car and hits the ground running.
- 7 Q. Running back towards the trooper to help?
- 8 A. No, Sir.
- 9 Q. Running where?
- 10 A. He's running towards 378.
- 11 Q. What did you do?
- 12 A. I immediately drew my weapon and started chasing him. I knew that Deputy
13 Kennedy had made several comments about the suspect reaching. I didn't
14 know if he was armed or not and so I drew my weapon and started chasing
15 him, hollering at him to stop or I'd shoot. He continued to run. I took my
16 weapon and shot several rounds in the air and told the suspect if he didn't stop
17 I'd shoot him. He immediately stopped. I immediately ordered him to the
18 ground. Told him to lay down and keep his hands where I could see them. He
19 gestured as if he was going to get on his knees and get down and listen to my
20 command. By the time he was reaching for the highway with his hands, he
21 jumps back up and starts running again.
- 22 Q. Were other officers showing up now?
- 23 A. Not right at that second, no, Sir.
- 24 Q. Okay, continue then.
- 25 A. I started chasing him again. I ordered him to stop or I'd shoot and he kept

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1 looking back at me but kept running down 527. I shot in the air a couple more
2 times and told him I'd shoot him and, of course, he continued to run. It was
3 about this time it had come in to the road down the road towards us from 378,
4 I saw blue lights flashing on a patrol car so at that time I knew help was there.

5 Q. That would be highway patrol?

6 A. Yes, Sir.

7 Q. Okay.

8 A. As the patrol car got on me the suspect passed the patrol car running by it and
9 it was First Sargent Sinclair and he started slowing down and I started motion
10 for him to stop and Sargent Sinclair stopped, backed up to me, and I
11 motioned, I said, "that's the suspect right there. Go after him". And I could
12 hear sirens behind me and I turned around and there were other officers pulling
13 up.

14 Q. Now we're talking this through slowly. Did this happen slowly that day?

15 A. No, Sir. It seemed like it was going on forever.

16 Q. Now, the other officers coming up...

17 A. Yes, Sir.

18 Q. What did you do with them? How did you direct them?

19 A. The first two officers that pulled up I told them to go to Sinc because he was
20 after the suspect running down the road. The next officer that pulled up, the
21 next two officers that pulled I asked them to help me with the officer in the
22 patrol car.

23 Q. Did they go help you?

24 A. Yes, Sir.

25 Q. And what did you all do with the patrol car?

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- 1 A. The first thing I did was check the suspect vehicle going back to my with my
2 fire extinguisher to make sure no one else was in the vehicle.
- 3 Q. That would be the Thunderbird?
- 4 A. Yes, Sir.
- 5 Q. Okay. Is that what we saw Chad Newman coming up doing as well?
- 6 A. Yes, Sir, he did it too, yes, Sir.
- 7 Q. Okay. Go ahead. I'm sorry.
- 8 A. I didn't see anybody else in the vehicle. I retrieved my fire extinguisher. I
9 know Deputy Kennedy and couple of others and ourselves we went into the
10 woods to the patrol car and started fighting the fire.
- 11 Q. Were you able to get it out?
- 12 A. No, Sir.
- 13 Q. You didn't participate and actually take the Defendant into custody? That was
14 the Sheriff's Department that did that?
- 15 A. Yes, Sir.
- 16 Q. Chief, let me show you some photographs that's marked State's Exhibit 5 a, b,
17 c, and d. Now look at those and tell me if you recognize those.
- 18 A. Yes, Sir. That's the Thunderbird the suspect was driving.
- 19 Q. All right, and it's in what position?
- 20 A. Beg your pardon, Sir?
- 21 Q. It's in what position?
- 22 A. Uh...
- 23 Q. They haven't seen it yet. Is it in the chase or after the chase or...?
- 24 A. This is after the chase, Sir. It's a total wreck.
- 25 Q. Okay.

HEARING

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1 MR. JACKSON: Your Honor, do we got a moment to set this up. I
2 want to show some of these to the jury. I would like to move these into evidence.

3 THE COURT: Mr. Howle?

4 MR. HOWLE: Your Honor, I've seen the pictures and we have no
5 objection.

6 THE COURT: All right. That's 5 and 6, Mr. Jackson?

7 MR. JACKSON: Your Honor, that would be 5 a, b, c, and d.

8 THE COURT: All right. Exhibits 5 a, b, c, and d are in evidence
9 without objection. A, b...?

10 MR. JACKSON: 5a, 5b, 5c, and 5d.

11 THE COURT: All right.

12 (State's Exhibits 5a, 5b, 5c and 5d are identified)

13 MR. JACKSON: Your Honor, if I could get permission for the Chief
14 to come down for just a moment.

15 THE COURT: Do you have the photographs that I could take a look
16 at it?

17 MR. JACKSON: Judge, he's going...he's got to do them one at a time.

18 THE COURT: Oh, he can't....

19 MR. JACKSON: I can hand them to you.

20 THE COURT: No, no, no. That's okay. I thought they were already
21 up there.

22 MR. JACKSON: Chief, if you would orient yourself so that everybody
23 can see and this lady right here. Can you see all right, ma'am?

24 JUROR: I can see.

25 MR. JACKSON: Okay.

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- 1 Q. All right, if you would orient the jury and show them about where you would
2 have come driving up?
- 3 A. Right here.
- 4 Q. Now when you drove up, what did you see?
- 5 A. I parked my vehicle right here. I could see him. I could see through the
6 windshield that he wasn't moving.
- 7 Q. Okay.
- 8 A. And that's when I turned my attention in the woods where the patrol car was
9 at.
- 10 Q. Now, would you have been standing about that point looking in?
- 11 A. Further, further back here but, yes, Sir, looking in.
- 12 Q. Could you see the Defendant was in there?
- 13 A. Yes, Sir, I could see him through the windshield right here.
- 14 Q. And what was your initial thought about him?
- 15 A. That he was either knocked out or dead.
- 16 Q. All right. 5c. That's just a closer view?
- 17 A. Yes, Sir.
- 18 Q. You mentioned he hit some trees. Would that be what's behind there?
- 19 A. Yes, Sir. There are several trees all along the wood line.
- 20 Q. All right, and where again show us as we get closer what do you see?
- 21 A. I look through the windshield here. His head is back against the head rest and
22 he's not moving.
- 23 Q. All right, and State's Exhibit 5d. Now show us where he got out of the
24 vehicle to run free.
- 25 A. He comes through the sun roof and slides across the hood, to the ground and

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1 comes out of the vehicle.

2 Q. All right, Sir. Thank you very much. You can take your seat please. Chief
3 Garrett, do you see the man in the courtroom today that came out of the car
4 that day?

5 A. Yes, Sir, I do, Sir.

6 Q. Would you point him out for the jury.

7 A. Right there beside his attorney, Sir.

8 MR. JACKSON: Your Honor, for the record we reflect that he's
9 identified Eric Ridel.

10 THE COURT: All right.

11 MR. JACKSON: Chief, that's all the questions I have for you. You
12 can answer any questions for Mr. Howle.

13 A. Yes, Sir.

14 THE COURT: Mr. Howle.

15 MR. HOWLE: Thank you, Your Honor.

16 CROSS EXAMINATION BY MR. HOWLE

17 Q. Chief Garrett, I think you when you first heard this, your concern was for the
18 schools and that's why you first went out?

19 A. Yes, Sir.

20 Q. Okay, and your intentions were to go out to the interstate to protect from the
21 roads leading into Manning?

22 A. We deploy our stop sticks prior to you ever getting to the schools.

23 Q. Okay, but you didn't deploy any?

24 A. No, Sir.

25 Q. Was that because the vehicle had already passed those roads?

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- 1 A. As I got to the intersection where I would normally deploy my sticks, that's
2 when I heard on the radio that they were going under the 119 over pass.
- 3 Q. But at that time you joined the chase as well?
- 4 A. Yeah, I joined David Robinson. Investigator Robinson.
- 5 Q. So at that point it wasn't for protection of the schools in Manning. You were
6 just on the interstate trying to catch whoever it was.
- 7 A. Not necessarily...well, you always want to stop a pursuit. Over my thirty three
8 year career in law enforcement we've had several pursuits that turn around and
9 come back and we've been able to deploy our sticks and deflate the tires on
10 the suspect vehicle.
- 11 Q. But you didn't stop and deploy or do anything in case the vehicle turned and
12 came back? You pursued the vehicle?
- 13 A. I never got that opportunity.
- 14 Q. But once they were passed you couldn't stop there and say, "if you come back
15 again I've got my sticks under deploy". Do any of your people do that.
- 16 A. Do what, Sir?
- 17 Q. Did any of the people in your department go on the roads leading into
18 Manning to set up these sticks to...?
- 19 A. After he passed the last interchange which was 122 mile marker which is the
20 Alcolu exit and 521 as a major road comes into Manning, my other officers
21 working that day didn't deploy any sticks.
- 22 Q. And none of them joined in the pursuit?
- 23 A. No, Sir.
- 24 Q. Okay. Now, I think you said about 125 you took the lead from Officer
25 Kennedy?

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- 1 A. No, Sir.
- 2 Q. When did you take the lead?
- 3 A. When the...
- 4 Q. I'm sorry. Not from Kennedy. From the other officers you were traveling
- 5 with?
- 6 A. When the suspect went up the wrong way on the interstate and exited 527, I
- 7 ended up on 527 behind him.
- 8 Q. At that time had you heard any highway patrol traffic on the radio as far as
- 9 them being involved or any officer stationed anywhere or anything of that
- 10 nature?
- 11 A. No, Sir.
- 12 Q. Now after you took the exit and gone on to 527, how far is it from that exit to
- 13 where the collision actually happened?
- 14 A. Probably less than three miles, Sir.
- 15 Q. Okay, and I think you said when you first got on you could barely see in the
- 16 distance.
- 17 A. He...I could see him but he was well ahead, yes, Sir.
- 18 Q. And those two miles or so you caught up with him within a couple hundred
- 19 yards?
- 20 A. Yes, Sir.
- 21 Q. So did his speed diminish a good bit?
- 22 A. I don't know, Sir. I was running at max speed of 130 just to try and catch him.
- 23 Q. How close were you to the patrol car when you say you first saw his blue
- 24 lights?
- 25 A. Probably back three hundred to four hundred yards, Sir, when I first saw the

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- 1 blue lights.
- 2 Q. Now you say the car that you pursuing went over to the left lane?
- 3 A. He had been in the left hand lane, Sir.
- 4 Q. Okay. But as far as passing traffic previous to that he was in the right lane?
- 5 A. That's correct, Sir.
- 6 Q. So there were no vehicles coming while he was in the left lane traveling that
- 7 way?
- 8 A. Not after making the last curve prior to Dab's Crossroads, no, Sir.
- 9 Q. And you say you never saw any brake lights?
- 10 A. No, Sir.
- 11 Q. Okay. Do you know how long the suspect was supposed to have been...in
- 12 other words, you heard the testimony of the lady from Colleton that said the
- 13 first call they got was about 10:16 to respond to whatever happened in
- 14 Walterboro.
- 15 A. I don't remember the exact time but I remember talking about responding to a
- 16 call; yeah.
- 17 Q. So when this collision happened it was close to two hours from the time that
- 18 may have happened until that happened, the wreck happened?
- 19 A. I'm not certain exactly the amount of time was, no, Sir.
- 20 Q. So you don't know how long he had been driving or if he was drinking or
- 21 drugs or anything else? You don't know any of that?
- 22 A. I don't have a clue, Sir.
- 23 Q. You say you've already heard some, you say that he had been reaching over or
- 24 doing something else other than paying total attention to his driving. Did you
- 25 ever see any of that or did you ever get close enough to see him what he was

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1 doing in the car?

2 A. No, Sir.

3 Q. The pictures that were shown of his automobile itself obviously severely
4 damaged also. I think you said that when you first went up to the car you
5 thought he was probably dead.

6 A. As I approached the car he was not moving.

7 Q. And his car had hit the trees and all going along as well?

8 A. He was on the shoulder of the road, yes, Sir.

9 Q. And you weren't involved in the actual apprehension of him?

10 A. No, Sir.

11 Q. So you didn't talk to him and ask him any questions or anything like that?

12 A. No, Sir.

13 MR. HOWLE: I don't have any further questions, Your Honor.

14 THE COURT: Re-direct, Mr. Jackson.

15 MR. JACKSON: A few follow ups, Your Honor.

16 RE-DIRECT EXAMINATION BY MR. JACKSON

17 Q. Mr. Howle asked you about highway patrol traffic. Tell the folks on the jury
18 what your wife does for.

19 A. My wife is a communications manager for the South Carolina Highway Patrol.

20 Q. And what does that...in layman's terms what does she do there?

21 A. Dispatch.

22 Q. And where does she dispatch?

23 A. She did many years here in Sumter before transferring to Florence.

24 Q. All right. At the time of this crime, where was she working?

25 A. She was in Florence.

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1 Q. In Florence, and you were riding up the 95 in pursuit of Eric Ridel, did you
2 talk with your wife?

3 A. I switched to the Florence highway patrol frequency so that their I-95 units
4 would be aware that there was a pursuit on the interstate with a robbery
5 suspect and it could possibly enter Florence County and for their units to be
6 advised.

7 Q. Because if he kept continuing north and we didn't get him at 378 where was
8 he headed?

9 A. Florence County.

10 Q. So you alerted the highway patrol in Florence County?

11 A. Yes, Sir.

12 Q. The brake lights, again you didn't see his brake lights at the point of impact?

13 A. No, Sir.

14 Q. Did he turn on his right signal to go up Skinner Road and slow down like he
15 was going to execute a right turn or anything like that?

16 A. No, Sir.

17 Q. Again you mentioned you saw him in the car and you thought he was dead.
18 When he came out of the car, what was his appearance?

19 A. He was bloody.

20 Q. Where?

21 A. In his face.

22 MR. JACKSON: That's all I have, Your Honor.

23 THE COURT: Mr. Howle, any follow up questions just restricted to
24 those points?

25 RE-CROSS EXAMINATION BY MR. HOWLE

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1 Q. The Solicitor asked you it looked like he slowed down to turn on Skinner
2 Road. You don't know if his intentions were to turn on to Skinner Road if he
3 was simply just going too fast he couldn't make it.

4 A. No, Sir. I feel like I know what his intentions were.

5 Q. Do you know what he was thinking?

6 A. I don't know what he was thinking. I know what his driving told me.

7 Q. You don't know whether he was trying to turn onto Skinner Road or not?

8 A. No, Sir, I don't think he was turning on to Skinner Road.

9 Q. You don't know if he was trying to turn on to Skinner Road or not. I don't
10 have any further questions, Your Honor.

11 THE COURT: All right, Mr. Jackson, any...can this witness be
12 excused?

13 MR. JACKSON: That's all I have, Your Honor. If Chief Garrett can
14 be excused. If he'd like to stay that would be fine.

15 THE COURT: Mr. Howle, any objection to the witness being
16 excused?

17 MR. HOWLE: No, Sir, Your Honor.

18 THE COURT: Okay, Chief, you can step down and you can stay with
19 us or depart. Whichever you choose.

20 MR. GARRETT: I'd like to stay, Sir.

21 THE COURT: All right. Thank you, Sir.

22 MR. JACKSON: Your Honor, the State calls Investigator Todd Avant.

23 CLERK: Place your left hand on the Bible and raise your right hand
24 and state your name please.

25 MR. AVANT: Richard Todd Avant.

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1 CLERK: Do you solemnly swear and affirm the testimony in this Court
2 to be the truth, the whole truth, and nothing but the truth so help your God?

3 MR. AVANT: I do.

4 CLERK: Watch your step. State your full name and spell your last
5 name for the record.

6 MR. AVANT: Richard Todd Avant. A-V-A-N-T.

7 CROSS EXAMINATION BY MR. JACKSON

8 Q. Investigator Avant, where do you live?

9 A. In Clarendon County.

10 Q. Married?

11 A. Yes, Sir.

12 Q. Got children?

13 A. No, Sir.

14 Q. Where do you work?

15 A. Clarendon County Sheriff's Office.

16 Q. How long have you been with the Sheriff's Department?

17 A. I was a reserve deputy from '92 to '96 and then became full time in '99 so
18 eight years.

19 Q. What's your current position?

20 A. I'm an investigator.

21 Q. With the Sheriff's Department?

22 A. Yes, Sir.

23 Q. Were you working on May the 16th of 2005?

24 A. Yes, Sir.

25 Q. Did you get the same BOLO as the other officers got?

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- 1 A. I did.
- 2 Q. And if you would tell the ladies and gentlemen of the jury what you did when
- 3 you got the BOLO.
- 4 A. Myself and Deputy Kennedy went out to the 113 mile marker and was sitting
- 5 stationary waiting on the suspect vehicle.
- 6 Q. Where were you all sitting?
- 7 A. In the median.
- 8 Q. Between the north and southbound?
- 9 A. That's correct. In a safe location.
- 10 Q. All right. Describe your car for the jury?
- 11 A. I drive a white unmarked Blazer. It's equipped with blue lights on the dash as
- 12 well as wig wag lights. It also has strobes and headlights.
- 13 Q. Did it come a time when you saw a car coming up the interstate matching the
- 14 description of the BOLO?
- 15 A. I did.
- 16 Q. Tell them what you saw?
- 17 A. I saw a burgundy Ford Thunderbird driven by a white male. He looked over at
- 18 Deputy Kennedy and myself.
- 19 Q. He looked at you all?
- 20 A. Looked dead at us.
- 21 Q. And what happened after that?
- 22 A. We then, of course, I had to wait for some traffic to clear then we pulled out.
- 23 Deputy Kennedy pulled out first. I pulled out behind him. We then got up
- 24 behind the suspect vehicle. I got that gut feeling that he was fixing to run. I
- 25 notified Deputy Kennedy to go ahead and activate his blue lights and siren

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1 which he did. I also notified dispatch that we were behind that vehicle.

2 Q: And what happened?

3 A: He began to run.

4 Q: The line up is what?

5 A: The suspect, Deputy Kennedy, and then myself.

6 Q: Who's got the fastest car? You or Deputy Kennedy?

7 A: Without a doubt Deputy Kennedy.

8 Q: All right. If you would continue to tell them what you saw and what happened.

9 A: After Deputy Kennedy activated his blue lights, we proceeded northbound on
10 I-95. My vehicle the maximum speed is around 94 miles an hour. Deputy
11 Kennedy was in excess of 100 behind the suspect vehicle. He called in the tag,
12 verified the tag on the vehicle which came back to a different vehicle not
13 matching the one the vehicle we were in pursuit of. They started to gain some
14 distance on me and of course traffic was moving over. I guess they wanted to
15 see what was going on so they would move into the left hand lane. I'd have to
16 wait for traffic to clear. About the 116 or 117 mile marker, he slammed on
17 brakes. Thank goodness Deputy Kennedy was paying attention and was able
18 to avoid that or that would have been an accident there. That enabled me to
19 gain some ground and catch back up to the two of them.

20 Q: Did you see a vehicle on the right hand side of the road and the right hand lane
21 of traffic when he slammed on the brakes?

22 A: I saw it on the video but I don't remember that vehicle being there that day
23 because you kind of get a tunnel vision when you're focused on the suspect
24 vehicle.

25 Q: Okay. So after the brake incident go ahead.

HEARING

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- 1 A. We began, of course, heading northbound on I-95. Deputy Kennedy was
2 calling out the exact mile marker. I was trying to give general landmarks so
3 that other officers would know like we're approaching to 119 which meant
4 Jerry's Truck Stop exit. I knew there was other officers leaving the sheriff's
5 office and other various locations who would attempt to try to get up there
6 and deploy stop sticks to help diffuse the chase.
- 7 Q. At the time you all got to 119, did you consider yourself still in the chase?
- 8 A. Yes, Sir.
- 9 Q. All right, and then what happened when you got to 119?
- 10 A. Basically we just kept heading northbound. Just heading up I-95 and then
11 shortly thereafter David Robinson and Chief Garrett joined in the chase.
- 12 Q. Okay, and then what happened?
- 13 A. As we...about the 123, 124 mile marker just on the other side of the Alcolu
14 exit, I moved over and allowed the narcotics agent Robinson and Chief Garrett
15 to pass them. They had faster vehicles than I did.
- 16 Q. You got your blue lights and siren on the whole time?
- 17 A. The entire time.
- 18 Q. From 113 until you moved over to let them go by?
- 19 A. Yes, Sir.
- 20 Q. Did you stay on the rest of the chase?
- 21 A. Yes, Sir.
- 22 Q. Once you let them go by you continue and you can tell the ladies and
23 gentlemen of the jury what you saw and participated in?
- 24 A. Well, the traffic started moving over so I wasn't able to see everything that
25 was occurring ahead of me. I do remember seeing the two trucks side by side

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1 about the, I don't remember what mile marker it was, 126 or 127 mile marker.
2 I remember them being side by side which also enabled me to gain a little bit of
3 distance and close the gap there. Then Deputy Kennedy came across the radio
4 said the suspect had crossed the median in the...he was headed northbound in
5 the southbound lane and then, of course, he notified us that he exited on
6 Highway 527 towards Sumter County. I then exited up the correct ramp and I
7 went on to 527. As I crossed the top of the bridge I saw Agent Robinson
8 down just ahead of me and then I saw Chief Garrett behind the suspect
9 vehicle. He was probably three quarters of a mile in front of me.

10 Q. As you all head up 527 you all were going north?

11 A. Yes, Sir.

12 Q. Tell them what happened on 527.

13 A. As we, of course, I could hear...dispatch was asking us some questions over
14 the radio. I don't remember what the dispatch was asking at the time but I
15 heard Chief Garrett say, "1033. Suspect has struck a patrol vehicle". Then the
16 radio went silent for the next few minutes or a few seconds and then you hear
17 Agent Robinson and Deputy Kennedy arrive at the scene. As I pulled up to the
18 scene, I saw Chief Garrett standing in the road and I saw the suspect vehicle to
19 the right. Chief Garrett's face and his expressions told the rest of the story. He
20 was pointing down the highway. It had turned from a robbery to a murder at
21 that point.

22 MR. HOWLE: Your Honor, I object to that.

23 THE COURT: Sustained. You will disregard that.

24 A. It's a police officer's instinct. I can't tell you what it is but by his actions it told
25 me the rest of the story. I...

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- 1 Q. Tell them what you did.
- 2 A. Okay. I saw, I saw a patrol vehicle following a suspect down 527 heading
3 towards 378.
- 4 Q. When you say patrol vehicle that's ...
- 5 A. Highway patrol vehicle, unmarked. I saw Chief Garrett pointing down the
6 road. I then headed towards the suspect, passed the patrol vehicle and the
7 suspect, pulled over to the shoulder of the road, exited my vehicle, the suspect
8 was running towards me. He looked back. David Robinson was coming up
9 behind him in his pick up truck. I tackled the suspect. David Robinson stopped
10 his vehicle, got out and handcuffed the suspect.
- 11 Q. Tell us what the demeanor of the suspect was?
- 12 A. He was, he was making some noise. Yelling but he stood up on his knees and
13 his hand, you know, he was handcuffed. He was bleeding from his face. At
14 that point, other officers arrived. I was covered in his blood. I then had to shed
15 all my clothes and get some disinfectant spray and start spraying down.
- 16 Q. And that's why it's a safety procedure?
- 17 A. Yes, Sir.
- 18 Q. Why is that?
- 19 A. For diseases and other stuff.
- 20 Q. Okay. That's something you do under any circumstances?
- 21 A. Yes, Sir.
- 22 Q. Okay, and you all took him into custody?
- 23 A. Yes, Sir.
- 24 Q. Did the ambulance arrive to take him to the hospital?
- 25 A. It did. Yes, Sir.

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1 Q. And that's when you all released him in an ambulance?

2 A. Yes, Sir. I don't remember any of the details after that.

3 MR. JACKSON: I beg the Court's indulgence for just a minute.

4 THE COURT: All right.

5 MR. JACKSON: That's all the question I have, Investigator Avant.

6 You can answer anything Mr. Howle has.

7 THE COURT: Mr. Howle?

8 MR. HOWLE: I have no questions, Your Honor.

9 THE COURT: All right, Sir. You may step down. Thank you very
10 much. Mr. Jackson?

11 MR. JACKSON: Yes, Sir.

12 THE COURT: Can this witness be excused if he would like to
13 excused?

14 MR. JACKSON: I would request that from the Court, Your Honor.

15 THE COURT: Any objection, Mr. Howle?

16 MR. HOWLE: No, Your Honor.

17 THE COURT: All right, Mr. Avant, you can leave or stay.

18 MR. AVANT: I'll stay.

19 THE COURT: Yes, Sir. All right, Mr. Jackson.

20 MR. JACKSON: Mr. Herbert Smith.

21 CLERK: Place your left hand on the Bible and raise your right hand
22 and state your name please.

23 MR. SMITH: Herbert Benjamin Smith.

24 CLERK: Do you solemnly swear and affirm the testimony of this court
25 to be the truth, the whole truth, and nothing but the truth so help you God?

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1 MR. SMITH: Yes, Sir.

2 CLERK: Please watch your step. State your full name and spell your
3 last name for the record, Sir.

4 MR. SMITH: Herbert Benjamin Smith. Smith, S-M-I-T-H.

5 CROSS EXAMINATION BY MR. JACKSON

6 Q. Morning, Smith.

7 A. Good morning, Sir.

8 Q. Tell the folks on the jury where you are living now?

9 A. I am currently living in Lumberton, Texas.

10 Q. Where did you live back in 2005?

11 A. , Kingtree, South Carolina.

12 Q. All right. Are you originally from this area?

13 A. Yes, Sir.

14 Q. All right, where are you originally from?

15 A. I was born in Lakeland, Florida and lived in New Zion, Turbeville area.

16 Q. New Zion, Turbeville area?

17 A. Yes, Sir.

18 Q. At that time you were living in Kingtree?

19 A. Yes, Sir.

20 Q. Who were you working for back in May of 2005?

21 A. C.W. Wright Construction. They put up utility poles, power lines.

22 Q. And where is C.W. Wright Construction? Where are the headquarters?

23 A. At that time we were out on 378 over there where the Speedy Pack

24 Warehouse is. Counter corner from up the road from where the highway
25 patrol and the radio, two way radio communications is.

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- 1 Q. Okay, so that's right in Sumter County?
- 2 A. Yes, Sir.
- 3 Q. And you were working for them then?
- 4 A. Yes, Sir.
- 5 Q. All right. Do you remember where you were on mid day May 16, 2005?
- 6 A. Mid day I was sitting at a speed limit sign waiting for a trooper to give me a
- 7 ticket.
- 8 Q. And where were you prior to that?
- 9 A. Prior to that I was sitting, well, the reason why I was on 527 is earlier that
- 10 Saturday I was coming from Florida, truck caught on fire in Walterboro,
- 11 South Carolina. I was waiting on a wrecker to bring the burnt vehicle,
- 12 company vehicle, to Sumter to our office and I was waiting on 527 overpass
- 13 and I was talking to guy on the radio, on the telephone, cell phone.
- 14 Q. The guy that you work with?
- 15 A. No, the guy that was pulling the truck.
- 16 Q. Okay.
- 17 A. He was from Walterboro Electric and he was coming up 95. I was telling him
- 18 what mile marker I'd be sitting at waiting on him to lead him into where the
- 19 office is.
- 20 Q. And this would have been on May the 16th?
- 21 A. May the 16th approximately, I got there about 9:30, 10:00.
- 22 Q. Okay, you had mentioned the Saturday. This would be a Monday?
- 23 A. Yes, Sir. Monday morning.
- 24 Q. All right. So you're sitting out on where out on 527?
- 25 A. I'm coming from Kingstree, 301 heading towards 378 to Sumter Highway is

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- 1 what we call it and my wife approached about 9:00, 9:15 because she was
2 coming to Sumter to pick up some books that she ordered for their school and
3 I gave her a kiss, she left. I was sitting there approximately just listening to the
4 radio and waiting on the guy with the pulling my company truck in and I call
5 him and he's some where around St. George just getting on the road coming
6 out of Walterboro heading north and I guess about 11:00, 11:10, 11:15 my
7 phone rings, my wife has been in an accident on 378 right there in front of the
8 highway patrol so I said, "Okay. Are you all right". She said, "yea, I'm fine.
9 The bumper is knocked off my vehicle". So I said, "I'll be there in a little bit".
10 Q. All right. Tell them exactly where you are when you're having that telephone
11 conversation with your wife.
12 A. I'm still sitting on overpass down 527 and I-95.
13 Q. I-95 and 527?
14 A. Yea, I-95 crosses under the overpass.
15 Q. Okay, and you get that call from your wife and talk with her?
16 A. I talk with her. By that time I'm thinking, "I need to go to her but I got the
17 truck coming" so I hang up with her, I call Steve, that's the driver of the
18 wrecker, I call Steve and I says, "Steve, when you come up to 527 head left
19 like you're going to Bishopville and then you'll run into 378, take a left to
20 Sumter and I'd meet you there because my wife's been an accident. I got to go
21 see her".
22 Q. So you went to your wife?
23 A. I peel off the side of the road there, running about 70, 75 miles an hour to get
24 to...
25 Q. What were you driving?

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- 1 A. I'm driving an Astro white van.
- 2 Q. Van?
- 3 A. Yes, Sir. About that time I come in...I start slowing down because I'm getting
- 4 in to where the...I don't know if anybody remembers...there's a lot of houses
- 5 right there before you get to 378.
- 6 Q. All right. Let me slow down. Your on 527?
- 7 A. Uh-hmm.
- 8 Q. Heading which direction?
- 9 A. I'm heading towards 378, Sumter.
- 10 Q. From I-95 to 378?
- 11 A. Yes, Sir.
- 12 Q. And you're coming up on the intersection of...which intersection are you
- 13 coming up at?
- 14 A. I'm coming up where there is two or three houses and then an intersection,
- 15 Raccoon Road. You all are calling it Skinner Road. The other end of it is
- 16 Raccoon Road.
- 17 Q. Okay.
- 18 A. I'm starting to slow down but not fast enough because I see this trooper
- 19 coming with his lights on.
- 20 Q. And he's coming from which direction?
- 21 A. He's coming from 378.
- 22 Q. Okay, and what happened?
- 23 A. Well, he's sitting here coming this way and I'm coming this way and I look at
- 24 him and I'm, "okay, you got me". So I pull off the road. He's sitting there and
- 25 I'm...

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1 Q. What do you mean he's sitting there?

2 A. Well, he's sitting off the side of the road.

3 Q. You all passed each other?

4 A. Yea.

5 Q. What did he do?

6 A. Well, he made a U-turn and set there.

7 Q. And pull up stops?

8 A. Yea.

9 Q. Okay, and you're right down pull up stop?

10 A. I'm up passed the 35 mile an hour speed sign and I'm looking in the mirror
11 and he's not moving, I'm not moving so I turn around and look and as I'm
12 looking over my left shoulder out my window...

13 Q. You got your window down?

14 A. I got my window down. I see him sitting there and I see a red car coming up
15 527. About that time, he comes and hits the officer's car. He goes off this a
16 way. The red car goes off that way and I'm like, "he just hit him". So about
17 that time I turn around and the guy jumps out of his car or comes out of the
18 woods, I don't actually physically see him jump out the car. I seen in the road
19 coming towards me and I'm like, "why is he coming towards me and not the
20 trooper" okay, and in the meantime I see a puff of smoke going up and I hear
21 an explosion and then shortly after I see a white car come up at the time I
22 don't know who it is, what it is. I hear somebody screaming, "get down, stop
23 or I'll shoot". About that time a couple of rounds goes off and I'm like, "okay,
24 time for me to go". So I back up and I figured I'd go finish what I was doing
25 because by that time everybody in the world was there with blue lights, sirens.

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1 I didn't want to get mixed in with this right now. Well, I said, "I'll come back
2 later or whatever". So I get back on 378 and I see helicopters coming,
3 ambulances, vehicles with SLED on it, all kind of law enforcement from
4 everywhere. I'm like, "okay, something went down there bad". So I go on
5 down to my wife. In the meantime, I'm calling my nephew because he's closer.
6 He runs a tree service here in Sumter. They were eating at Shoney's. I said,
7 "Roger, your Aunt Jesse's been in a wreck. Can you go to her and wait for me
8 to get there". Okay, he does that. So I get there and there all down in there
9 and were sitting there probably an hour, an hour and a half waiting on a
10 highway patrolman gets there. I said...he apologized for being late and I said,
11 "well, I was thinking you might have been with the trooper that got hit". He
12 said, "how do you know about that?" I said, "well, I was off on the side of the
13 road and I seen the red car hit him". He said, "well you need to go back to that
14 scene". I said, "no I can't get there. They blocked it off". Because in the
15 meantime I've called my...the guy with the car bringing the company truck up
16 I tell him to hit 378 instead of 527 to come around because they done blocked
17 it and him with a truck, a wrecker he won't be able to turn. He'd be sitting in
18 it. He said, "well being that you seen that you might need to...". I said, "well, I
19 can't get in there". He said, "well, I'll call them. You tell them who you are,
20 what you did, and they'll escort you in or somebody will come out on 378 to
21 talk to you". Because the highway patrolman that worked our wreck came
22 from Mullins. Mullins, Marion or...he was up above Florence and that's why it
23 took him so long to get to us.

24 Q. All right. Let's go back to where you said you looked out the window. You
25 got your windows down?

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1 A. Yes, Sir. I'm, like I say, I'm in the...I done pulled off the road little bit past the
2 35 mile an hour speed sign because I wanted him, the officer, to be well of the
3 road and I done had my license and my registration pulled and the insurance
4 card. It would be the first ticket that I'd be getting and I, you know, I got the
5 window down because as soon as he got to the car I'd done planned out when
6 I was going to tell him what I was doing. I was going to say, "my wife's in a
7 wreck, that's why I'm in a hurry. If you want to give me a ticket, please hurry
8 because I want to get to her or you either you follow me where she's at".
9 That's what I was going to tell him but it didn't happen that way.

10 Q. Now did you actually lean out the window and look or...

11 A. Yes, Sir.

12 Q. Okay. You had a clear view. Nothing between you and what happened?

13 A. Nothing at all.

14 Q. All right. Let me ask you, did you see a deer or dog or a pedestrian or
15 anything out there that somebody would maneuver to get around and cause an
16 accident?

17 A. No, Sir. There wasn't no other vehicles coming, going or any livestock or
18 any...after the collision there was a gentleman coming out of his house, that
19 first house up there on the left that just had an addition done to the home. He
20 was coming out to the road and like I say, when I got turned around I seen the
21 officer with his weapon screaming, hollering, and carrying on and then by that
22 time another vehicle come around him and a guy football tackled him.

23 Q. At the time of impact, no cars coming either way?

24 A. No, Sir. I thought...

25 Q. .. To have to get out of the road to avoid?

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1 A. No, Sir. I thought that was kind of strange 527 being, you know, 11:30, 12:00
2 nobody stirring on that highway at that particular moment.

3 Q. All right, Sir. Your Honor, if I could I'd like to have him to come down and
4 look at State's Exhibit number 6 which I believe is coming in without
5 objection. All right. Let me get you to step right down here, Mr. Smith.

6 THE COURT: Mr. Jackson, Mr. Howle, could you all come up here
7 for just a moment?

8 MR. JACKSON: Yes, Sir.

9 THE COURT: Mr. Smith, you can have a seat in the witness chair.
10 We're going to take a mid morning break at this time. Ladies and gentlemen, thanks
11 for bringing that to my attention. Do not discuss the case in the jury room at all. We
12 will have you back out probably in ten to fifteen minutes. Again do not discuss the
13 case. Thank you.

14 (Jury exits the courtroom for break 10:51)

15 THE COURT: All right. We'll take a break for probably about fifteen
16 minutes. Mr. Smith, during the break you can't discuss your testimony with anyone.
17 You can leave your seat but just don't discuss the case or your testimony with anyone.
18 All right. Thank you, Sir.

19 MR. JACKSON: Mr. Smith, you can come back to the witness stand.

20 THE COURT: Mr. Smith, you're still under oath.

21 BAILIFF: Your Honor, we have all the jurors and alternate present in
22 the Courtroom.

23 THE COURT: Thank you, Sir. Ladies and gentlemen, when we broke,
24 Mr. Smith was still on the stand still and the direct examination of Mr. Jackson. You
25 can proceed.

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1 MR. JACKSON: Thank you, Your Honor. If I can get Mr. Smith to
2 step down here to assist me at this time, Your Honor.

3 THE COURT: All right.

4 MR. JACKSON: This is State's Exhibit Number 6.

5 Q. Mr. Smith, if you would, here's a red pen, let's get oriented. This would be
6 95?

7 A. Yes, Sir.

8 Q. All right, and I believe...where did you said started out down here at 527/95?

9 A. Yes, Sir.

10 Q. And which direction were you traveling on 527?

11 A. I was headed towards 378.

12 Q. All right. If you would draw a line down and draw a, put a little square where
13 your car pulled off up there. You came that direction?

14 A. I ain't too straight.

15 Q. That's right. Of course, this is not the scale.

16 A. There's a speed limit sign when you're coming in here you have a speed limit
17 posted sign and then you have the actual speed limit sign that says thirty five.

18 Q. All right, is the thirty five sign up here is that the one that says you think you
19 reduced your speed?

20 A. Yes, Sir.

21 Q. Reduced it? Okay, and past that and then you got the ...

22 A. Yes, Sir. I pulled like I say enough so the officer could get off the road and
23 out of the...safely off the road.

24 Q. Okay, all right. Let me hold your red pen. Now if you would draw what you
25 saw what the trooper did or block in even if it's not the scale so that we can

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1 get an idea.

2 A. Well, when I actually, like I say, I actually noticed he was coming with his
3 lights on when I was here so I started slowing down for two reasons.
4 Knowing I'm coming into thirty five where the houses are.

5 Q. Okay.

6 A. And then...but I'm still speeding regardless, you know, doing seventy in a
7 fifty-five you know you're going to get caught, you're going to get a ticket.
8 So, anyway, I noticed him. I'm approaching the speed limit sign approaching
9 him so I know he's got me clocked at probably seventy or sixty five. So he's
10 here and...

11 Q. Draw him coming up if you will ...

12 A. This is about where I noticed him and then we meet. I see him, he sees me but
13 evidently not looking at me but not acknowledging me because he's got other
14 things on his mind. Like I say, I pass and then he made this turn and I saying
15 this vehicle was pointing out like so.

16 Q. All right. This is about where you were? Point the...

17 A. Yes, Sir.

18 Q. Point the direction you were?

19 A. Yes, he's pointing this a way and I'm...we're both pointing in the same
20 direction that's why I can't figure out why he's not approaching me and like I
21 say I turn around, a few seconds go by and he ain't done nothing, I didn't so
22 that's when I look out my window because, like I say, by that time when I
23 come to a complete stop, he stops, I'm getting the information, insurance card,
24 registration, my driver's license out of my wallet and he's still had not done
25 anything so I look and that's when I noticed a red vehicle coming up 527 from

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1 I-95 side towards me and then he looks like he bears to the right, turns to
2 right, however you...he's going straight and all of sudden he goes towards the
3 officer's car and they both end up in mid air.

4 Q. But he's not slowing down to execute a safe right hand turn on Skinner Road?

5 A. Well, I would say he's driving faster than I was when he noticed the trooper
6 sitting there so I'm thinking he thinks he may be caught too. Because I have
7 seen troopers and I have been pulled with two vehicles speeding in the past.

8 Q. All right. Now, let me ask you this. You said you were going this direction.
9 What speed when you came into the intersection?

10 A. I was probably running about fifty five to sixty when I actually saw the
11 officer's car, the van, his car.

12 Q. Nothing in the road made your car go off ...

13 A. No, I pulled my off.

14 Q. Okay.

15 A. Up here. You know, I slowed down enough so that when I exit the road I
16 would...because I don't know I imagine I...that shaded area there, that grass
17 could still be kind of moisture and have dew on it because we're still getting
18 dew up until June or July now in the shaded areas.

19 MR. JACKSON: All right, Sir. You can go back to your seat. Your
20 Honor, I would like to enter State's Exhibit 6 into evidence.

21 THE COURT: Mr. Howle?

22 MR. HOWLE: No objection, Your Honor.

23 THE COURT: All right, State's Exhibit 6 entered into evidence
24 without objection.

25 (State's Exhibit Number 6 was marked)

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1 MR. JACKSON: Mr. Smith, that's all the questions I've got right
2 now. Answer anything Mr. Howle has for you.

3 THE COURT: Mr. Howle.

4 MR. HOWLE: Thank you, Your Honor.

5 CROSS EXAMINATION BY MR. HOWLE

6 Q. How long were you stopped beside the road before you saw this red car
7 coming?

8 A. Long enough for me to grab my insurance and registration out of the top part
9 of my van. A couple of seconds. Minute, maybe half a minute, minute and a
10 half. I'm not real...I didn't watch my watch because I quit wearing a watch
11 when I got into utility work.

12 Q. This vehicle that was coming, you don't know if it was trying to turn on
13 Skinner Road?

14 A. I have no idea where he was going but I seen what he did when he did what he
15 done.

16 Q. But you don't know if he was turning...trying to go straight...you don't know
17 what he's trying to do?

18 A. Well, like I say, the few seconds I've seen him he was going straight ...

19 Q. If you don't know ...

20 MR. JACKSON: Your Honor. If he can answer the ...

21 Q. You don't know.

22 MR. HOWLE: He's not answering the question that's why I'm asking.

23 THE COURT: Mr. Howle, Mr. Smith, let's do it this way. Once the
24 question is asked then you can answer and Mr. Howle, wait until he finishes his
25 answer before you...in other words don't interrupt each other. All right, let's go at it

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1 that way. All right, Mr. Howle, you can just re-ask that question.

2 Q. You don't know if he was trying to turn or not?

3 A. No, Sir. I have no idea. I wasn't riding with him.

4 MR. HOWLE: I have no further questions, Your Honor.

5 MR. JACKSON: Your Honor, that's all I have for Mr. Smith and I'm
6 going to ask if he can be excused.

7 THE COURT: All right, Mr. Smith, you can step down and be
8 excused. Any objection, Mr. Howle?

9 MR. HOWLE: No, Sir, Your Honor.

10 THE COURT: All right. Thank you, Sir. You are released. Thank you,
11 Sir.

12 MR. JACKSON: Your Honor, if I could have the court's indulgence
13 just a moment.

14 THE COURT: All right.

15 MR. JACKSON: The State calls First Sargent James Sinkler.

16 CLERK: Place your left hand on the Bible and raise your right hand
17 and state your full name please.

18 MR. SINKLER: James Sinkler.

19 CLERK: Do you solemnly swear and affirm the testimony to the Court
20 to be the truth, the whole truth, and nothing but the truth so help you God?

21 MR. SINKLER: I do.

22 CLERK: All right, Sir. Have a seat please. Watch your step please.
23 State your full name and spell your last name for the record.

24 MR. SINKLER: James L. Sinclair. S-I-N-K-L-E-R.

25 CROSS EXAMINATION BY MR. JACKSON

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- 1 Q. First Sargent Sinkler, do you live here in Sumter?
- 2 A. Yes, I do.
- 3 Q. How long have you been in Sumter?
- 4 A. I've been back here now for nine years. I've been patrolling in Horry County
- 5 for ten years before I transferred back here.
- 6 Q. All right. When were you in Horry?
- 7 A. From '88 to '98.
- 8 Q. Where you in the highway patrol before '88?
- 9 A. No, Sir.
- 10 Q. You got in in '88?
- 11 A. Yes, Sir.
- 12 Q. All right. After Horry County you came back home?
- 13 A. Yes, Sir.
- 14 Q. In May of 2005, what was your rank?
- 15 A. First Sargent.
- 16 Q. All right. What was the duties and responsibilities of a First Sargent here in
- 17 Sumter County in May of '05?
- 18 A. To make sure that the enforcement duties are carried out, check accident
- 19 reports, time sheets, work in collisions, other duties that we normally do.
- 20 Q. Is First Sargent a supervisory position in your chain of command?
- 21 A. Yes, Sir.
- 22 Q. And who were some of the troopers under your supervision at that time?
- 23 A. Trooper Jonathan Parker, Corporal B.K. Floyd, Corporal Helm, Johnny
- 24 Weeks.
- 25 Q. You mentioned Trooper Parker. What was his rank at the time?

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- 1 A. Senior Trooper.
- 2 Q. He was a senior Trooper?
- 3 A. Yes, Sir.
- 4 Q. How long have you been at the highway patrol?
- 5 A. Just over four years.
- 6 Q. Over four years?
- 7 A. Yes, Sir.
- 8 Q. Close to five?
- 9 A. Close to five. Not much shy of five.
- 10 Q. Was he from Sumter?
- 11 A. Yes.
- 12 Q. Have he worked in law enforcement before he came under your supervision?
- 13 A. Yes, he did.
- 14 Q. Who did he work for?
- 15 A. He worked for Sumter County Sheriff's Department.
- 16 Q. As a deputy?
- 17 A. Yes, Sir, as a deputy.
- 18 Q. Okay, and then he went to work for the highway patrol?
- 19 A. Then we came...yea, that's right. He went to patrol training and became a
- 20 trooper.
- 21 Q. Do you know if he was married?
- 22 A. Yes, he was married.
- 23 Q. Did he have children?
- 24 A. No children.
- 25 Q. Was he working with you on May the 16th of 2005?

HEARING

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- 1 A. Yes, Sir, he was.
- 2 Q. I've heard people talk about call signs in this trial. What's a call sign?
- 3 A. It's your number that dispatch calls you and most of the troopers when you're
- 4 working on the radio you don't call it by your name, you call it by a call sign
- 5 and was assigned a call sign number.
- 6 Q. What was Senior Trooper Jonathan Parker's call sign?
- 7 A. A1-18.
- 8 Q. A1-18?
- 9 A. Yes.
- 10 Q. And that's how you all refer to each other over the radio instead of saying,
- 11 "Hey, Sinclair", you'd say, "this is A1-18"?
- 12 A. Yes, Sir.
- 13 Q. What were you all doing in the office on May the 16th 2005? Talking about
- 14 morning hours?
- 15 A. That morning I was in my office doing paperwork and Jonathan was in the day
- 16 room, where normally other troopers sit and do their paperwork and he was in
- 17 there finishing up on two fatality reports for about the three hours we were
- 18 conversing back and forth, talking, he would come up to my office and I
- 19 would go back and talk with him or he'll yell something at me back and forth
- 20 all for about three hours.
- 21 Q. Where is that office? It's not there anymore is it?
- 22 A. Yes.
- 23 Q. You all still manning that office?
- 24 A. Yes, Sir. Sumter office. Sumter Patrol Office.
- 25 Q. Where is it?

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1 A. On Pike road right near the DMV.

2 Q. Okay, and you all were there together? Anybody else there? Any other
3 troopers?

4 A. No, there... Corporal Helm was there earlier and he left to go to Columbia but
5 it was just me and Trooper Parker.

6 Q. Did you get a BOLO over the radio?

7 A. Yes, Sir, we did. Earlier came across the radio to be on the lookout for a I
8 think it said a burgundy vehicle that was involved in a robbery in Walterboro.

9 Q. Did that get any attention from you when it first came out?

10 A. A little bit because they said to be on the lookout on I-95 and we have I-95
11 that runs through Sumter in Clarendon County.

12 Q. So when you first heard it, did you immediately go out or did you just
13 continue to do paperwork?

14 A. Continued to do paperwork.

15 Q. All right. Later in the morning. What happened?

16 A. Dispatch came across the radio and said Clarendon County Sheriff Department
17 was behind that subject in a burgundy car that was involved in ten seventy four
18 which was a robbery down in Walterboro.

19 Q. Okay, so now he's closer?

20 A. Yes, Sir.

21 Q. And where is he according to the radio?

22 A. He's in Clarendon County. I can't remember the mile marker but he just got
23 down at the bottom of Clarendon County.

24 Q. And what are your responsibilities when you hear that on the radio?

25 A. Our responsibility to all is to assist the other agencies and to make sure that

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1 we can end that chase and make sure that it's stopped before anyone gets hurt
2 or killed.

3 A. And what did you all do?

4 Q. When the BOL...when it came out, I had a gentleman sitting in my office.
5 Parker was in the back. I heard him come running up, he came running up to
6 my office, stuck his head in, and said he was going to the chase, pursuit, and I
7 told him I'd be with him in a couple of minutes and it took me about three
8 minutes before the gentleman in the office to leave for me to lock up. By that
9 time, Trooper Parker had already gotten on to the highway heading towards I-
10 95.

11 Q. And then you got in too?

12 A. Yes.

13 Q. You all on 378?

14 A. Yes, Sir.

15 Q. What initially were you all planning...what was your initial destination? Where
16 were you headed initially?

17 A. I-95. 378 and I-95. The way they were calling they said he was traveling...the
18 way he was traveling northbound we thought we could intercept him at I-95
19 and 378.

20 Q. That's where the Compass Restaurant is?

21 A. Yes, Sir.

22 Q. Okay. So you all head to 378 in that direction?

23 A. Yes, Sir.

24 Q. He in front of you?

25 A. Yeah, yeah, he's a few minutes ahead of me.

HEARING

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- 1 Q. You all talking on the radio?
- 2 A. Yes, Sir. We're talking, dispatch is talking and talking to Trooper Parker and
- 3 we had another Parker on the radio and it's all three of us on the radio talking.
- 4 Q. And there's another Parker? Who would that be?
- 5 A. That's John Parker also and John B. Parker.
- 6 Q. Okay, and where would he have ended up being...where was he in ...
- 7 A. He was on I-95 and he was up there waiting at the rest area.
- 8 Q. Okay. That's who we heard Mack Kennedy talk about earlier?
- 9 A. Yes.
- 10 Q. At the rest area?
- 11 A. Right.
- 12 Q. All right. Now you're traveling up 378 what do you hear on the radio about
- 13 the pursuit?
- 14 A. We keep hearing these mile markers...the station keeps giving out these mile
- 15 markers that he's getting to...this mile marker and that mile marker. I mean,
- 16 their saying it real quick and they still behind him and he's still traveling
- 17 northbound.
- 18 Q. When they're saying them real quick the next mile marker, what are you
- 19 thinking?
- 20 A. I know he's moving because it's a mile...at each mile marker and they way
- 21 they're getting it out, he's traveling that high rate of speed.
- 22 Q. All right, and when you get close to 378, well, we'll call it Dabb's Crossroads
- 23 at 527 that comes into 378 when you and Parker get close to that, what do
- 24 you hear on the radio about that?
- 25 A. Well, like I said, he's three, about three to four minutes ahead of me because

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- 1 when he took off north and he was gone and I was going as fast as I could to
2 get out there. We hear that the pursuit has gotten on to 527 heading in Sumter
3 County and at that time Trooper Parker told the station that he was at 527 and
4 378. He was getting on the 527.
- 5 Q. Let me stop you right there. What kind of vehicle do you drive?
- 6 A. I'm driving a Crown Victoria.
- 7 Q. And how is it equipped with lights and that stuff?
- 8 A. It has lights and siren, lights in the dash, and some I think in the grill and the
9 back lights and the rear window.
- 10 Q. Is it the silver color we all know?
- 11 A. Yes, but it doesn't have any markers on it. It's unmarked.
- 12 Q. It doesn't have any gold emblem and that stuff?
- 13 A. No, Sir.
- 14 Q. But it's got the lights?
- 15 A. Yes, Sir.
- 16 Q. How about Trooper Parker? What kind of vehicle does he drive?
- 17 A. He's driving a Dodge Intrepid and it's fully marked with blue lights on top and
18 wig wag. You've heard wig wag, the headlights wig wagging back and forth
19 and four way flashers.
- 20 Q. Okay, and markings on the side look like what?
- 21 A. It's the blue markings on the side and it has State Trooper on the side of it and
22 on the trunk.
- 23 Q. Is it big as a Crown Vic or smaller?
- 24 A. It's a little smaller than a Crown Vic. Just about a little bit.
- 25 Q. You said south on 527?

HEARING

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- 1 A. Yes, Sir.
- 2 Q. All right. What happens next?
- 3 A. Parker says he's on 527 and it said they were headed that way and he advised
- 4 the station that he's going to be ten twelve at, which means he will be standing
- 5 by, at Skinner Road and 527. He advises that. I talk back and forth to, I think,
- 6 Trooper Parker, the other Parker that was on the interstate. At this time,
- 7 Parker gets back, Jonathan Parker gets back on the radio and he says that he
- 8 sees him coming up behind him.
- 9 Q. And where are you about this time?
- 10 A. I'm just getting closer to 527, about to turn on to 527.
- 11 Q. And then what happened?
- 12 A. And at that time someone came on the radio and said that patrol...the dispatch
- 13 says, advised me that a patrol car has been hit and at that time that's when they
- 14 called A1-18 which is Parker and he didn't answer and they told me again that
- 15 a car had been hit and they call him again and he didn't answer.
- 16 Q. What are you thinking?
- 17 A. Well, I'm thinking that he's out with a deputy or someone that may have
- 18 gotten hit in the pursuit not thinking that he's involved in it. I'm just thinking
- 19 he's out of the car.
- 20 Q. All right, and what do you continue to do?
- 21 A. By that time, I turn on to 527 and I'm traveling up the roadway and I'm going
- 22 as fast as I can go and then as soon as I'm going down the road I see this
- 23 white male with blood on his face and Chief Garrett behind him with his gun in
- 24 the air and as I'm going by kind of fast Chief Garrett is telling me get him like
- 25 that. I put my car in reverse and I turn around and the subject is still running

HEARING

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1 down the center of road. He's not running in the grass. He's running down the
2 center of road and like I say he's covered in blood. I let the station know that
3 I'm right behind him and he's on foot and he's still...he's running pretty good.
4 I'm calling for an ambulance while I'm still behind him because I can see his
5 car kind of off to the distance but that's all I could see was his car. At that
6 time, and I'm driving behind him he's running down the road, a pick up truck
7 comes at an angle likes this and the next thing I know some officers had
8 tackled him and handcuffing him.

9 Q. Okay. After they handcuffed him, where did you go and what did you do?

10 A. After they handcuffed him I ran for like a few seconds and I told the station I'd
11 be going to check on Parker. I drove back up, it took me a few seconds, I
12 gunned it down the road and as soon as I got up I could see smoke and fire
13 coming up and by that time I looked off into the woods and then that's when I
14 saw the patrol car and I saw the state trooper car and some officers standing
15 around with fire extinguishers. Then I realized it was Parker's car that got hit
16 and it was burning and it was fully engulfed.

17 Q. All right. Go back to where you first came off of 378 on to 527. What's the
18 speed limit right in there?

19 A. Thirty five miles an hour.

20 Q. Is that a residential section?

21 A. Yes, Sir, it is.

22 Q. And that's where you was headed?

23 A. Yes, Sir.

24 Q. You talked us through this. When you were talking with dispatch on the radio,
25 was that recorded that audio transmission?

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1 A. Yes, Sir, it was.

2 MR. JACKSON: And, Your Honor, if I could it's actually in this
3 computer, not the physical exhibit. We'll substitute the physical exhibit and introduce
4 this into evidence later.

5 THE COURT: What number?

6 MR. JACKSON: State's Exhibit Number 7.

7 THE COURT: Mr. Howle?

8 MR. HOWLE: No objection.

9 THE COURT: Is the...what you have in the laptop the same as what's
10 on the substitute? Mr. Howle, do you have any objection to this?

11 MR. HOWLE: Your Honor, I'm just...I don't know how many times
12 we need to hear the radio transmissions. I think he pretty much went through the
13 whole testimony what we're going to hear?

14 THE COURT: The...well, Mr. Jackson, this is the HP...

15 MR. JACKSON: It's the Highway Patrol dispatch audio recording.

16 THE COURT: All right, I'll allow it over Mr. Howle's objection.

17 MR. JACKSON: Thank you.

18 (State's Exhibit Number 7 was marked)

19 THE COURT: Ladies and gentlemen of the jury, if...I know we're
20 getting fairly close to the lunch hour, well, not really close but if anyone else needs a
21 break it will be like we did the last time and just raise your hand and let me know that.
22 All right, Mr. Jackson.

23 MR. JACKSON: Thank you, Your Honor. I think...check with the jury
24 make sure they can hear it when we turn it on.

25 (Audio tape played for the jury).

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1 Q. First Sergeant, If we need to pause it and explain something, please do so. But
2 if you would walk us through so we'll know what the numbers are and who is
3 speaking.

4 MR. HOWLE: Your Honor, are we getting ready to play this again?

5 MR. JACKSON: Yes, Sir.

6 THE COURT: Mr. Howle, I overruled your objection. The objection
7 is based on the fact that it's repetitive?

8 MR. HOWLE: Absolutely.

9 THE COURT: Your objection overruled. Any other grounds you'd
10 like to state?

11 MR. HOWLE: Well, not only because it's repetitive but before when
12 we did this it was to explain some things but I don't think there's a code or anything
13 that needs explaining there.

14 THE COURT: All right, objection overruled.

15 (Audio tape played for the jury).

16 THE COURT: If we're going to have testimony along with the tape
17 let's make sure the tape is stopped.

18 MR. JACKSON: Yes, Sir.

19 THE COURT: So that we won't have any talking over something that
20 needs to be explained.

21 MR. JACKSON: Very good. Thank you, Sir.

22 Q. It starts off you're at the office?

23 A. Yes, Sir.

24 Q. All right, and that's your dispatch calling from where?

25 A. From the Blythewood out of Columbia.

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1 Q. All right, and if you would go ahead.

2 (Audio tape played for the jury).

3 A. That's Trooper Weeks just wanted to know if that vehicle is northbound or
4 southbound. They already just said the vehicle is on I-95.

5 (Audio tape played for the jury).

6 A. He's just letting us know that that's the BOLO that we heard earlier and that
7 vehicle is traveling northbound on I-95.

8 (Audio tape played for the jury).

9 A. That's the other John Parker on I-95. He's letting the station know that he's
10 sitting at the 139 at the rest area.

11 (Audio tape played for the jury).

12 A. That's Trooper Parker calling to other Parker that's sitting on the interstate.

13 (Audio tape played for the jury).

14 A. Trooper Jonathan Parker advises John Parker that he's ten seventeen, he's
15 headed that way. He has his lights and sirens on and that he's headed up to
16 378/95.

17 (Audio tape played for the jury).

18 A. Trooper Parker asks the station who is chasing him and he advises, the station
19 advises, that the Clarendon County Sheriff Department is chasing this subject.

20 (Audio tape played for the jury).

21 A. That's Trooper John Parker on the interstate letting the station know that he
22 has a deputy standing by sitting with him at the rest area.

23 (Audio tape played for the jury).

24 A. That was just me asking the station to make sure this is the same vehicle that
25 they gave out earlier and this is....

HEARING

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1 (Audio tape played for the jury).

2 A. That's Parker sitting at the rest area wanting to know if Clarendon County
3 Sheriff Department chasing the subject and they advised him...

4 (Audio tape played for the jury).

5 A. That's me telling Parker that's sitting at the rest area since this...they're going
6 northbound to be careful because of the speed and be careful.

7 (Audio tape played for the jury).

8 A. That's Trooper Jonathan Parker letting the other Parker know that he's
9 coming to the Black River Swamp right now.

10 (Audio tape played for the jury).

11 Q. He's at the Black River Swamp at 378?

12 A. Yes.

13 Q. The same Black River Swamp down on I-95 where the eighteen wheeler
14 incident happened?

15 A. Yes, Sir.

16 Q. Okay.

17 (Audio tape played for the jury).

18 A. He's letting us know that he's gotten off the interstate and he's gotten on...off
19 at the 132 and he's on 5...getting ready to get off on 527.

20 (Audio tape played for the jury).

21 A. That's Trooper Parker asking which way they're headed on 527 and they told
22 him he's heading back towards Sumter and he asked if they were going back
23 towards Sumter or Clarendon and they said Sumter. He said he's at 527 and
24 378 and he'd be waiting for him.

25 (Audio tape played for the jury).

THIRD JUDICIAL CIRCUIT

(803) 436-2150

HEARING

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1 A. That's me calling the station to let them know to notify the Sumter Sheriff
2 Department and see if they got a deputy out there with some stop sticks on the
3 east side.

4 (Audio tape played for the jury).

5 A. Trooper Parker who was waiting at the rest area for this pursuit to come up,
6 he lets me know that the deputy who was out there with him has some stop
7 sticks and knows what I need and he's headed that way towards 527.

8 (Audio tape played for the jury).

9 Q. Can you explain that?

10 A. That's Jonathan Parker says that he's sitting at 527 and Skinner Road and he
11 can see him coming up on him now. He can see the pursuit coming up to him
12 now while he's sitting there.

13 Q. He uses his call sign was A1-18?

14 A. And he used his call sign. He calls the station and use his call sign and advised
15 the station that he's at Skinner Road and 527 and he's waiting and he could
16 see them coming up behind him now.

17 Q. Could you tell if he's stationary or not on radio transmissions?

18 A. Well, he said he's ten twelve and that's an intersection so he's got to be sitting
19 still.

20 Q. Okay.

21 (Audio tape played for the jury).

22 A. And he's calling to let me know that a subject had hit a patrol car.

23 Q. Now, what we're listening to is in real time isn't it?

24 A. Yes, Sir.

25 Q. So from the time that we hear Trooper Parker saying that he sees them coming

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1 up until we hear a patrol car has been rammed, in that period of time it's
2 happened?

3 A. Yes, Sir, it happened quick. Everything was happening quick.

4 Q. Go ahead.

5 (Audio tape played for the jury).

6 A. That's when the station calls Jonathan, car A1-18 which is his call number and
7 they ask him if he's ten-four.

8 Q. And if they want to hear...what does that mean?

9 A. They want to make sure he's all right and he doesn't answer.

10 (Audio tape played for the jury).

11 A. Again, I ask the station, "you said he rammed a patrol car" and again they said
12 the affirmative, which means "yeah" and then they call Trooper Parker again, a
13 second time they call him, no answer.

14 (Audio tape played for the jury).

15 A. That's me telling the station to get rescue out here because I'm seeing him
16 running down the road with blood and I can see his car up there and that's
17 why I'm calling for rescue out there because I knew it's a bad accident.

18 (Audio tape played for the jury).

19 A. I'm advising dispatch that I'm behind the subject. He's running down the road.
20 He's still down the center of the road and I'm directly behind him in my car
21 and he's running fast as he can go down the...

22 Q. You'd already come up and turned around and chasing him?

23 A. Yes, I came up and once I saw that he was being --- and Chief Garrett was
24 telling me to get him like that, I turned around, made a U-turn and gone on
25 back behind him.

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1 Q. And let dispatch know what you were doing?

2 A. Let the dispatch know that I was behind and he was on foot.

3 (Audio tape played for the jury).

4 A. That's the station going ten-thirty-three. That means no more talking over the
5 radio. There's an emergency going on, no more talk except for the that's
6 involved.

7 (Audio tape played for the jury).

8 A. I'm letting the station know that they got him in custody and that I need an
9 ambulance and a wrecker down here and I'm going to check on Jonathan
10 Parker, A1-18.

11 (Audio tape played for the jury).

12 A. That's me and I'm just realizing it's Jonathan Parker's car that's in the trees
13 and it's burning and I need the fire department down there right then. That's
14 when I saw his car. That was the car was involved and it was fully engulfed.

15 (Audio tape played for the jury).

16 A. I advised the station to let the captain and the colonel that they need to come
17 down there to scene.

18 Q. And that would be colonel who?

19 A. Colonel Roark..

20 Q. Over what?

21 A. Over the highway patrol.

22 Q. And why would you need to call the colonel?

23 A. Because I knew that Parker....had died and burned in that car while I was
24 standing right there.

25 MR. HOWLE: Your Honor, I'm going to object to that comment

HEARING

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1 about him burning in the car. Nothing's been proven into evidence yet in regard to the
2 cause of death or anything else.

3 THE COURT: Would you all come around just a minute?

4 THE COURT: There will be additional testimony later during the trial
5 as to the cause of death and the context of the trooper's answer just relied upon the
6 testimony that you hear on the cause of death. You can proceed, Mr. Jackson.

7 MR. JACKSON: Thank you, Your Honor.

8 Q. Is that it for the audio?

9 A. Yes, Sir.

10 Q. All right, Sir. The Colonel and those later came on the scene?

11 A. Yes, Sir.

12 Q. Now, did you have an opportunity after the incident to go back down and
13 work up the scene and check out the condition of the roads and that type of
14 thing?

15 A. Yes, Sir, I did.

16 Q. And when did you do that?

17 A. Actually, I rode back the next day but we rode back within that week, within a
18 week and went back out with a camera and a Dodge Intrepid.

19 Q. All right. When you went out the next day, did you look around the
20 intersection and see what conditions the roadways were in?

21 A. Yes, Sir, I did.

22 Q. And tell the jury what...what, if anything, did you find the conditions of the
23 road?

24 A. The roadway was fine. There was no potholes, no nothing. The roadway was
25 in good condition.

HEARING

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- 1 Q. Any speed bumps?
- 2 A. No, Sir. No speed bumps.
- 3 Q. Any place where there used to be a pothole and filled it up and makes a little
- 4 bump or a hole?
- 5 A. No, Sir.
- 6 Q. All right.
- 7 A. None of those.
- 8 Q. Any trees across the road that needed to be avoided?
- 9 A. No, Sir.
- 10 Q. How about the line of site there? What's the road like? How far can you see?
- 11 A. It's a straight stretch from there going back for about eighth of a mile to a
- 12 ninth of a mile, not even more than a mile. It's all straight stretch of road.
- 13 Q. Any debris in the median, to the left, or the right of the road that would keep
- 14 you from seeing the distance up the road?
- 15 A. No, Sir.
- 16 Q. Anything blocking the view on the side of the road?
- 17 A. No, Sir.
- 18 Q. Now you mentioned something about a Intrepid. Tell us about that. Tell us
- 19 what you did?
- 20 A. We had a Dodge Intrepid come down out of Orangeburg. We had a talk with
- 21 an officer down and have them bring up a Dodge Intrepid just like Jonathan
- 22 Parker had.
- 23 Q. Just like it?
- 24 A. Just like it with lights and all, marked, a marked unit and had it placed on the
- 25 shoulder of the road where Jonathan Parker's car would have been.

HEARING

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- 1 Q. And you all...how did you determine that's where Jonathan Parker's car...I
2 know you didn't but you placed it there for a reason? Where did you get that
3 information?
- 4 A. We got that information from the reconstruction from where they said the
5 place of impact was and where his car was sitting at when it got struck.
- 6 Q. All right. So based on what you were told you placed a Dodge Intrepid like his
7 in a similar position?
- 8 A. Yes, Sir, I did.
- 9 Q. All right, and who else was out there when you all were doing this?
- 10 A. Me at that time Deputy Monahan, Trevor Brown, I can't think of that
11 trooper's name that brought the Intrepid down from Orangeburg.
- 12 Q. Okay.
- 13 A. It was about four of us out there.
- 14 Q. And what was the purpose of setting this up?
- 15 A. To see what the line of sight would be and the distance and you can see the
16 blue lights on Jonathan Parker's car coming back from I-95 towards Skinner
17 Road.
- 18 Q. All right, and that would help the jury some where down the line be able to see
19 what everybody else saw.
- 20 A. Yes, Sir.
- 21 Q. All right. Did you all video tape someone driving a...as though they were
22 coming north on 527?
- 23 A. Yes, Sir, we did.
- 24 Q. All right. What was the speed of the person...you all driving the limit of the
25 speed or just...

HEARING

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1 A. No, Sir. We did what the speed limit was. We videotaped it all the way down
2 coming to where his car was, where the car ended up.

3 Q. All right. State's Exhibit 8. That would be the video of that demonstrative
4 film?

5 A. Yes, Sir.

6 MR. JACKSON: All right, Your Honor, at this time we would like to
7 introduce this into evidence and publish this.

8 THE COURT: Number 8?

9 MR. JACKSON: Yes, Sir.

10 THE COURT: Mr. Howle.

11 MR. HOWLE: Your Honor, I've seen the video, I mean, what it is I've
12 got no real objection.

13 THE COURT: All right. Number 8 is in evidence without objection.
14 How long is it, Mr. Jackson?

15 (State's Exhibit Number 8 was marked).

16 MR. JACKSON: Less than two minutes.

17 THE COURT: All right.

18 Q. And First Sargent, if you could come down I'll get you to point out a few
19 things for the jury. This video starts where?

20 A. Just as you come over I-95. Just a few miles from the scene.

21 Q. All right, and we're going to see a camera in front of the car coming the same
22 direction as the Defendant would have been coming?

23 A. Yes.

24 Q. Now, there's been testimony that the Defendant was in the left lane in the
25 southbound lane going north. This officer on this video has stayed in his lane?

HEARING

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- 1 A. Yes, Sir, he's staying in his lane the whole time.
- 2 Q. Okay. I'm going to give you this and it comes on whenever you're ready.
- 3 (Video played for the jury).
- 4 Q. Talk through this.
- 5 A. This is just the deputy over there in car coming down to the scene and headed
- 6 down towards 378 and Skinner Road.
- 7 Q. And what road is that?
- 8 A. This is 527.
- 9 Q. The date on that is correct?
- 10 A. Yes, Sir.
- 11 Q. So this would be eight days after the crash?
- 12 A. May 24th, yes, Sir.
- 13 Q. What's that on the right?
- 14 A. That's the patrol car sitting with the lights on. Lights are still blue.
- 15 Q. And that's how Jonathan Parker's car was then?
- 16 A. Yes, Sir.
- 17 Q. These folks back here, what's....
- 18 A. That's me and more troopers and we're sitting at the spot where Trooper
- 19 Parker's car ended up into the woods when he was hit.
- 20 Q. And that's the same of car Trooper Parker was in?
- 21 A. Same kind.
- 22 Q. Blue lights the same?
- 23 A. Yes, Sir.
- 24 Q. All right. Blinking lights on the back?
- 25 A. Yes, Sir. Forward flashers, lights.

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1 Q. All right, and that was fairly and adequately depict what would have been the
2 scene coming north on 527 on May the 16th, 2005?

3 A. Yes, Sir.

4 Q. All right, Sir. Go ahead and take your seat. First Sargent, for purposes of
5 record would this have occurred in Sumter County?

6 A. Yes, Sir, it happened in Sumter. Clarendon/Sumter County.

7 Q. Have you had the opportunity to review the high speed pursuit?

8 A. Yes, Sir, I did.

9 Q. And you so the things that you saw. What are some infractions of law that you
10 picked up, not all of them, just some of the infractions of law that you picked
11 up that Eric Ridel would have committed. The things you should do by law or
12 should not do by law. Share some of those with us.

13 A. Some of the stuff...the violations that I saw from that video tape in that pursuit
14 that Mr. Ridel was in that he was speeding, violation of improper lane change,
15 failure to signal. When he passed the tractor, the double tractor trailer in both
16 lanes and he drove on the shoulder, an improper passing. When he crossed the
17 median, went across the median and drove up the wrong side he was traveling
18 up the southbound side going north. Also he drove the wrong way up the
19 entrance ramp to I-95 off of 527 and from what they were calling in improper
20 tags on the vehicle and I got him leaving the scene with injuries of death.

21 Q. All right, and all of these would be just be examples of acts that Eric Ridel
22 committed that were forbidden by law or the fact that he was neglecting a duty
23 imposed by law, correct?

24 A. Yes, that's correct.

25 Q. And there are others...there's some you didn't mention?

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1 A. Right.

2 MR. JACKSON: First Sargent, that's all the questions I've got at this
3 time. You can answer anything Mr. Howle has?

4 THE COURT: Mr. Howle?

5 MR. HOWLE: Thank you, Your Honor.

6 CROSS EXAMINATION BY MR. HOWLE

7 Q. First Sargent Sinclair, the video we watched, you said that car was going the
8 speed limit?

9 A. Yes, Sir, the speed limit or below or just below the speed limit.

10 Q. How fast do you think it was going?

11 A. Between 50-55.

12 Q. Okay. You heard testimony that the car that day, the suspect's car was going a
13 good deal faster?

14 A. Yes, Sir.

15 Q. So, as the Solicitor said now I can see the car and it took a number of seconds
16 to get there. In real time at that speed he would have gotten there much
17 quicker?

18 A. Yes, he would.

19 Q. The collision itself you never saw that? When you arrived when had already
20 happened?

21 A. Yes, it already happened.

22 MR. HOWLE: Thank you. I have no further questions.

23 THE COURT: Mr. Jackson?

24 MR. JACKSON: No re-direct, Your Honor.

25 THE COURT: All right. Sargent Sinclair, you can step down.

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1 MR. JACKSON: Your Honor, the next witness would Major Buck
2 Ivey.

3 THE COURT: All right.

4 MR. JACKSON: I understand that there may be something we may
5 need to...

6 THE COURT: All right. Ladies and gentlemen of the jury, we're going
7 to take a break at this point. I've got a point to discuss with the attorneys and we will
8 have you back out in the courtroom in due course probably within the next ten or
9 fifteen minutes. Do not discuss the case during the break. Of course, that would be
10 inappropriate until you've heard all of the evidence and charge on the law so you can
11 talk about anything that you'd like as long as it does not even remotely involve this
12 case. All right.

13 (Jury exits the courtroom 12:12)

14 THE COURT: All right, Mr. Jackson and Mr. Howle, as I understand
15 it now we're going to address the issues pertaining to Mr. Ivey's testimony
16 concerning the removal of the seat from the vehicle?

17 MR. HOWLE: Yes, Sir.

18 THE COURT: Would you all come up for just a minute?

19 MR. HOWLE: Sure.

20 BAILIFF: Place your left hand on the Bible and raise your right hand
21 and state your name please.

22 MR. IVEY: Charles T. Ivey.

23 BAILIFF: Do you solemnly swear and affirm the testimony of this
24 Court to tell the truth, the whole truth, and nothing but the truth so help you God?

25 MR. IVEY: Yes.

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1 BAILIFF: Watch your step. State your full name and spell your last
2 name for the record?

3 MR. IVEY: Charles T. Ivey. I-V-E-Y.

4 PROFFER TESTIMONY OF MR. CHARLES T. IVEY - DIRECT EXAMINATION
5 BY MR. JACKSON

6 Q. Major Ivey, I'm going to skip down...

7 THE COURT: Let's put it in context for the record. Major Ivey is
8 going to testify about his actions on the scene insofar as arriving, observing Trooper
9 Parker's vehicle and its condition. I believe the indication is from your statement, to
10 me, Mr. Jackson and Mr. Howle that the vehicle was on fire, his efforts to put out the
11 fire, and that's where we get to the points of dispute as far as evidence is concerned.
12 Is that right, Mr. Howle?

13 MR. HOWLE: Yes, Your Honor.

14 THE COURT: All right, so we can have a complete record on it and
15 since there's no agreement as to the presentation of this witness' testimony I need to
16 hear it in order to rule upon it and put any parameters on it that I think are
17 appropriate. Keeping in mind, of course, that even irrelevant evidence is not
18 admissible if prejudicial impact outweighs the appropriate value and that's the points
19 that I'm looking for.

20 MR. JACKSON: Yes, Sir.

21 Q. Major Ivey, when you and other fire officials responded describe the fire for
22 us.

23 A. The vehicle was about eighty percent involved when I arrived on the scene.

24 Q. All right, how about...how high was the fire, how big was the flame?

25 A. The flames were shooting just about tree top level.

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1 Q. Okay, and what did you all do?

2 A. Once I arrived on the scene trainer officer Horton was in the process of pulling
3 a jump line off the truck. I put on my gown and assisted him on a hand line.
4 We proceeded to extinguish the fire. We were having a little bit of a hard time
5 due to the amount of gas that was spilling on the ground and the woods that
6 was on fire. After we pulled a second line we finally got the fire under control.

7 Q. All right. Once you got the fire under control did you eventually get it put out
8 all together?

9 A. Yes, it took us a few more minutes to finish putting out the hot spots and
10 everything.

11 Q. All right. I'm going to hand you a series of photographs.

12 THE COURT: Mr. Howle, you can object it at the appropriate time.
13 When you do have an objection so we can address these things in orderly way.

14 MR. HOWLE: You want me object now or...

15 THE COURT: I would prefer that to keep it straight from these so that
16 I'll know where we're heading if any limitations have to be put on the testimony.

17 MR. HOWLE: Your Honor, since I know when the autopsy...

18 THE COURT: Well, I'm talking about his testimony from this point.

19 MR. HOWLE: I understand but maybe I'm jumping ahead when we do
20 that. We know what the autopsy report is going to say is the cause of death. It had
21 nothing to do with the fire. So all of these...this testimony and showing the burned
22 vehicle and how the body was removed and wanting to show a picture of his belt
23 buckle and all like that, has nothing to do with whatever the intent may have been or
24 whatever in regard that caused this accident. I mean, if that autopsy report said or
25 even indicated as far as fire or something else, I could understand that but all of this is

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1 something that happened after the death and I cannot imagine any reason the Solicitor
2 wanting to know all of this and put on the record other than to seek ...with the jury.

3 THE COURT: All right. Do you have any objection to his testimony to
4 this point. I spoke basically on what you said you object to his testimony about
5 responding to put out a fire.

6 MR. HOWLE: Your Honor, I don't object to him going and saying
7 because...well, everybody already said statements to the fire or anything else that he
8 went and put the fire out but when...I don't --- pictures if you want to show him the
9 car.

10 THE COURT: All right. Well, let's just keep going, Mr. Jackson. Mr.
11 Howle, if you have objections to any particular point it would help me out if you
12 would state those at the appropriate time so that I will know what your actual
13 objections are.

14 MR. JACKSON: Your Honor, the photographs will be State's Exhibit
15 9 a, b, c, d, e, f, g, h, and I.

16 THE COURT: So a through I?

17 MR. JACKSON: A through I and, Your Honor, I apologize. We
18 hadn't marked these. I'm going to get her to mark them.

19 THE COURT: Okay.

20 (State's Exhibits 9, 1, b, c, d, e, f, g, h and I were marked)

21 DIRECT EXAMINATION CONTINUED BY MR. JACKSON

22 Q. Major Ivey, if you would refer to these by the number on the back and briefly
23 tell. All right, if you would just refer this by the writing on the back and
24 briefly tell and walk the Judge what those nine photographs are?

25 A. The first photograph is 9a. It's a picture of the vehicle that is sitting inside the

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1 woods after it's been extinguished.

2 Q. Is that the path that it takes going in?

3 A. Yes, Sir, that's correct.

4 THE COURT: All right, Mr. Howle, do you have an objection in 9a,
5 you might want to just come up here and look as we go.

6 MR. HOWLE: I have no objection at this time, Your Honor.

7 THE COURT: All right. Go ahead.

8 A. 9b is another picture of the vehicle in the woods after it's been extinguished.

9 Q. That's just more closer to the top?

10 A. It's just a little closer picture. 9c is a picture of the...

11 THE COURT: Let's stop right there.

12 MR. IVEY: I'm sorry.

13 THE COURT: How about 9b, Mr. Howle?

14 MR. HOWLE: Your Honor, I don't know why we need nine pictures
15 to show...

16 THE COURT: Well, let's talk about 9b. We're not talking about all of
17 nine.

18 MR. HOWLE: I don't think 9a is any different from 9b, Your Honor.

19 THE COURT: 9b shows a closer view. I think that 9b is admissible. It
20 shows a vantage point that you come up to the scene of the vehicle resting in place.
21 You want to state an objection for the record.

22 MR. HOWLE: I want to state that I think the pictures are cumulative.
23 Shows the same thing over and over.

24 THE COURT: All right. 9a is in without objection. 9b is in over Mr.
25 Howle's objection. All right, how about c?

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1 A. 9c is another picture of the vehicle. The passenger side of the vehicle. An up
2 close shot picture of the vehicle.

3 THE COURT: All right, 9c, Mr. Howle? Any objection to that?

4 MR. HOWLE: No objection, Your Honor. If they want to take eight
5 pictures later on to show of the car, that's fine.

6 THE COURT: All right. I'll withhold ruling on 9c. All right, go to 9d.

7 A. 9d is another up close picture of the passenger side and also the rear of the
8 vehicle. A lot of body damage to the vehicle.

9 THE COURT: All right, Mr. Howle, not speaking for you but it shows
10 a yet closer view of the vehicle closer than 9c so your objection would be the same?

11 MR. HOWLE: Your Honor, actually I don't mind a picture of the car.

12 THE COURT: All right.

13 MR. HOWLE: And I don't care which one it is other than number 9
14 which I definitely have a problem with.

15 THE COURT: All right. So c and d are objected to.

16 THE HOWLE: Until Your Honor selects one out of the...

17 THE COURT: I understand. All right, go ahead with "e".

18 Q. 9e is another up close picture of the passenger side front of the vehicle.

19 THE COURT: All right. In other words you're getting closer?

20 MR. IVEY: Yes, Sir.

21 THE COURT: All right, Mr. Howle, the same train of thought that you
22 had. Same objection?

23 MR. HOWLE: Yes, Sir.

24 THE COURT: All right.

25 A. Next picture is an up close shot of the passenger's front of the vehicle.

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1 THE COURT: And that is 9...?

2 MR. IVEY: 9f, yes, Sir.

3 THE COURT: All right, 9f is on the other side, Mr. Howle?

4 MR. HOWLE: Yes, Sir. Same objection

5 THE COURT: Same objection, different vantage point however. It
6 shows looking from the right front bumper area towards from parts and you can see
7 some sky behind that.

8 MR. HOWLE: Yes, Sir.

9 THE COURT: All right. Go ahead, Major.

10 A. The next picture is an up close shot of the rear driver's side of the vehicle.

11 THE COURT: All right. This is 9g. Mr. Howle?

12 MR. HOWLE: Same objection.

13 THE COURT: Same objection?

14 MR. HOWLE: Yes, Sir.

15 THE COURT: That it's....?

16 MR. HOWLE: It's just cumulative.

17 THE COURT: Cumulative and...all right.

18 A. The next picture is the driver's side of the vehicle up close shot.

19 THE COURT: All right, 9h, Mr Howle, is the view of the left side of
20 the vehicle and just for the record all of these photographs were taken of the vehicle in
21 the same physical point but just from different angles.

22 MR. IVEY: Correct.

23 THE COURT: Is that correct?

24 MR. IVEY: Yes, Sir, correct.

25 A. And the last...

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1 THE COURT: Objection, Mr. Howle?

2 MR. HOWLE: Same objection.

3 THE COURT: All right.

4 A. And the last photo is the driver's side front indicates the State Trooper on the
5 front of it.

6 THE COURT: All right. Same resting place, different view from the...

7 MR. IVEY: Yes, Sir, correct.

8 THE COURT: Same objection, Mr. Howle?

9 MR. HOWLE: Yes, Sir, Your Honor, and I think that's the one where
10 they had already cut the top out and everything to take the seat out.

11 THE COURT: All right.

12 MR. IVEY: No, Sir.

13 MR. JACKSON: It's not.

14 THE COURT: No, that's just some debris on top of the....

15 MR. JACKSON: It's actually a burned tree top. It's...I was corrected
16 on that.

17 MR. HOWLE: Oh, okay, because we had talked earlier I thought it
18 was cut ...

19 MR. JACKSON: No, it's not.

20 THE COURT: All right, now, Mr. Jackson?

21 MR. JACKSON: Yes, Sir.

22 THE COURT: You have two experts here is that correct?

23 MR. JACKSON: That's correct, Your Honor.

24 THE COURT: A different question arises if any of these photographs
25 in the opinion of the experts make a difference and have an impact on their case, you

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1 know the answer to that question?

2 MR. JACKSON: I do, Your Honor. Just let me state this. These
3 photographs, there are nine of them. Three of them are walking in to where the car is
4 sitting through the path they took all getting closer. The other six are 360 degree
5 photographs around how this car was sitting in the woods.

6 THE COURT: All right.

7 MR. JACKSON: The experts are going to place this car in the woods.
8 These photographs will corroborate not only what Major Ivey saw going in to put the
9 fire out and how they had to go in to put it out and what was left immediately after
10 the scene. They will also help the jury in making their determination whether the
11 experts went in and reasonably put the car where it should have been and the
12 measurements that they took. It will corroborate both of those.

13 THE COURT: All right.

14 MR. JACKSON: And as, Your Honor, knows we have removed lots
15 of photographs and I have stayed away from anything that may otherwise be
16 prejudicial.

17 THE COURT: All right. 9a is in without objection?

18 MR. JACKSON: Yes, Sir.

19 THE COURT: All right, Mr. Howle, do you have any additional
20 argument you would like to present on b through I other than the fact that they are
21 cumulative and what...do you have any other grounds?

22 MR. HOWLE: Your Honor, the same ground I raised initially in
23 that...I mean we didn't stipulate to what's the speed, the team comes in and says they
24 think the point of impact was. I mean, I don't understand all of this after...

25 THE COURT: What is that speed going to be?

HEARING

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1 MR. JACKSON: It's going to be no less than eighty miles an hour. It
2 will be a greater speed but the...on their it's no less than eighty miles an hour.

3 THE COURT: All right, and you're prepared to stipulate as to the
4 speed no less than eighty, point of impact, path of travel of the vehicle to its resting
5 place, the ultimate resting place and obviously the testimony that's already been
6 introduced that the vehicle caught fire which I think is relevant to the degree of impact
7 and I don't know where Mr. Ridell's vehicle came to rest in relation to this but you
8 would be prepared to stipulate to what?

9 MR. HOWLE: To what, his vehicle?

10 THE COURT: To what I just said? The point of impact, the path of
11 the travel of the patrol vehicle after impact, its ultimate resting place, and that it
12 caught fire.

13 MR. HOWLE: Yes, Sir.

14 THE COURT: All right, Mr. Jackson, would your witnesses need to
15 testify further to clear anything else in context for the jury or to elicit or to have your
16 experts testify as to their ultimate opinion? I'm not going to hamstring you by
17 stipulations. I think you're entitled to present your case but that Mr. Howle's
18 stipulation cause you to change any desire to have these photos introduced into
19 evidence?

20 MR. JACKSON: His offer to stipulate does not change my, the way I
21 want to present my case and offer these photographs to corroborate. We've already
22 put some in of the Defendant's car at the times going to come through the experts, we
23 want to put more in the way of the Defendant's car. They need to see the angle of
24 both cars ended.

25 THE COURT: All right. In that regard, Mr. Howle, 9a is in without

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1 objection. 9b as it shows a closer view as the camera gets tracking the travel into the
2 woods is evidence. 9c likewise overrule your objection. It shows a closer view as does
3 9d, as does 9e, f, g, h, and I. I will let all those photographs into evidence over your
4 objections provided Mr. Jackson, that you understand that I'm going to keep very
5 close watch over this witness' testimony as to the condition of Mr. Parker's body at
6 the time he examined the vehicle because as I understand it the medical doctor will
7 testify that the cause of death was not by fire. That's what I'm most concerned about
8 but Mr. Howle, even though you've prepared to stipulate to many facts, I do not think
9 that that would keep these photographs from coming into evidence because it does
10 show in my view the degree of impact, therefore, the speed and the path of travel and
11 I'm sure that the experts will have it measured and some other witness may have it
12 measured but these photographs are in evidence over your objections. I know we have
13 some additional matters to address with the Major's testimony and we can go forward
14 with that.

15 MR. JACKSON: Thank you, Your Honor.

16 THE COURT: So 9a through 9i are in and you can introduce those to
17 the jury and Mr. Howle, you can note your objections .

18 MR. HOWLE: Yes, sir, Your Honor, I will.

19 (State's Exhibit Numbers 9a-9i are marked)

20 DIRECT EXAMINATION OF MR. JACKSON CONTINUED

21 Q. Now when we talk about these photos, Major Ivey, these photographs depict
22 the position of the car after the fire was extinguished correct?

23 A. Correct.

24 Q. All right. Now, once the fire was extinguished did you and/or others approach
25 the car for the purpose of removing the body to go to the autopsy?

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1 A. Yes, Sir, correct, yes.

2 Q. When you got to the car what position was the body in? Was Jonathan
3 Parker's body in?

4 A. He was still seating in his seat upright position. Sitting upright position.

5 Q. And you all removed him and sent his body to the autopsy?

6 A. Correct.

7 Q. Were you able to determine if his seatbelt was on and intact?

8 A. Yes, Sir.

9 Q. All right, Sir.

10 THE COURT: Do you have any objection to that, Mr. Howle?

11 MR. HOWLE: None, Your Honor, and matter of fact we stipulated he
12 was wearing his seatbelt. I told Mr. Jackson repeatedly we will stipulate that he was
13 wearing a seatbelt.

14 THE COURT: All right, Mr. Jackson, what...both of you, what, what
15 aside from the fact that the law requires it, what difference does it make in this case
16 either way? Mr. Howle, if the seatbelt was on why do you care that the jury hears it?

17 MR. HOWLE: I don't care so much as the jury...I'm stipulating to it. I
18 don't care if they hear it. What I don't want to have it is him say well let me show you
19 the picture to show that he was buckled and show a burned picture.

20 THE COURT: How about that, Mr. Jackson?

21 MR. JACKSON: Well, Judge, I pulled the pictures out, put them back.
22 All I want to do is put the seatbelt in, that he was buckled, that they had to remove the
23 seat to get the seatbelt to show that it was buckled to corroborate what they saw.

24 THE COURT: All right.

25 MR. JACKSON: That's all I want to do.

HEARING

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1 THE COURT: All right. Now why is it important to the State's case,
2 and important is not a legal term but that's my term. Why is it important to the State's
3 case to demonstrate that the seatbelt was buckled?

4 MR. JACKSON: Your Honor, it's important for me to show that the
5 Jonathan Parker did everything he was supposed to do and did not contribute to his
6 death and did not contribute to the wreck and we're doing that through these witness
7 because he was not in the road. He was off the road.

8 THE COURT: All right. He is prepared to stipulate that the seatbelt
9 was buckled. Why do you need a photograph of it?

10 MR. JACKSON: I don't want to put the photographs in, Judge.

11 THE COURT: I thought you said you did.

12 MR. JACKSON: No, Sir. I backed off from that. I want to put the
13 buckle in that corroborates that it was done.

14 THE COURT: Where's the buckle?

15 MR. JACKSON: Right here, Your Honor.

16 THE COURT: Mr. Howle, that removes the photographs from the
17 consideration that we had already reviewed on...

18 MR. HOWLE: Yes, sir.

19 MR. JACKSON: And also, Your Honor, it reads in to what the experts
20 with the photographs they will have with the car, the door, and part of the roof cut off
21 and a seat cut out. That's why.

22 THE COURT: All right. The evidence bag marks the...this is Item
23 Number 6, and of course, that wouldn't be the... Why do you need this physical
24 exhibit?

25 MR. JACKSON: To corroborate that the seatbelt was buckled.

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1 THE COURT: All right, Mr. Howle is stipulating to that why do need
2 additional corroboration? That's all the corroboration you need. The jury was
3 instructed that if the parties...stipulated something that that is the ultimate
4 corroboration.

5 MR. JACKSON: I'm simply presenting my case, Your Honor, and
6 would like to put this into evidence in corroboration and if the Court rules against it I
7 understand.

8 THE COURT: All right.

9 MR. JACKSON: Some where down the road the question is going to
10 come up and it was buckled, here is the buckle.

11 MR. HOWLE: The question is not going to come up from me, Your
12 Honor.

13 MR. JACKSON: There's no better evidence than this. It may come up
14 on the appellate level but we got...

15 MR. HOWLE: Well, there...

16 MR. JACKSON: Our witness' testimony corroborates by real evidence
17 and I would like to put it into the record.

18 MR. HOWLE: I don't stipulate to the real evidence, Your Honor.

19 THE COURT: All right, Mr. Howle, anything else on the point about
20 the actual seatbelt apparatus coming into evidence other than what you just said?

21 MR. HOWLE: No, Sir.

22 THE COURT: All right, Mr. Jackson, are you going to elicit that
23 testimony from Major Ivey?

24 MR. JACKSON: Yes, Sir. He moved the chair, he moved the seat so
25 that he could extract the seatbelt and gave it to the Sheriff's Department.

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1 THE COURT: All right. Based on the fact that Mr. Howle is
2 stipulating and I can announce the stipulation to the jury or you can do it jointly I will
3 announce to the jury or you folks can do it that the seatbelt was undisputedly,
4 unequivocally, and no doubt about it buckled at all pertinent times especially at the
5 time of impact and that Trooper Parker did have in place his seatbelt and that when he
6 was removed from the vehicle the seatbelt was still buckled and in that regard, I will
7 not allow into evidence the actual exhibit of the fastened seatbelt.

8 MR. JACKSON: All right. Can the witness resay that he went in to
9 extract the body, that the seatbelt was buckled?

10 THE COURT: Absolutely.

11 MR. JACKSON: Okay.

12 THE COURT: And the reason for that, Mr. Jackson, is the degree of
13 damage to the seatbelt buckle. The record won't show but my view of the apparatus
14 will show that. I don't think it will hurt your case at all.

15 MR. JACKSON: Yes, Sir, and for purposes of the experts can they my
16 say...can we say we had to cut the door out to get the body out, therefore, pictures
17 later one?

18 THE COURT: I think that would be appropriate. Mr. Howle, I'll be
19 glad to hear the testimony and then hear it from Mr. Howle on that because I don't
20 know exactly what he would say. I've heard you describe it but I don't know what his
21 testimony is so if you want to go ahead and proceed with that and, Mr. Howle, I'm
22 sure you'll have your say on that?

23 MR. HOWLE: I've got to hear it first because I don't know...

24 THE COURT: Don't know what it is?

25 MR. HOWLE: Correct.

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1 THE COURT: Go ahead, Mr. Jackson.

2 Q. Major Ivey, when you all removed his body to send it off to the autopsy, did
3 you have to dismantle part of the car to get the body out?

4 A. Yes, Sir. We had to cut the roof off the vehicle and the driver's door and the
5 driver's side passenger door. We had to take all three of those off.

6 Q. Okay, and did you also have to remove the seat?

7 A. Yes, Sir, we had to cut the seat loose from the vehicle.

8 Q. Okay. That's all.

9 MR. HOWLE: My objection to that is...he's charged with two things.
10 Murder and the death for running the blue light. Those have happened and this is all
11 after that and it can't be any other reason than to prejudice the jury. Talking about the
12 fire and cutting the door to get the body out and all like that. I mean you've got
13 evidence that's going to come on the speed of the vehicle, you've got evidence from
14 the autopsy is going to come in what the cause of death was. This goes beyond that
15 and I don't think it's any probative value whatsoever.

16 THE COURT: All right, Mr. Howle has raised two objections that's
17 unduly prejudicial and we can just back up from that. It has no proffered value to the
18 issues in that not where the charges and the indictment which are murder and failure
19 to stop for a blue light resulting in death. What does, Mr. Jackson, what does it prove
20 and I'm not ruling against you.

21 MR. JACKSON: Sure.

22 THE COURT: I'm just playing devil's advocate. What does it prove
23 for this jury to hear or what will testimony prove the fact that the seat had to be cut
24 out or that the doors had to be cut off or that the roof had to be cut out. What does it
25 prove as far as failure to stop for a blue light resulting in death or murder?

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1 MR. JACKSON: It proves neither of those, Your Honor, but I am
2 always charged with satisfying the Court and the jury that a piece of evidence at one
3 place is the same piece of evidence at another place and I don't have that here. I got a
4 piece of evidence which is a vehicle that was dismantled and partially at one place and
5 removed to another and so that the photographs of two different places and one of the
6 cars is partially dismantled, the other is not and I can get my brains together in the
7 closing argument on that and I should have the right to explain to the jury why a piece
8 of evidence is different from here to here and that's the simplest way to do it in this
9 particular case.

10 THE COURT: Well,...

11 MR. JACKSON: ...it takes out all the bad stuff, but I believe it's...

12 THE COURT: Would you plan to elicit testimony from the witness
13 during the course of what you did in that regard removing the doors, moving the roof,
14 and taking the seat out, would you be eliciting any testimony on the condition of the
15 trooper's car?

16 MR. JACKSON: No, Sir.

17 THE COURT: All right. Mr. Howle, any response to that?

18 MR. HOWLE: Your Honor, he's already said it has nothing to do with
19 the charges but I just want to show it. For reasoning why in the world in my closing
20 argument am I going to start talking about the condition of the automobile? I mean...

21 THE COURT: Well, here's what I'm thinking and, Mr. Jackson,
22 certainly you have the liberty to try your case...

23 MR. JACKSON: Yes, Sir.

24 THE COURT:...within the rules and I certainly respect that and Mr.
25 Howle has done an excellent job in pointing out some potentially objectionable

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1 testimony and other evidence. The jury will be charged that they are to base their
2 decision in this case on the evidence that's presented in this courtroom. The jury is
3 also charged that they can determine matters of credibility and what they're ultimately
4 decision of the truth based on what might not be in evidence. In other words, is
5 something missing, and again, we've all been at this long enough to know that
6 sometimes you don't know whether a jury will base their decision on but a jury is
7 properly told during the charge that they consider what a witness says and they can
8 consider what the evidence shows or what evidence is in or perhaps what evidence is
9 not there or is not discussed and sometimes that goes beyond what an attorney does
10 or does not address in argument. I will allow, and I told Mr. Jackson a minute ago, I'll
11 watch it very carefully so that the jury will have a complete explanation of the scene
12 and the handling of the scene for whatever it may bring to bear. I will allow the
13 witness to testify as to what he did with the vehicle up to the time of removing the
14 seatbelt. I will not allow the witness to even remotely address the condition of
15 Trooper Parker at that time. So that's my ruling...

16 MR. JACKSON: Yes, Sir.

17 THE COURT:...and I would assume that Mr. Howle, you will object
18 at the appropriate times as you are required to do under the rules. I wouldn't if I were
19 you take a chance in State versus Wood and say you don't have to but I would go
20 ahead and object it at the appropriate times and that's my ruling.

21 MR. HOWLE: Your Honor, at that time you want me to object and
22 say note my objections rather than go into anything further.

23 THE COURT: For the purposes of the record whenever he says note
24 my objection, Mr. Jackson, I'm going to treat that as a complete recitation of what
25 he's already stated during this discussion and proper outside the presence of the jury.

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1 Do you have any objection to that?

2 MR. JACKSON: No, Sir. I was going to make one more comment
3 about the ... but you...

4 THE COURT: Well, don't talk me out of it.

5 MR. JACKSON: No, Sir.

6 THE COURT: All right. What happened is Mr. Howle's objection has
7 no probative value even if it does the prejudicial impact outweighs that probative
8 value and my ruling is that it does have probative value and the prejudicial impact
9 does not.

10 MR. JACKSON: Yes, Sir.

11 MR. HOWLE: Your Honor, the only two times I think I object and
12 I'm not trying to anticipate where he's going with everything would be with the
13 pictures first or and I can just note my objections because I realize you're allowing
14 him more than I thought and the other one is start talking about the car being sort of
15 taken apart for the body to be removed. Those are probably the only two that I ...

16 THE COURT: And, Mr. Jackson, keeping in mind that you have told
17 me you want to make sure that it's because you don't want there to be any hereafter
18 questioning the jury's mind either by process of elimination or because something Mr.
19 Howle argued.

20 MR. JACKSON: Yes, Sir.

21 THE COURT: Make sure that your goal and your input or your
22 emphasis to the jury is not that this was done because the body had to be removed and
23 this is the only way.

24 MR. JACKSON: Yes, Sir.

25 THE COURT: Now, are we clear on that?

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1 MR. JACKSON: Not going there. Not going there. Major Ivey, you
2 understand that?

3 MR. IVEY: Yes, Sir.

4 THE COURT: So your reins are tight?

5 MR. JACKSON: Yes, Sir.

6 THE COURT: Just letting the jury know that the physical scene was
7 handled in a certain way and that that's why at some later time when experts might
8 look at the car that it was in that particular shape.

9 MR. JACKSON: Yes, Sir.

10 THE COURT: All right.

11 MR. HOWLE: Thank you, Your Honor.

12 THE COURT: It's quarter to one now. How long will Major Ivey's
13 testimony take if you had to estimate?

14 MR. JACKSON: Five minutes.

15 THE COURT: All right, and Mr. Howle, would you be prepared to
16 cross examine him at that time?

17 MR. HOWLE: Oh, yes, Sir.

18 THE COURT: All right, so we can conclude that before lunch then?

19 MR. JACKSON: Yes, Sir.

20 THE COURT: All right. Just to make sure you remember to re-alter
21 those exhibits in front of the jury...

22 MR. JACKSON: Sure.

23 THE COURT:...and we can proceed that way.

24 MR. JACKSON: And, Your Honor, we won't bring the t.v. over.

25 THE COURT: All right, and Major Ivey, since you haven't taken the

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1 witness stand in front of the jury won't you have a seat and we'll call you back up and
2 you'll be sworn. Have a seat.

3 (Jury in 12:46 p.m.)

4 BAILIFF: Your Honor, we have all the jurors and alternates back in
5 the court room..

6 THE COURT: All right. Thank you. Mr. Jackson, call your next
7 witness.

8 MR. JACKSON: Thank you, Your Honor. Your Honor the State calls
9 Chief Bud Ivey.

10 BAILIFF: Place your left hand on the Bible, raise your right hand.
11 State your name, please.

12 WITNESS: Charles Ivey.

13 BAILIFF: Do you solemnly swear or affirm that the testimony you
14 give the Court will be the truth, the whole truth and nothing but the truth, so help you
15 God?

16 WITNESS: I do.

17 BAILIFF: Have a seat. Watch your step.

18 (Witness complies)

19 BAILIFF: Please state your full name and spell your last name for the
20 record.

21
22 WITNESS: Charles Ivey, I-V-E-Y.

23 CHIEF IVEY - EXAMINATION BY MR. JACKSON:

24 Q. Your are Chief Bud Ivey?

25 A: Yes, sir, correct.

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- 1 Q. And you live here in Sumter?
- 2 A. Yes, sir.
- 3 Q. How long have you been in Sumter?
- 4 A. Since 1971.
- 5 Q. And you're Chief of what?
- 6 A. That County operations of Fire Service.
- 7 Q. How long have you been in the Fire Department?
- 8 A. This December will be 26 years.
- 9 Q. 26 years. Started as what?
- 10 A. Started as fight fighter.
- 11 Q. And worked up to Chief?
- 12 A. Correct, patillion Chief.
- 13 Q. How many patillions do we have in Sumter?
- 14 A. We have 4.
- 15 Q. So there are three others besides you?
- 16 A. Yes, sir.
- 17 Q. May 2, 2005, what were you rained then, Bud?
- 18 A. I was a Major.
- 19 Q. A Major. What position?
- 20 A. Still with the County operations.
- 21 Q. Did you get I believe they call it toned out. Ever agencies got their word, but
- 22 ...
- 23 A. Yes.
- 24 Q. You all were toned out on May of 2005?
- 25 A. Correct.

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- 1 Q. Tell the ladies and gentlemen of the jury what that is.
- 2 A. That's when our Sumter dispatch tones our fire service at the Fire Department
- 3 to let them know they've got a call and what location it is.
- 4 Q. Where did you respond?
- 5 A. Highway 527, Skinner Road.
- 6 Q. Who all went out there from the Fire Department?
- 7 A. There was quite a few of us. All the way from our Fire Chief down to several
- 8 firefighters.
- 9 Q. When you got there what did you find?
- 10 A. One vehicle that was in the ditch. A red vehicle. We didn't know exactly
- 11 what it was. It was on the left hand side the road near the ditch, mangled up
- 12 pretty good and then there was one vehicle in the woods burning.
- 13 Q. Describe the fire for the jury.
- 14 A. The vehicle inside the woods was burning, about 80% of the vehicle was burn.
- 15 You could actually see the flames pretty much up to tree top level.
- 16 Q. When you all got there what did you do?
- 17 A. Engine 19 arrived on scene just prior to my arriving on scene. Officer Horton
- 18 was in the process of putting his gear on and pulling a handline.
- 19 Q. What's a handline?
- 20 A. A handline is the water line that we pull off the fire truck and put the fire out.
- 21 Q. What I would call a fire hose?
- 22 A. A fire hose.
- 23 Q. Correct.
- 24 A. I proceeded to put my turn out gear on to assist him with it.
- 25 Q. What is turn out gear.

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1 A: It's all the gear that we wear. Coats, pants, boots, helmets. All that good
2 stuff. Once I put on my turn out gear I assisted the firefighter with the
3 handline in extinguishing the fire. We had a hard time doing it due to the
4 amount of gas and the woods that were burning around the vehicle. Normally,
5 we don't pull a second handline on a car fire but we had to on this one. Once
6 we pulled the second handline the fire was extinguished pretty quick.

7 Q. All right. So, you all got the fire out?

8 A. Yes, sir.

9 Q. Once you got the fire out did it become your responsibility to remove the body
10 to get it to the autopsy?

11 A. Yes, sir.

12 Q. All right. I'm going to show you a series of pictures. This is State's Exhibits
13 9a through 9i. Flip through these, see if you recognize them. Don't tell me
14 what they are.

15 MR. HOWLE: Your Honor, I would just ask the Court to note the
16 objection that was previously made.

17 THE COURT: The objection is noted.

18 Q. Generally, what are those nine photographs?

19 A. These are pictures of the trooper's vehicle that was on fire in the woods after
20 they extinguished the fire.

21 Q. All right. I'm going to hold up 9a, if you'd join me just a minute so that we
22 don't have to bring the machine all the way over. 9a, what do we see here?

23 THE COURT: Stand back, please Chief so that everybody can hear
24 you.

25 A. This is a picture of the vehicle that's in the woods. The entry path of the

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1 vehicle where it went into the woods.

2 Q. Are these just a series of pictures walking up closer?

3 A. Yes, sir. Close up shots.

4 Q. All right. That's the vehicle down in the there?

5 A. Yes, sir. That's the passenger side of the vehicle.

6 Q. All right. As you get a little closer?

7 A. Correct. Just the passenger's side of the vehicle again.

8 Q. All right. Once you get in, if you'll hold up a couple of those. What do these
9 pictures reflect once you get in the woods?

10 A. Just the position of the vehicle and the damage to the vehicle.

11 Q. 360 degrees around it?

12 A. 360 degrees around the vehicle.

13 Q. Okay. Now, these tarps back here. What's these tarps?

14 A. The Fire Department always puts tarps up any time we have an incident like
15 this just to keep the bystanders from seeing what's going on.

16 Q. Very good.

17 MR. JACKSON: Your Honor, we'd offer these into evidence.

18 THE COURT: All right. Mr. Howle, over your objection, those
19 photographs are in evidence.

20 MR. HOWLE: I understand, Your Honor.

21

22 THE COURT: Except for 9a, which you didn't object to.

23 MR. HOWLE: Yes, sir.

24 (State's Exhibit Numbers 9a through 9i)

25 MR. JACKSON: Can I send them to the jury, Your Honor?

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1 THE COURT: Yes, sir. Ladies and Gentlemen, when the exhibits are
2 published to you, you're free to look at those exhibits; however, when you are looking
3 at them make sure you do two things at once. In other words, listen to the witnesses
4 testimony while you're looking at what is handed to you. That's 9a through 9i,
5 correct?

6 MR. JACKSON: 9a through 9i.

7 Q. After you went and extinguished the fire and got those pictures, did you move
8 the body and send it to the autopsy?

9 A. Yes, sir. That's correct.

10 Q. In doing so, did you have to dismount the car in any degree?

11 A. Yes, sir. There were several parts of the car that we had to ...

12 MR. HOWLE: Your Honor, we'd ask that you just note the same
13 objection we made in regard to that.

14 THE COURT: The objection is noted. Mr. Howle your objections can
15 run throughout.

16 MR. HOWLE: Thank you, Your Honor.

17 Q. What part of the car did you dismount?

18 A. We had to take the roof off the vehicle and the driver's door and the driver's
19 passenger's door.

20 Q. Okay. Looking in at Trooper Parker, what position was his body in in the
21 seat?

22 A. He was still sitting in the driver's seat in an upright position.

23 Q. In the upright position as though he were driving the car.

24 A. Yes, sir. Correct.

25 THE COURT: Your objection has been continued, Mr. Howle.

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1 MR. HOWLE: Thank you, Your Honor.

2 Q. Did you notice if he was buckled in with the seatbelt or not?

3 A. Yes, sir. He seatbelt was buckled.

4 Q. Yes, sir. Were you able to actually get in and physically see that the buckle
5 was actually buckled together?

6 A. Yes, sir. Correct, I was.

7 THE COURT: Ladies and gentlemen of the jury the two attorneys
8 have stipulated which means they have agreed that Trooper Parker's seatbelt was at
9 all times fastened. It was fastened properly at the time of impact and up to the time
10 that the vehicle came to rest. I would further charge you that a stipulation or an
11 agreement between the attorneys is in fact binding as evidence in this case. And again
12 the parties have stipulated that the seatbelt was buckled and that it was in a buckled
13 state at the time the vehicle came to rest. All right, anything additional on the
14 stipulation, Mr. Howle and Mr. Jackson?

15 MR. JACKSON: Nothing from the State, Your Honor.

16 MR. HOWLE: Nothing further, Your Honor.

17 MR. JACKSON: Your Honor, that's all the questions I've got for
18 Chief Ivey.

19 THE COURT: All right, Mr. Howle?

20 MR. HOWLE: I have no questions of Chief Ivey, Your Honor.

21 THE COURT: Thank you, Sir, you can step down.

22 MR. JACKSON: Can he be excused, Your Honor?

23 THE COURT: Yes, Sir. Any objection, Mr. Howle?

24 MR. HOWLE: None, Your Honor.

25 MR. JACKSON: Judge, I believe that's all we have before the lunch

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1 hour.

2 THE COURT: Okay, would you all come up for just a minute?

3 MR. JACKSON: Yes, Sir.

4 THE COURT: We're not talking about anything exciting. We're just
5 trying to find out what they have planned for the afternoon.

6 THE COURT: Ladies and gentlemen of the jury, we're going to take
7 our lunch break at this time. During the lunch break, again, do not discuss the case if
8 any of you happen to eat lunch together. Do not discuss the case at all and if you
9 happen to go home, go to McDonald's or go anywhere, again refrain from discussing
10 the case with anyone. Co-workers, family, or anyone like that. In addition, if you
11 happen to be where somebody else might be who may be even mentioning anything
12 about this case even remotely, just remove yourself from that setting and you may
13 want to let whoever that is know that you're on this particular jury. I know you don't
14 wear your badges outside the courtroom in Sumter County. Is that right?

15 BAILIFF: That's correct.

16 THE COURT: And other counties prefer you keep your badges all day
17 long. But do not discuss the case, do not read anything about it, listen to anything
18 about it. When you get back in the courtroom this afternoon the pictures that I believe
19 got to the last person on the front row will be distributed to the rest of you so don't
20 be concerned about that. In that regard, you may want to sit on the second row after
21 lunch if you're sitting on the second row now. Also this afternoon, I will likely appoint
22 a foreperson in the jury and, of course, that will be my decision. Do not discuss the
23 case during lunch. Be back in your jury room at 2:30. We'll be ready to proceed at
24 that time. All right, and you can put those pictures back.

25 (Jury dismissed for lunch break 12:56).

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1 THE COURT: Others in the courtroom. We don't have any immediate
2 authority over you except, of course, the attorneys and the folks who are with the
3 attorneys. Keep in mind that Sumter is a bit small. If the jury goes to lunch and this
4 has happened to me before when I was practicing law. Two officers who were
5 testifying were eating at Wendy's and this was not in Sumter by the way. It was
6 actually in Conway and they were discussing the case and seated in a booth right
7 behind them were three jurors and the jurors reported that the comments made by the
8 officers who were witnesses, and they didn't do anything wrong, it had an impact on
9 what they thought about the case. So if you would just refrain from...you can certainly
10 discuss the case but just refrain from discussing it in any way for somebody might
11 overhear you because, of course, we've gotten this far and we want to make sure that
12 the jury remains pure. So if you would just follow that request, I certainly would
13 appreciate it. All right. We'll see you back, the lawyers back at 2:15. We'll resume at
14 2:30.

15 MR. JACKSON: All right, sir.

16 (Court - Lunch break taken)

17 THE COURT: All right, Mr. Jackson and Mr. Howle, you ready for
18 the jury?

19 MR. HOWLE: Yes, Your Honor.

20 MR. JACKSON: We're ready, Your Honor.

21 THE COURT: Is there anything we need to put on the record before
22 we begin?

23 MR. JACKSON: Nothing from the State, Your Honor.

24 THE COURT: What we'll do is we'll take a break after this first
25 witness and address some concerns on the matter you all brought up in my office. Is

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1 that all right, Mr. Jackson and Mr. Howle?

2 MR. JACKSON: Yes, Sir.

3 MR. HOWLE: Yes, sir.

4 THE COURT: Okay. All right, bring them in.

5 (Jury brought into the Courtroom at 2:45 p.m.)

6 BAILIFF: Your Honor, we have all the jurors and alternates present in
7 the Courtroom.

8 THE COURT: Thank you, Sir. Ladies and gentlemen, thank you for
9 your patience. We are trying to make plans as to how far we can progress this
10 afternoon. This is the type of things we do some times. It takes a little bit longer than
11 we think. Is the State ready, Mr. Jackson?

12 MR. JACKSON: We are, Your Honor.

13 THE COURT: Mr. Jackson, is the State prepared to call its next
14 witness?

15 MR. JACKSON: We are, Your Honor, although Ms. Fant is going to
16 call the next few witnesses.

17 THE COURT: All right, Ms. Fant?

18 MS. FANT: May it please the Court. Your Honor, at this time the
19 State would call Sargent Gerald McDevitt.

20 CLERK: Place your left hand on the Bible and raise your right hand
21 and state your name please.

22 MR. McDEVITT: Gerald Christopher McDevitt.

23 CLERK: You solemnly swear or affirm the testimony to the Court to
24 be the truth, the whole truth, and nothing but the truth so help you God?

25 MR. McDEVITT: I do.

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1 CLERK: Thank you, Sir. Have a seat please. Watch your step.

2 MR. McDEVITT: Thank you.

3 CLERK: State your full name and spell your last for the record.

4 MR. McDEVITT: Gerald Christopher McDevitt. —C-D-E-V-I-T-T.

5 DIRECT EXAMINATION BY MS. FANT

6 Q. Mr. McDevitt, can you tell us where you work?

7 A. Charleston City Police Department.

8 Q. And how long have you worked there?

9 A. Fourteen years.

10 Q. What are your current duties or job descriptions?

11 A. I'm the sergeant of the Traffic Division. The supervisor of the forensic
12 mapping unit. I'm also the supervisor of the Charleston Police Department
13 Motor Unit.

14 Q. And how long have you been in the Traffic Division at the Charleston Police
15 Department?

16 A. Ten years.

17 Q. Could you tell us what your educational background is?

18 A. I graduated from Clemson University with a Bachelor of Science degree and
19 I'm currently working on my master's through Boston College.

20 Q. And what would that degree be in?

21 A. Police Management.

22 Q. Have you had any other specialized training related to your work?

23 A. I'm a certified accident reconstructionist for the State of South Carolina.
24 That's a three phase certification. Phase I is at scene collision reconstruction.
25 Second phase is technical collision reconstruction and the third phase

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1 encompasses all three which is reconstruction certification. I've also got a
2 international certification for forensic mapping and I am an instructor for
3 forensic mapping. I certify other law enforcement agencies.

4 Q. So do you teach in both the areas of forensic mapping and crash
5 reconstruction?

6 A. Yes, ma'am, I do.

7 Q. Could you describe your experience in these fields? How many years?
8 Approximately how many accident scenes have you ...

9 A. I've been an accident reconstructionist for nine years. I have been performing
10 forensic mapping also approximately for nine years and instructing for eight. I
11 have mapped over three hundred scenes for my agency and also other agencies
12 along with federal agencies, ATF and FBI. I also...I've traveled extensively
13 instructing neighboring agencies in the state and outside the state certifying
14 them and their officers to reconstruct collision scenes using forensic mapping.

15 Q. Have you ever been qualified as an expert in a court of law?

16 A. I have in Charleston.

17 MS. FANT: Your Honor, at this time I would offer Sargent McDevitt
18 as an expert in the field of forensic mapping and collision reconstruction.

19 THE COURT: Mr. Howle, any voir dire?

20 MR. HOWLE: In both those areas?

21 MS. FANT: Yes.

22 MR. HOWLE: Is that what we talked about in the introduction
23 without objection to the drawing which was forensic mapping but we're going into
24 accident reconstruction as well...I mean reconstruction.

25 MS. FANT: Now, that is the plan. Now, we believe he's qualified as

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1 an expert in this.

2 THE COURT: Mr. Howle, would you like to question the witness on
3 either of those qualifications?

4 MR. HOWLE: Well, I guess where we're coming from is I knew there
5 was a team that was to follow apparently that was going to talk about the
6 reconstruction aspects of it. I just was not expecting it to come through this particular
7 witness but I'm aware of his qualifications at Clemson and the other things he had
8 done and if he's testified before, I have no objection to that, Your Honor.

9 THE COURT: All right. The witness is qualified in the field of forensic
10 mapping and accident reconstruction. Ladies and gentlemen of the jury, may I have
11 your attention for just a minute. Normally a witness who testifies in court can testify
12 to what he or she hears, sees, smells, or touches, things of that nature. In other words,
13 first hand observation. That's what we typically call it in layman's. Those types of
14 witnesses can't give opinions about certain facts. There's an exception in the rules of
15 evidence and as I indicated to you, you have all these rules in this blue book. There's
16 an exception for an expert witness. An expert witness is a person who because of
17 education, training, experience and that type of thing is allowed to give an opinion as
18 to certain matters. In weighing an expert's opinion, however, you are to give it the
19 weight that you think it's entitled to and I'll instruct you further on this point later on
20 but in other words, just as with any other witness you can believe all of what the
21 witness has to say. You can believe none of it or you can believe parts of it and
22 disregard the rest. So in other words this witness has been qualified as an expert in
23 accident reconstruction and forensic mapping and is entitled to give opinions but you
24 can and you are to weigh the credibility of his testimony just as you would any other
25 witness. All right, Ms. Fant.

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- 1 Q. Sargent McDevitt, how did you become involved in this case?
- 2 A. On that Monday, I was contacted by my lieutenant and he stated that there
- 3 was a request from the Sumter County Sheriff's Department that we assist
- 4 them in a collision where a trooper was fatally injured and that I would ask if
- 5 we could bring our forensic equipment up to reconstruct the collision.
- 6 Q. And you were referring to Monday, May the 16th of 2005?
- 7 A. Yes, ma'am. I was on shift at the time.
- 8 Q. And did you ultimately come to Sumter that same day?
- 9 A. Yes, ma'am, myself and my partner, Private First Class Brian McEvers.
- 10 Q. And what did you all do when you got there?
- 11 A. When we arrived at the scene we interviewed the deputies that were at the
- 12 scene and they gave us a briefing of what occurred and then we followed
- 13 protocol from there which we...the first thing we did is we did a walk through
- 14 of the scene in four different directions, north and then south, east, and then
- 15 west and as we did that we marked all evidence that we found that would
- 16 pertain to this collision with orange paint. We do temporary evidence first
- 17 because it can be moved or disturbed and then after that we'll do permanent
- 18 evidence. So we mark everything as soon as we get there and then we review
- 19 it with the deputies at the scene to ensure we have not overlooked anything or
- 20 left anything out.
- 21 Q. And is that what you did in this case?
- 22 A. Yes, ma'am.
- 23 Q. Could you describe for the jury what forensic mapping is?
- 24 A. The simplest way to describe it is it's surveying equipment that's been adapted
- 25 to law enforcement. If you've seen surveyors on the side of the road, you have

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1 one individual that's standing by a tripod and he's looking through a what
2 looks like a camera and he's looking down the range down the road to another
3 individual that's standing with a pole with a little lense on top. Forensic
4 mapping takes that same equipment and what it is is the architect of the scene
5 or the supervisor, would be me, I would be looking through the thing on the
6 tripod, which is called a theolight, and I would be sighting in on that pole. The
7 officer at the other end of the pole is holding the pole and it has a what's called
8 a fish eye level, a fish eye bubble. It ensures that that pole is directly over an
9 evidence point. I would sight in and look at what I'm trying to shoot to, to
10 take a shot and that's what's recorded into what we call a data collector. It
11 records everything that we do. All of the evidence that we've shot. We take
12 this equipment and we map all the evidence of the incident and...all temporary
13 evidence and roadways, trees, anything that is...has anything to do with this
14 incident and we map it, store it, download it into a software, and present it in
15 court. We're able to use that information to reconstruct...forensically
16 reconstruct the actual incident itself.

17 Q. Could you explain what a topostation measuring device is?

18 A. Again, it's a combination of three electronic devices. The theolight which is
19 what I'm looking through sends a laser signal or laser beam to evidence that I
20 am trying to record. If the evidence is within a certain distance, I don't need a
21 prism pole I can actually point it directly on the piece of evidence and send a
22 signal. It will shoot a laser beam, return it, and that will give me the exact
23 measurement from my fixed location of that evidence. Anything that is at a
24 certain distance, we'll use the pole and the officer will stand there and hold it
25 and we enter that information in and what it does it records the whole scene

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1 with a great amount of accuracy. The accuracy of the system I use is at a mile
2 the accuracy is less the...the amount that it could be off is less than the
3 thickness of a matchbook cover. So it's extremely accurate.

4 Q. And that's the equipment that you used in this case?

5 A. Yes, ma'am.

6 Q. Let me show what has been marked as State's Exhibit Number 10.

7 MS. FANT: May the witness step down, Your Honor?

8 THE COURT: Yes, ma'am.

9 Q. And could you identify what this exhibit is?

10 A. Yes, ma'am. This is the location that I mapped on that day, Monday. This is
11 the highway and the intersection right here.

12 Q. Okay, and could you just walk us through it beginning with down here and tell
13 us what various things are and how you went about mapping that day?

14 A. Yes, ma'am. I'll start with where I set up my station. This is a point that we
15 choose that we can see all of the evidence from and we collaborated by
16 marking a position that is a known distance so that it's...we know that we can
17 ensure the accuracy of it. I actually set my station up in the roadway here so
18 that I could actually see. I'm sitting right there. I could see the whole scene
19 from that position. There's no evidence that I can't see at the time. What I did
20 was I started shooting the physical evidence, the temporary physical evidence
21 first and then I did the roadway. You have a fog line, edge of pavement which
22 is this line closest to the left. You have a fog line...what a fog line is, is a drive
23 down the roadway, the white line to the right, that's a fog line. The center
24 lines are usually yellow. So this would be the fog line. You have your two
25 dividing lines and then you have another fog line and the edge of the pavement

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1 where the concrete actually...the asphalt goes to the dirt. So I mapped the
2 whole roadway including the side street and then I mapped the perimeter of
3 the trees. On both scenes this was an abandoned building. This line that comes
4 around here...I hope I'm not blocking you. This line that comes around here is
5 the fog line for the east side of the roadway. This indicates a....it's a loose
6 gravel...it's a loose pavement. It's not like gravel but it's not paved, it's not
7 compacted. A little bit of what was the parking lot for this building and then I
8 have where I put the...the trooper's vehicle was parked. I have where the
9 Defendant's vehicle made impact. First touch and the red lines here. Those red
10 lines right there are the...they indicate the evidence that was left by the front
11 tires of the trooper's vehicle. These two dots here. The i's stand for impact
12 points. This is where the trooper's vehicle impacted the ground after the
13 collision and then these red lines right here indicate the gouge marks left by the
14 Defendant's vehicle as it was sliding down to its final resting point which is
15 right here. This is the trooper's rear trunk. And this is the DOT sign. It's the
16 reduced speed limit sign. This is my records measurement. This is the very first
17 shot of every scene and the very last shot of every scene. When you take the
18 last shot you compare the distances from the first and last. That guarantees the
19 accuracy of your scene. In this case both shots were identical.

20 Q. Just so we're clear, could you show us which road is 527 in there?

21 A. Yes, ma'am. This road right here.

22 Q. And which road is Skinner Road?

23 A. This road right here.

24 Q. Okay. Now did you inspect the actual physical roadway when you came up?

25 A. As a part of our protocol when we first get to the scene and we make our walk

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1 through in the four different directions, that is one of the reasons why we do a
2 walk through. We're doing...we're expecting everything that would have
3 anything to do or any contributing factors to this collision. When we walk
4 from...and my map...this scene shows you where I started the walk through.
5 From here to here and from this edge of the way all the way up to here. At
6 that time I found the road to be pristine. There were no defects in the roadway
7 whatsoever.

8 Q. And by defects what are you referring to?

9 A. Pot holes, uneven pavement, patchwork, the roadway was dry. There was no
10 oil or any...anything that would cause loss of traction or anything like that.

11 Q. Did you see any evidence at all of skid marks?

12 A. None. None whatsoever.

13 MS. FANT: Your Honor, at this time I would offer State's Exhibit 10
14 into evidence.

15 THE COURT: Mr. Howle?

16 MR. HOWLE: No objection, Your Honor.

17 THE COURT: All right. Number 10 is in evidence without objection.

18 (State's Exhibit Number 10 is marked)

19 Q. Now in addition to dealing with forensic mapping of the scene, do you also do
20 a forensic map of the vehicles that were involved?

21 A. Yes, ma'am. Wednesday we returned to the impound yard in Sumter where
22 we did a forensic map of both vehicles.

23 Q. And was that your first actual look at the vehicles involved in this?

24 A. Yes, ma'am.

25 Q. And what did you observe when you first saw the vehicles?

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1 A. We saw Trooper Parker's vehicle first with extensive amount of damage to the
2 rear end. We set up our system at that time and began to map the perimeter of
3 that vehicle. It's about four hundred shots. Individual points to the whole
4 perimeter of the vehicle which basically gives you the deformation or the
5 damage that was done to the vehicle.

6 Q. And at this time are you using the same equipment that you used to do the
7 other mapping?

8 A. The exact same station.

9 Q. And why do you do that? What's the purpose of mapping the vehicles as
10 opposed to the scene?

11 A. We use the map, the perimeter map of the vehicle so that we can take both
12 vehicles and re-engage them to show maximum engagement. Maximum
13 engagement is when one vehicle intrudes into another vehicle to a point, to it's
14 maximum point. Right after maximum engagement the vehicles begin to
15 separate. So what we want to do is replace those vehicles to that exact
16 position and we use the crush damage that I map when I do the perimeter. I'm
17 able to do, in this case, I did five different levels where the actual impact made.
18 Each line is color coded so when I do two vehicles I can match the lines up
19 and I can present these vehicles back in the exact position that they were in
20 when maximum engagement was reached. We do that so we can figure speeds.

21 Q. In showing you State's Exhibit, excuse me, 10, again, could you step down
22 and just show us where that was in this diagram?

23 A. Yes, ma'am. Maximum engagement is where you see the red lettering and the
24 arrow. The vehicles here where they are now is point of first contact.
25 Maximum engagement was where this arrow is which is approximately fifty-

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1 five inches from where they first touched. Where I was able to determine from
2 that reconstruction phase that the vehicle...the Defendant's vehicle intruded
3 into the trooper's vehicle and reached maximum engagement which was fifty-
4 five approximately fifty-five inches.

5 Q. Now why is it important to analyze touch? What's the purpose of getting
6 those numbers on the vehicles?

7 A. Well, you are able to determine speeds to cause that amount of intrusion. You
8 are also able to determine departing velocity or departing speeds. We were
9 able to determine that the trooper's vehicle, which was stationary at the point
10 of impact, traveled fifty-five inches and in that fifty-five inches reached a speed
11 of approximately forty miles an hour and at which time they separated and the
12 trooper's vehicle careened off into the trees and the suspect's vehicle went
13 down through the ditch.

14 Q. So you were able to determine that vehicle...the Defendant's vehicle...excuse
15 me, vehicle hits ... trooper's vehicle and in less than fifty-five inches the
16 trooper's vehicle accelerated to approximately thirty nine or forty miles an
17 hour?

18 A. Yes, ma'am.

19 Q. And given your experience and what you learn through you mapping and your
20 visual inspection of the scene, your inspections of the vehicles, what did you
21 learn about Trooper Parker's car at the time of the impact?

22 A. In my investigation I was able to determine that Trooper Parker's vehicle was
23 stationary and was off of the roadway. Not in the travel. It was outside the fog
24 line. I was able to determine that the Defendant's vehicle was traveling
25 northbound at a high rate of speed in excess of eighty miles an hour and that

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1 he was...when he made first point of contact to intrusion that the change in
2 velocity was such that the collision was almost one hundred percent not
3 survivable. I was able to determine that there was absolutely no evidence on
4 the roadway prior to the first touch that would indicate that the Defendant's
5 vehicle made any steering input to avoid this contact. If there had been, I
6 would have had physical evidence on the roadway that shows steering input to
7 avoid. There was no evidence whatsoever to indicate that this vehicle in my
8 opinion did anything other than what it was intended to do.

9 Q. Let's show you again what's been marked or entered as State's Exhibit 10. If
10 you could step down again. In looking at that and in looking at the
11 Defendant's vehicle. What path did you determine that the vehicle took before
12 striking Trooper Parker's car?

13 A. Based on the witness' testimony we heard earlier, we were able to determine
14 that the Defendant's vehicle was in the opposing lane of traffic as it was
15 approaching this T intersection. From this point to the first touch the vehicle
16 made a steering input maneuver to the right into the back of the trooper's
17 vehicle. There is no evidence in the roadway to indicate anything other than
18 that. At the speed that he was traveling if he made any steering input then
19 there would have been evidentiary on the roadway. You would have seen
20 marks or skids marks or anything like that. We didn't see anything from this
21 point back.

22 Q. And in your opinion did that represent a direct head to rear collision?

23 A. Yes. It's what we call an in-line collision. It's basically what everybody knows
24 as a rear-ender but in this case it was obviously a lot more severe.

25 Q. And finally on the diagram you were there yourself obviously doing this.

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1 A. Correct. Myself and...

2 Q. And did you drive it or walk it?

3 A. I walked it. I walked...the range of this map is the exact area that I walked.
4 From this point to this point and then from that pole to right here and
5 everything that you see on here...other than deep into the trees I walked the
6 whole scene.

7 Q. Right here?

8 A. No.

9 Q. On the road?

10 A. My scene's parameters show that this area here is the area when the Defendant
11 was traveling northbound when he's in this lane...here you can't see any of this
12 roadway. Here you can see this building but you...it looks like maybe it's a
13 parking lot. It doesn't indicate...I couldn't see signage indicating the roadway.
14 It's not until this point where you can actually determine that there was a T
15 intersection to the right.

16 Q. And in your opinion given the speed that's estimated greater than eighty miles
17 per hour, approximately how many seconds do you think it would have taken
18 for him to get from the point where you could see it on down?

19 A. I mean, less than what's point of perception which is in a normal human is
20 1.46 seconds. This was much less than that.

21 Q. Please answer any questions Mr. Howle might have.

22 A. Yes, ma'am.

23 THE COURT: Mr. Howle?

24 MR. HOWLE: Thank you, Your Honor.

25 CROSS EXAMINATION BY MR. HOWLE

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- 1 Q. Sargent McDevitt, when you first get there to start...you have to have a
2 starting point? Do you use a GPS or use...?
- 3 A. No, Sir, we use what's called a records measurement. We'll choose a point at
4 the scene where we're able to see if not all the evidence as much of the
5 evidence as we can see. From that point we find a fixed point in the scene
6 which happens to be...this was a very large utility pole and we put a metal tape
7 measurement down and measure it and then we use a total station to
8 match...to shoot to it. Compare the two measurements and if they are within
9 one and one hundredths of an inch of each other, that will be your reference
10 measurement. That's how you place the station in the scene.
- 11 Q. So you don't have to verify anything north and south? You don't float needles,
12 you don't do anything like that?
- 13 A. Well, I do take a north reading and that's how I'm able to put a north, south
14 on the drawing and we use a compass for that. So...
- 15 Q. So you do use a compass? You don't...but you don't have a survey sight to...?
- 16 A. No.
- 17 Q. ...to make a ...?
- 18 A. That's correct. Many scenes that we go to we don't have that available.
- 19 Q. One thing that I didn't quite understand. When you were talking about the skid
20 marks or the yellow marks on the road...now there are no skids marks?
21 There's nothing to indicate brakes were applied?
- 22 A. Correct.
- 23 Q. Okay, but the car is coming down the road and it's just drifting off to the right,
24 you're not going to see any yellow marks are you?
- 25 A. No, Sir.

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1 Q. Okay. Do you only see those if there was a sudden jerk of movement to turn in
2 that direction?

3 A. The steering input at that speed the...normally you will see those in...when
4 someone is avoiding, you know, it's a steering input and it's a directed action
5 by the driver to try to change the attitude of the vehicle. It will leave markings
6 on the roadway. There were none prior...

7 Q. I realize you saw nothing to indicate a jerk at least back to the left?

8 A. No.

9 Q. Okay, but even if you have a slight turn to the right at those speeds, you're
10 going to go over quite quickly?

11 A. Yes. I mean, the higher your speeds the less input it would take from an
12 operator or a driver of a vehicle to leave evidence on the roadway.

13 Q. Right.

14 A. Someone who is going twenty miles an hour it's going to require a real
15 physical movement on the steering wheel to leave evidence. The faster you go
16 then it's not as required.

17 Q. So eighty miles an hour, you're going to get from this side of the road to the
18 other quicker?

19 A. Well...

20 Q. And leave less evidence for you to look at to see...to see that.

21 A. It's difficult to say "quicker". You know, the travel...the distance that he's
22 traveling, you know, from point A to point B for me to say how much input
23 would take from him to leave this on the roadway without...it's not a very easy
24 thing for me to describe. In this case, he left...he didn't leave anything.

25 Q. All right. Well, let's put it this way. To get to Point A to B if I'm going eighty

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- 1 miles an hour I'm going to get there quicker than going twenty?
- 2 A. Absolutely. Yes, Sir.
- 3 Q. So your analysis still would not pick up just a drift from non attention, looking
- 4 at something else, whatever it might be?
- 5 A. The only thing that I can say is that my analysis shows there was a lack of
- 6 steering input from...
- 7 Q. A lack enough to turn back to the left?
- 8 A. Effort to turn left or right or any direction other than the direction the vehicle
- 9 was going.
- 10 Q. Now there was testimony earlier that this vehicle was on the left hand side of
- 11 the road?
- 12 A. Yes.
- 13 Q. Were you in here when they figured that?
- 14 A. Yes, Sir.
- 15 Q. How far back did you go to see any marks or indicators or anything as to
- 16 where the vehicle was?
- 17 A. The actual range of the scene as I recall from my reference point back to
- 18 where the scene's borders are, it was probably four hundred to four hundred
- 19 and fifty yards. The range of the whole scene was a good distance from top to
- 20 bottom.
- 21 Q. All right. Four hundred and fifty yards at eighty miles an hour about how quick
- 22 would you cover that distance?
- 23 A. I'd have to pull out my calculator to do numbers but, you know, fairly
- 24 expeditiously.
- 25 Q. Okay. Thank you.

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1 MR. HOWLE: I don't have any further questions.

2 THE COURT: Re-direct, Ms. Fant?

3 MS. FANT: No, Your Honor.

4 THE COURT: Thank you, Sir.

5 MR. McDEVITT: Thank you, Sir.

6 THE COURT: Ms. Fant, would you like for this witness to be
7 excused?

8 MS. FANT: Yes, Your Honor. He may want to remain.

9 THE COURT: Mr. Howle?

10 MR. HOWLE: I have no objection or problem.

11 THE COURT: You can. It's your choice, Sargent. Could the lawyers
12 come up here for just a second?

13 THE COURT: We're going to take a brief recess at this point. I have
14 to take up a matter outside of your presence. As I explained to you at the beginning of
15 the trial some times rules simply require that. It's not anyway we can avoid it. The
16 bailiff is going to go down and find out if any of you want a soft drink, diet or regular.
17 I suppose you have both and then when you come back into the courtroom you're
18 certainly welcome to bring that with you. At this time I would ask you to do one thing
19 for me. The foreperson of this jury will end up making sure that the deliberations in
20 this case are conducted in an orderly manner. I wanted you to take the further
21 opportunity to get one...to know one another. The only folks that can't be forepersons
22 or can't be the foreperson would be the two alternates. That would be you, Ms.
23 Mitchell and you. Is it Evans Edwards or Edward Evans?

24 JUROR: Evans. Evans first.

25 THE COURT: All right. You two ladies will not be permitted to act as

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1 a foreperson so in that regard, I'm going to place you two in charge of the selection of
2 the foreperson. Just make sure that, ladies and gentlemen, that this is not a campaign
3 for office. The foreperson does not have any greater voice in the jury room. The
4 foreperson does not...is not charged with the responsibility of taking control and
5 drowning out anyone else who chooses to speak. The foreperson is simply the
6 spokesperson for the jury. So if you two ladies would take care of that for us. We'll
7 have you back out probably in roughly fifteen minutes.

8 Do not discuss the case but simply select the foreperson from your
9 number and the foreperson will be the last one to enter the courtroom and occupy the
10 seat to where your seated, Sir. That's where the foreperson will sit. All right. Thank
11 you, ladies and gentlemen. Do not discuss the case.

12 (Jury exits the courtroom)

13 THE COURT: All right. Ms. Fant, who is the State's next witness?

14 MS. FANT: The State will call Bill Barge at this time. Corporal Bill
15 Barge.

16 THE COURT: All right, Corporal Barge?

17 MS. FANT: Your Honor, are we going to proffer testimony or...

18 THE COURT: Well, I don't know.

19 MS. FANT: Oh, okay.

20 THE COURT: I think from what I understood from what we talked
21 about in chambers you wanted to discuss the photographs and we may need the
22 Corporal to testify. I don't know. We can do it any way you two think is the most
23 orderly way. I think I understand the issue but we may need the Corporal to testify as
24 to how he thinks the photographs are pertinent to the opinions he wants to give.

25 MR. HOWLE: Your Honor, I understand he may have needed to look

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1 at that and his condition and everything to make his readings. My objection which is
2 the fact that he needed that to refer to it doesn't mean that he needs the picture.

3 THE COURT: Well, let's do this. Let's have the photographs that are
4 disputed and marked for identification so the record will be clear. Have they been
5 marked for i.d. yet?

6 MS. FANT: No. I'll have her do that right now.

7 THE COURT: Okay.

8 MR. HOWLE: And out of these various pictures we looked at, Your
9 Honor, over the lunch break that was the only group that was objectionable.

10 THE COURT: All right.

11 MR. HOWLE: The others have already been marked.

12 THE COURT: From my count that would be number 36 through
13 whatever for I.D. Is that right?

14 COURT REPORTER: Yes, Sir.

15 THE COURT: Mr. Bradley, you can go ahead and swear the witness
16 and have him take a seat?

17 BAILIFF: Place your left hand on the Bible and raise your right hand.
18 Do you solemnly swear or affirm the testimony to this Court to be the truth, the whole
19 truth, and nothing but the truth so help you God?

20 MR. BARGE: I do, Sir.

21 BAILIFF: Thank you, Sir. Have a seat please.

22 THE COURT: All right. 36 through 39? Is that the only four
23 photographs at this time?

24 MS. FANT: They were objected to.

25 THE COURT: So 36 through 39 for I.D. Ms. Fant, Mr. Howle, can

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1 we agree that those photographs were taken in the yard so to speak at the tow office
2 is that correct or were they...?

3 MS. FANT: The maintenance facility for the Sheriff's Department.

4 THE COURT: The Sheriff's Department Maintenance Facility. All
5 right.

6 MR. HOWLE: Your Honor, I have a question as to the pictures were
7 taken.

8 THE COURT: And, Mr. Howle, or Ms. Fant, if you would perhaps
9 solicit some questions from this witness to establish for the record your reason for
10 using these photographs.

11 PROFFER TESTIMONY OF CORPORAL BARGE - DIRECT

12 EXAMINATION BY MS. FANT

13 Q. Corporal Barge, did you go to the Sumter County Maintenance Facility to
14 view the two vehicles involved in the crash?

15 A. Yes, ma'am.

16 Q. And as part of doing that did you conduct a thorough examination of each
17 vehicle?

18 A. Yes, ma'am.

19 Q. And so that would include Trooper Parker's vehicle?

20 A. Yes, ma'am.

21 Q. Did you also document everything you were doing with photographs?

22 A. Yes, ma'am.

23 Q. And why is it important for you to do that in regard to Trooper Parker's
24 vehicle?

25 A. I'll be testifying to the amount of crush damage on the vehicle and...

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1 THE COURT: What's that term, Sir?

2 A. The crush damage. The amount that is dented in and that shows that that
3 matches my measurements.

4 THE COURT: Ms. Fant, this witness be offered as an expert in what
5 field?

6 MS. FANT: Crash reconstruction, Your Honor.

7 THE COURT: Assuming that he is qualified in that regard go ahead,
8 Ms. Fant.

9 Q. And why were the pictures important for you to see?

10 A. I wanted to show all four sides of the vehicle. So I shot rear pictures, front
11 pictures. I walked around the car shooting the pictures that demonstrate the
12 crush damage that occurred during the impact.

13 Q. And why is determining that crush damage important to your analysis in the
14 end?

15 A. It helps me determine the speed of the vehicle that struck the Trooper's
16 vehicle.

17 MS. FANT: Your Honor, that would pretty much be it regarding those
18 photos.

19 THE COURT: And your ultimate opinion as to that point would be
20 what? The speed of the vehicle?

21 MR. BARGE: Yes, Sir, at impact.

22 MS. FANT: He's asking what it is.

23 MR. BARGE: It was eighty. Minimum eighty or higher.

24 THE COURT: Minimum eighty or higher. All right. Mr. Howle, do
25 you have any questions of this witness on these points before we get to the

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1 photographs?

2 MR. HOWLE: Your Honor, I have no questions on those points.

3 Note my objection to those photographs . The photographs are not now ...

4 THE COURT: I guess what I asked about...what particular rule is it
5 that you're making an objection under? Is it relevance? Is it undue prejudice? Is it...or
6 what is it?

7 MR. HOWLE: Well, it's undue prejudice in the fact that you've
8 already allowed eight or nine pictures in that show the wrecked vehicle. Now I realize
9 he needed to see the vehicle in that condition and he took measurements or whatever.
10 But this is a reproduction of another five or six pictures of the same wrecked car. I
11 think it's prejudicial and I think it's cumulative and he had the actual vehicle to look at
12 it and we're not contesting that it was taken to the yard and that the vehicle he looked
13 at was in fact Trooper Parker's automobile and he took the measurements.

14 THE COURT: Let me so those photographs and compare those with
15 9(a) through (I) and then the 36 through 39. All right, Corporal Barge, have you seen
16 photographs which are marked as exhibits 9 (a) through (I)?

17 MR. BARGE: I don't recall.

18 THE COURT: Have you seen those photographs?

19 MR. BARGE: I've seen them now, Sir.

20 THE COURT: All right. What is it about the photographs that would
21 assist the jury in understanding the...in your mind what is it about the photographs
22 that you took would assist the jury in understanding your testimony and your opinion.

23 MR. BARGE: Those photographs are clouded by limbs and trees. The
24 photographs that I took are in the open field and they show the deformation of the
25 rear axle being pushed forward for crush damage.

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1 THE COURT: All right. If you put aside 9 (a) through (I) what is it
2 about the photographs that you took that would allow the jury to understand the
3 measurements that you took and the opinions that you have in this case?

4 MR. BARGE: When I discuss the fifty-five inches or particularly on
5 the Trooper's car the...about thirty-six inches of crush damage it will plainly be visible
6 that that is the measurement.

7 THE COURT: All right. Do you have any questions?

8 MR. HOWLE: Your Honor, the only thing I say to that is that the
9 previous witness testifying fifty-five inches we objected to that because, I mean, that's
10 what it was. We've seen the report. I just don't know what...for verification the jury
11 needs to look at a picture and if someone takes the stand and qualifies as an expert
12 and says that the measurement we took and wants to show a picture of the crushed
13 vehicle when they already...I realize there are limbs and everything around the
14 elements but ..I mean, how many wrecked vehicles do they need to look at it to make
15 that determination?

16 THE COURT: All right. Anything else, Ms. Fant?

17 MS. FANT: Your Honor, I would just add that I believe the photos
18 that Corporal Barge took go directly to support his testimony. The fact that some of
19 his testimony may overlap with Sargent McDevitt's testimony and also with
20 Lieutenant Wells' testimony doesn't negate our ability to present the evidence and the
21 conclusions that he drew according to what he himself did.

22 THE COURT: All right, Corporal Barge, how about the fact that the
23 photos you took, and this maybe on cross, Mr. Howle, but the fact that the photos
24 you took show that the driver's side door is not there? Does that have any impact on
25 or would you be eluding to that during ...

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1 MR. BARGE: No, Sir. What I'm eluding to is the displacement of the
2 rear axle on that particular side.

3 THE COURT: All right.

4 MR. HOWLE: Your Honor, if you need to decide to let some in limit it
5 to the picture that has the shot of the rear axle rather than the walk around...

6 THE COURT: Anything else, Ms. Fant or Mr. Howle on those points?

7 MS. FANT: No, Your Honor.

8 THE COURT: After considering your arguments and reviewing the
9 photographs and listening to what the Corporal has to say, I'm going to overrule Mr.
10 Howle's objection to these photographs and allow these into evidence upon proffer
11 offer during the testimony, Ms. Fant, as they would...to me in accordance with the
12 rules of evidence would assist the jury in understanding the Corporal's testimony. Mr.
13 Howle, you can certainly cross-examine him as you see fit on what the photos do not
14 show in your explanation I am going to instruct the Corporal not to discuss anything
15 else other than...concerning the condition of the vehicle to draw attention to the
16 matters which don't to his expertise if in fact is qualified as an accident
17 reconstructionist and we haven't gotten to that yet. Anything else, Ms. Fant?

18 MS. FANT: No, Your Honor.

19 THE COURT: Mr. Howle?

20 MR. HOWLE: No, Sir, Your Honor, but I assume when they come
21 back in you want me to note the exception that I also ask...if I do cross examine, that
22 I cross examine the subject with the exception.

23 THE COURT: All right. That's correct. Ms. Fant, you can take these
24 back and Corporal, if you would step down and let us take a...let's take about ten
25 minutes and we'll resume.

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1 (Court break was taken)

2 THE COURT: All right. Thank you. Thank you very much. Have a
3 seat. All right, Mr. Jackson, Ms. Fant, are you ready for the jury?

4 MS. FANT: Yes, Sir.

5 THE COURT: Okay, Mr. Braddock, you said the...the gentleman and
6 lady and foreperson is Patrick Reames, Juror #126.

7 (Jury enters the courtroom 3:42 p.m.)

8 BAILIFF: Your Honor, we have all the jurors and alternates present in
9 the courtroom.

10 THE COURT: Thank you, Sir. All right, ladies and gentlemen, thank
11 you for your patience and congratulations, Mr. Reames, on your election with some
12 more greater responsibility but absolutely no extra pay so we thank you for your
13 willingness to act as foreperson. Again, you do not have any greater voice or authority
14 in the jury room. You will just be the spokesperson for the jury and ultimately it will
15 be your responsibility to make sure that the deliberations are conducted in a orderly
16 manner. I'll be more specific a little later on. All right, Mr. Jackson, Ms. Fant, are you
17 ready to proceed?

18 MS. FANT: Yes, Your Honor.

19 THE COURT: All right, you can call your next witness.

20 MS. FANT: Your Honor, at this time the State would call Corporal
21 William Barge.

22 CLERK: Place your left hand on the Bible and raise your right hand
23 and state your name please.

24 MR. BARGE: Corporal William Barge, Jr.

25 CLERK: Do you solemnly swear or affirm the testimony to the Court

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1 to be the truth, the whole truth, and nothing but the truth so help you God?

2 MR. BARGE: I do, Sir.

3 CLERK: Thank you, Sir. Please state your full name and spell your last
4 name for the record.

5 MR. BARGE: William M. Barge, Jr. B-A-R-G-E.

6 DIRECT EXAMINATION BY MS. FANT

7 Q. Trooper Barge, can you tell us where you work?

8 A. With the Florida Highway Patrol.

9 Q. And how long have you worked there?

10 A. Coming up on thirty years in August.

11 Q. What are your job responsibilities with the patrol?

12 A. I'm assigned to the Traffic Homicide Division and I'm currently one of the
13 department reconstruction experts.

14 Q. Excuse me. What is your educational background?

15 A. I have a Bachelor's of Science from Marvin University majoring in
16 mathematics. I also have a Master's in Science majoring in mathematics from
17 Auburn and I have all but my Ph.D and my doctrine in mathematics.

18 Q. And what type of job training have you had along the way?

19 A. When I first come through the patrol school back in '77 and went through
20 basic recruit school and since then in five...in '83 five years later or six years
21 later I made traffic homicide investigator. It's a series of courses we have to
22 go through and since that time I've had over a thousand hours of training just
23 in traffic homicide courses.

24 Q. So have you been in the traffic homicide division since 1983?

25 A. For twenty-five years coming up.

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1 Q. Are there any...do you have any teaching experience?

2 A. Yes, I do. I was the adjunct instructor for Texas A & M University and taught
3 reconstruction courses on the east coast. I also teach for Briar Community
4 College located in Ft. Lauderdale, Davie, Florida and I teach down there and
5 we teach approximately...myself and my partner teach it. We teach twenty-
6 seven major departments in south Florida from Palm Beach south. All the
7 major reconstruction courses.

8 Q. Can you estimate or despite your experience that you've had over the years or
9 what types of things do you do as a reconstructionist?

10 A. I'm assigned to homicide and since that time I've been assigned. I've been
11 through approximately a thousand scenes on scene physically there myself. I
12 might not have been the lead investigator. I've conducted between three
13 hundred and three hundred fifty homicide cases where I was the lead
14 investigator of which fourteen years of that was in Miami and eleven had been
15 in Ocala and five in Lakeland. So I've got a lot of scene time and currently
16 what I do now is myself and one other person we have a hundred and ninety
17 six investigators in the state of Florida and last year we worked approximately
18 twenty two hundred homicide cases traffic. I review those cases. Any high
19 profile cases we go we teach all the courses and if the investigators have any
20 questions in reconstruction, we go and testify and do the expert testimony for
21 them and help them with their cases.

22 Q. And just so we're clear all of the homicides that you're talking about are
23 traffic homicides?

24 A. All traffic, yes, ma'am.

25 Q. Have you ever been qualified before as an expert in traffic reconstruction?

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1 A. Yes, ma'am.

2 Q. And have you testified in court?

3 A. Yes, ma'am.

4 MS. FANT: Your Honor, at this point I would offer Trooper Barge as
5 an expert in automobile crash reconstruction.

6 THE COURT: Any voir dire, Mr. Howle?

7 MR. HOWLE: No, Your Honor. I got an opportunity to review the
8 written resume that came along with it, Your Honor, and I have no objection to that.

9 THE COURT: All right. Corporal Barge is qualified as an expert in the
10 field of accident reconstruction. Ladies and gentlemen of the jury, my prior instruction
11 to you on how you treat the testimony of expert witnesses remains the same with
12 Corporal Barge as well. All right, Ms. Fant.

13 Q. First off, could you just explain what the basics of crash reconstruction are?
14 What are kind of the first things you would do and why do you do them?

15 A. Yes, ma'am. Well, there was a guy named Newton one time. He had some
16 physics laws, three of them and based on those laws we're able to reconstruct
17 crashes. When moving objects hit each other, in our cases they're vehicles,
18 we're able to determine speeds. When you slam on brakes and your tires lock
19 up and you leave marks on the roadway, we're able to determine speeds from
20 that. If you run into a pole and you dent your car, we're able through the
21 processes of reconstruction formulas to determine speed on that. Or when two
22 cars hit each other we can use various methods to determine their speeds and
23 I'll be talking about crush damage today and we're able to determine speeds
24 with vehicles using that information.

25 Q. And why is it important to determine the speed of the vehicle?

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1 A. Well, it lets us know the speed at impact and whether or not they were over
2 the speed limit and the forces that were involved in the collision.

3 Q. How did you become involved in this case?

4 A. My lieutenant colonel, I work directly for special ops and was assigned to my
5 lieutenant colonel. He contacted me and had said that Sumter County had
6 requested some assistant.

7 Q. And do you recall when you came up to Sumter?

8 A. We...I was notified on May 17th that I would be coming up the next morning,
9 May 18th which I believe was a Wednesday after the crash occurred on
10 Monday.

11 Q. And what did you do once you got here?

12 A. We arrived at the airport and we were taken to...the Sumter County took us
13 out to the crash scene. We inspected the crash scene. We did a series of
14 walking through it in each direction, looking at it. There was still physical
15 evidence at the crash scene that we wanted to see and marks had been made
16 and then when we...and I took some photographs of the scene. Then when we
17 did that we were told that Charleston Police Department had did forensic
18 mapping which made us excited because we knew we'd have a scale diagram
19 to do measurements with which is very beneficial in speed work-up. We then
20 left the scene and we went to the county maintenance yard in Sumter County
21 where we were able to observe the trooper's car and the Thunderbird that had
22 struck the car.

23 Q. We're going to show you some photographs and I'm going to have you step
24 down and walk through these. This would be State's Exhibits 23 through 35. I
25 believe they have been admitted without objection from the defense, Your

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1 Honor.

2 THE COURT: Mr. Howle?

3 MR. HOWLE: No objection, Your Honor.

4 THE COURT: All right. State's 23 through 35 are entered without
5 objection. Do you need the witness to come down?

6 (State's Exhibit Numbers 23-35 admitted)

7 Q. The first up will be State's Exhibit 23. And first off but just so we're clear, did
8 you take all of the photographs that we're going to be reviewing?

9 A. Yes, ma'am, I did.

10 Q. And could you tell us what this is and why you took this photograph?

11 A. What I wanted was a picture of the direction of the travel that struck the rear
12 of the red car. So I back up the road and I saw the picture of the shoulder and
13 the roadway out here and I what I'm looking for here is any furrows. If a car
14 runs off the shoulder at a high rate of speed and loses control, I would see
15 those marks. I don't see any of those marks. I see some travel of the path
16 where maybe rescue vehicles or whatever made normally but no cars have
17 exited this shoulder at a high rate of speed that let's me know there's no
18 physical evidence here. Some times what we have to do especially when I
19 teach is, the lack of evidence is good evidence and there is no evidence or
20 anything happened here so I shot that picture walking into the scene.

21 Q. So this right here is not any kind of mark that the Defendant's vehicle made?

22 A. No, ma'am.

23 Q. State's Exhibit 24 will be next.

24 A. What I've done now is I've walked up close when I shot that picture and the
25 trooper's vehicle would be sitting right in this area right here so I just want to

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1 look in here for any ruts or speed bumps or pot holes or anything like that and
2 none of those are in there and I see no physical evidence or yellow marks or
3 skid marks which would let me know things about what the vehicle was doing.

4 Q. State's Exhibit 25.

5 A. I'm still walking in to the area of the collision and once again there's nothing
6 here that concerned me.

7 Q. And according to the mapping where would Trooper Parker's vehicle had
8 been?

9 A. Once again up in here.

10 Q. State's 26.

11 A. Now we're right here in the area of the collision you'll see where Charleston
12 P.D. had laid down some orange paint for marks that were on it for path of
13 travels of vehicle it actually help in the photograph to show those. I didn't do
14 those. They did that and you can see the area of collision right in here. This is
15 what we call maximum engagement the Charleston officer talked about. That's
16 when they finally had reached as far as they're going to damage each other.
17 The accident would be parked back here because maximum engagement
18 occurs a little bit further down than the immediate point of collision. You can
19 see the path of the trooper's car going off this way and the Thunderbird going
20 off this way.

21 Q. State's 27.

22 A. Now this is at maximum engagement. When two objects collide with each
23 other when there are no forces left, the only force that's left is gravity and it's
24 going to pull them from the ground. You will see this on pavement we call it
25 gouge marks. You'll see them all the time on the intersections and that's

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1 what's happened. That's at that point of collision. In this case we were in the
2 grass so it dug up the dirt. And the reason I'm showing you this is this lets you
3 know the distances I'm going to talk about in a few minutes to determine the
4 speeds. You can still see the path of the vehicle going down through here. This
5 sign had been replaced. I'm up here on Wednesday. The crash was Monday.

6 Q. And next would be State's 28.

7 A. This is important to me because from the original area of collision there are no
8 marks from here to there and that distance according to the forensic mapping
9 is eighteen feet which means that the trooper's car was actually airborne for
10 some distance of eighteen feet and it lets me know that he's actually kind of
11 catapulting instead of just rolling over. Kind of a front over rear end type
12 thing.

13 Q. And the fact that the trooper's vehicle was airborne for eighteen feet
14 approximately, what does that tell you about the amount of force that was
15 used?

16 A. With that particular car with nothing in it, is about three thousand five hundred
17 sixty seven pounds and it takes a lot of force to get it up in the air like that.

18 Q. State's 29.

19 A. Now he's back on the ground. You can see the path where he's going through
20 the woods over here. That's what we followed the Trooper's car. And we're
21 just walking right into the woods with the marks on the grounds.

22 Q. That would be State's 30. State's 31.

23 A. And we're continuing into the edge of the woods where it looks like they had
24 cut the trees that entered into the vehicle but we're still walking into the final
25 rest of the trooper's vehicle.

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1 Q. 32.

2 A. And this is walking up almost to the final rest right in here where the trooper's
3 vehicle was.

4 Q. Now was the trooper's vehicle there when you got there?

5 A. No, ma'am.

6 Q. So this was your reconstructing it based on...

7 A. That's with these photographs and physically walking it myself.

8 Q. Okay. State's 33.

9 A. And this is the shot of where the back of the car was right here.

10 Q. Now, could you tell that by your photograph or from other witnesses that had
11 told you?

12 A. Both.

13 Q. Okay, and State's 34.

14 A. Now we're going down the shoulder of the road to that sign and later on when
15 we look at it the crush damage on the vehicle I'll explain what this sign means.
16 We're going to talk about it later as the red Thunderbird hits this sign.

17 Q. And finally State's 35.

18 A. And this kind of shows the final position. He's hit several trees but he comes
19 to rest in this area right in here and what I want to know is the distances he
20 came to rest. What I did learn is that on the forensic mapping the distance the
21 trooper parked here was one hundred four feet. The distance the Defendant's
22 car went is a hundred and eighty two feet and I'll explain how to utilize that
23 later on.

24 MS. FANT: Your Honor, these next four were marked as State's
25 Exhibits 36, 37, 38, and 39. I guess I will have him describe them and then I'll put

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1 them into evidence? Would that be appropriate or

2 THE COURT: Mr. Howle? Over objection those photographs are
3 entered into evidence.

4 MR. HOWLE: Do I need to...what was on the record previous you
5 just ...

6 THE COURT: What's on the record previous is incorporated here and
7 your objection will carry through.

8 MR. HOWLE: Thank you.

9 Q. Now did you also go to view the vehicles that were involved in this?

10 A. Yes, ma'am.

11 Q. And this would be State's Exhibit 36. What does it show?

12 A. This is the trooper's car and what we're mostly concerned about here is the
13 crush damage to the back end and the rear axle being pushed in.

14 Q. State's 37.

15 A. Once again this is a side shot but my concern was the axle back here and how
16 far it's pushed in for crush damage.

17 Q. State's 38.

18 A. And this is the other side of the vehicle and once again here is that rear axle
19 pushed way in and actual stacked up under the door.

20 Q. And State's 39.

21 A. This is the right rear again and what's important to this the mapping shows
22 this when they mapped it and did the car, it also shows that there's a thing
23 called POF. We call that Principle Direction of Force. We're going to know
24 what that means. What it means in physics is, which way did the force come
25 from? Where was the most force exerted? Well, when you look at this car it's

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1 right side is pushed in further than the left side so that tells the
2 reconstructionist we know the force had to come in this direction and that's
3 how we were able to take those car and how the trooper was parked on the
4 side of the road by putting them back together. That's why it's important to
5 have these shots.

6 Q. And you mean putting his vehicle back together with the Defendant's vehicle?

7 A. Correct.

8 THE COURT: Ms. Fant, this is photo or exhibit number...

9 MS. FANT: 39, Your Honor.

10 THE COURT: All right.

11 MS. FANT: And the next set of photographs will be State's Exhibits
12 40 through 45.

13 Q. Now can you tell us what this is?

14 A. This is the Defendant's vehicle, the red Thunderbird, and this is a shot straight
15 into the vehicle showing the crush damage.

16 Q. State's 41.

17 A. This is kind of walking around and you see on the front that there's more
18 damage to the front right than to the front left. Once again that gives me that
19 angle that we've been talking about so we can put them back and so we can
20 do that.

21 Q. State's 42.

22 A. This is the side shot. You can see that there's really not too much damage in
23 there. While we're here. You see how we, we call this the A post. The front
24 windshield. The middle is the B and back would be the C post so when we talk
25 about A post being dent. There was so much force that this vehicle actually

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1 went up under the trooper's car, that the back of the trooper's car left transfer
2 marks up on this Thunderbird in this area.

3 Q. State's 43.

4 A. This is the rear shot of the vehicle and it's a little blurry but there's a dent right
5 here and didn't measure the width of it we could do that but it matches the
6 tree that had the bark off of it so this is what would be the car back around it
7 that tree.

8 Q. And State's 44.

9 A. Here's a better picture of it right here.

10 Q. And finally State's 45.

11 A. Would it be permissible to go back. We missed that sign?

12 Q. Certainly.

13 A. Can we back up a couple? Keep going. One more. One more. Oops! We're
14 missing a picture I think.

15 Q. No, it's before that. Which sign are you looking for?

16 A. The reduce speed limit sign to the rear panel of the car. You might not have it
17 in there. It's in here is a delineation deformation damage which is consistent
18 with the sign. So anything that does for us, we don't really worry with speed
19 loss on that. What we did is we know the direction the vehicle at the point it
20 hits the sign so it helps us reconstruct the crash. Oh, there it...that's the shot
21 we're looking for. You can see the sign facing this way you can put that pole
22 right back there and you'd line right up there with those dents and you know
23 the height that it hit it. It just gives us information to help reconstruct the
24 crash. Thank you.

25 Q. You can have a seat. The sign that you were just referring to. Just for

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1 clarification. Was that the reduced speed limit sign that you mentioned earlier?

2 A. Yes, ma'am, it was.

3 Q. And it obviously appears in your photograph but it would have been taken
4 down by the Defendant's car?

5 A. Yes, ma'am. That sign was replaced. That's correct.

6 Q. And the things that you've just done. What was the total of the evidence that
7 you used to base your conclusions on?

8 A. In this case, mathematically it's a straight forward case in physics. You have a
9 vehicle that's stopped at a rest. We know that for several reasons. But it's
10 stopped at a rest and another object or vehicle strikes it. Well, what I want to
11 know is how much crush damage occurs between those two vehicles because
12 that's energy loss. It takes work to do that. So if I can calculate and I did that.
13 And then, you know, since you've got to imagine that the trooper's car is
14 sitting still but now he's a hundred and four feet down that road. And the
15 Thunderbird kept going another hundred and eighty two feet. But who owns
16 all that speed? Who owns all that work? Who owns all that energy? It's the car
17 that's moving whoever that is and in this particular case when you do the
18 physics without boring you with all the math which I would be happy to do if I
19 need to, but the minimum speed because I didn't count the crush damage to
20 the trees. I didn't count the crush to the sign. There's some things I just let go
21 is eighty miles an hour. At least eighty miles an hour at impact. Now what
22 happens is when that vehicle hits that stopped vehicle the trooper has
23 accelerated from zero to forty miles an hour in a very short period of time and
24 that usually always indicates an injury, a fatal injury in a vehicle because you
25 cannot withstand that G force.

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1 Q. I'm going to ask you to step down and let's look at State's Exhibit 10 for a
2 minute. One of the things that I was curious about and I'd like you to explain
3 is the positioning of the vehicles and how you determined where they were.

4 A. First of all, because you saw the angle of the damage to the ptrooper's car and
5 the damage to the front. Once you have those mapped out on a piece of paper
6 or in a computer program, you can physically slide them together and we
7 know the angle. So you can lay them up here on the side of the road. Well, in
8 order to hit this car from the right side like it was, he would have to come
9 from this way. Well, physics won't let him come from that way plus witnesses
10 won't let him come from that way. So actually what we do is we rotate that,
11 well, that's an acceptable angle, it's an approximation but it's very, very close
12 to the actual angle that it happened. So we know that Trooper Parker's car
13 was probably near the edge line but not in the roadway with the left rear
14 bumper and it's front bumper probably two to two and a half feet off the
15 roadway something like that at an angle. Now while at the scene and he's in
16 the Dodge Intrepid and I borrowed one of the Sumter County cars and it's a
17 Crown Vic but I put it approximately at the same angle and when I did that I
18 could look in my rearview mirror and see back down the road and I don't
19 know if that's why he did that or if that's just how it happened. But I know
20 that did work for me when I tried that experience.

21 Q. So he would be in the vehicle here slightly at an angle going that way and is
22 that why he ultimately ended up in the trees there?

23 A. That and because when this vehicle strikes him there are center masses in the
24 car and everybody loves center masses. What it amounts to is there are pivot
25 points in these vehicles and when you're hit on this side of a pivot point then

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1 you're going to go that way. Both vehicles rotated clockwise. In fact, if he had
2 been struck a different way he would have rotated different so based without
3 boring you with physics based on rotations and center masses we can
4 determine which way they will rotate and that is consistent with how we run
5 these.

6 Q. When you went to the maintenance facility did you also notice the bulbs or the
7 brake light bulbs that were in the vehicles?

8 A. That was the second trip up here, yes, ma'am.

9 Q. And what was important about those bulbs to you?

10 A. We can examine bulbs either headlight bulbs or taillight bulbs to see if they
11 were on or off during impact.

12 Q. And what is what you would refer to or a mechanic would refer to, as hot
13 shock?

14 A. Hot shock. If you can imagine for like...if I've got two filaments going up here
15 and I've got a spring going across here, which is the filament that
16 actually...when it gets the power to it, it heats up. It's sitting there. But when
17 it undergoes force, if the force came in this way to my hand it would actually
18 bow this out this way in a horseshoe shape because the filament is hot so it can
19 just stay there but other two sides move forward so it gives us a hot shock.
20 Not only does it...we let it know that the bulb is on but we know the direction
21 of the force and we did some of that with this both vehicles.

22 Q. I'll show you what's been marked for identification as State's Exhibit 46. Do
23 you recognize that?

24 A. Yes, ma'am.

25 Q. And how do you recognize it?

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1 A. These were removed from the trooper's rear bumper lights. Taillights.

2 Q. And could you open up the envelopes?

3 A. Yes, ma'am.

4 Q. And do you recognize that?

5 A. Yes, ma'am, I do.

6 Q. And what are those?

7 A. They are bulbs that were...we know that are on. They're hot sockets is what
8 we call that. If they're not on and they get the force and they break just fall to
9 the bottom and the spring is still intact. But when they're hot shocked they
10 actually stretch out and this what happened in this case and I can also tell you
11 these bulbs were mounted in the vehicle in a upright position based on the
12 force in the rear.

13 MS. FANT: Okay, first of all, Your Honor, at this time I would offer
14 State's Exhibit 46 including the bulbs into evidence.

15 THE COURT: All right, Mr. Howle?

16 MR. HOWLE: I believe ... can we side bar?

17 THE COURT: Yes.

18 (Counsel approach bench)

19 THE COURT: Just for my clarification, Ms. Fant, these bulbs that are
20 part of ... Is it part of Exhibit 46 or is that Exhibit 46?

21 MS. FANT: Your Honor, it is that exhibit. She marked the envelope
22 and there were two bulbs in them.

23 THE COURT: All right and these are from the patrol vehicle?

24 MS. FANT: Yes, Your Honor.

25 THE COURT: Mr. Howle, any objection to that?

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1 MR. HOWLE: Your Honor, my concern primarily was custody matter
2 there but I understand he actually took them out of the automobile himself and that
3 resolves that problem.

4 MR. BARGE: If I may say myself and or partner but I was right there.

5 THE COURT: All right. Any other or would you like to state an
6 objection, Mr. Howle?

7 MR. HOWLE: Well, Your Honor, normally I would object to the
8 chain of custody but I understand that he took them out. I understand he had them
9 and he brought them to court. I have no chain of custody problem, Your Honor.

10 THE COURT: And therefore no further objection?

11 MR. HOWLE: No objection, Your Honor.

12 THE COURT: Exhibit 46 entered without objection.

13 Q. Just to clarify. Let's back up for a minute. The day that you came up and you
14 saw these bulbs. Who was with you?

15 A. Sargent Aspirin and Bruce Stewart.

16 Q. And where do they work?

17 A. They work for Florida Highway Patrol. Now Lieutenant Aspirin is a Traffic
18 Homicide Coordinator for the State and Corporal Bruce Stewart is my training
19 partner. The person I work with for the last fifteen years.

20 Q. Excuse me, and where were the bulbs when you all first noticed them?

21 A. We noticed them on the ground in the...where the bumper got knocked off of
22 the trooper's car. They were still in the bumper in the light sockets.

23 Q. And that was the bumper or the trunk lid on there?

24 A. It's actually the bumper part.

25 Q. Of the back of the patrol vehicle?

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1 A. Yes, ma'am.

2 Q. And so who removed them from the vehicle?

3 A. Corporal Aspirin pulled them out of the socket and handed them to me.

4 Q. And after you reviewed them what did you do with them?

5 A. We put them into evidence and we submitted them to Sumter County so that
6 they could keep them.

7 Q. Now I'm going to ask you to step down. We're going to show these on the
8 projector again and get you to describe the hot shock. Actually, I'll have you
9 take a seat again. We're going to have one thing first just for order of
10 presentation here. I'll show you what's been marked as State's Exhibit 47. Do
11 you recognize that?

12 A. Yes, ma'am, I do.

13 Q. And how do you recognize that?

14 A. These are the bulbs that Lieutenant Aspirin and myself removed from the
15 Thunderbird. The Defendant's car.

16 Q. And what did you do with them once they were removed?

17 A. Now they were in the rear deck where down in the taillight bumper area but
18 up in the back window area. They were in those bulbs there and we took them
19 out. We looked at them, observed them, and then we put them into evidence
20 and submitted them to Sumter County.

21 MS. FANT: Your Honor, I would offer these bulbs into evidence at
22 this time.

23 THE COURT: Mr. Howle?

24 MR. HOWLE: Sorry.

25 THE COURT: Exhibit 47?

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1 MR. HOWLE: No objection.

2 THE COURT: All right and those are the bulbs from the what, Sir?

3 MR. BARGE: The Thunderbird.

4 THE COURT: I know but what part?

5 MR. BARGE: Oh, in the back deck of the back window inside the car
6 you got the little brake light that lights up.

7 THE COURT: All right. All right.

8 (State's Exhibit Number 47 was marked)

9 Q. And did you retrieve any other bulbs during your inspection?

10 A. No, ma'am.

11 Q. Excuse me. All right, now I'm going to ask you to step down so we can look
12 at those. All right, we're going to show the two bulbs that are entered as
13 State's Exhibit 46. These would be the two bulbs from the Trooper Parker's
14 vehicle.

15 A. Twist that just a little bit more for me. The other way. Okay, that end. Now
16 this shows the...this bulb was found in an upright position okay and the front
17 of the trooper vehicle would be this way because when it was struck the two
18 solid pieces stayed together but the hot burning piece went back from the
19 force. So that's how I know...if you gave me bulbs independent I would tell
20 you which car they come out of but since we removed them we know. Now in
21 order for this to happen to be dent like that and the horseshoe the brake lights
22 would have to be on. Now I don't know how hard he had his foot on the
23 brake but I k now that it was hard enough to activate the brake lights so the
24 brake lights were on the trooper's car at the time of impact. That's what that
25 tells me.

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1 Q. Let me show the second bulb as well.

2 A. That's a really good one where you could see where the force has really
3 pushed that backwards. Once again, these pieces are solid. They don't burn so
4 they maintain their strength so when the vehicle is hit this is hot, it bends back
5 towards the opposite direction of the force. The way you feel this is simply if
6 you've ever flown in an airplane and when you take off you push back into
7 seat. Same thing ... When you land you're forward. The same thing occurs in
8 these filaments.

9 Q. And the direction of force...this shows you the direction of force that's coming
10 from which direction?

11 A. From the rear to the front of the trooper's vehicle.

12 Q. And you could tell that by how the bulbs are mounted?

13 A. By the hot shock, yes, ma'am. Had this been mounted horizontally then it
14 would not have bend over like that. It would have been straight back.

15 Q. Okay. We'll now the bulbs from State's Exhibit 47. These are the two bulbs
16 from the Defendant's vehicle.

17 A. Go ahead and twist that around. There you go like that. These bulbs are
18 mounted horizontal to the ground instead of upright and what I have is the
19 force going back that way. Well, the only strange thing about that if you're
20 looking at me and I'm the back of the Thunderbird their mounted like this so
21 you can see them when I hit the brake lights. Well, that kind of confuses it at
22 first because they should be in this way. If the foot was on the brake and we
23 had hot shock during the collision it would come this way just like I showed
24 you in Trooper Parker's car it went the other way. So what this tells me is as
25 he rotated on down the...after collision he hit something to cause this hot

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1 shock his foot was on the brake then and that's when it happened. Did not
2 happen at impact so this particular direction because the way the bulb indicates
3 to me that the foot was not on the brake at the time of the impact and hot
4 shock occurred on down around the trees when he hit the rear of the trees
5 because you can see where he backed into the trees.

6 Q. We'll show the second bulb as well.

7 A. And here's another example of the same thing where it's out like this. The hot
8 shock has occurred and once again the force, if I'm looking at you and you
9 look in the rear of the Thunderbird...if they are hot shock and for me hitting
10 the trooper car then they should come in this way but they don't. They go out
11 which means it's rotated a hundred and eighty degrees and it's hot shock when
12 he hit the trees or something further down. Certainly not during the impact.

13 Q. Thank you. Did you also check the brakes when you were observing or
14 examining the vehicles at the maintenance facility?

15 A. Yes, ma'am, I did.

16 Q. And what did you...how did you do it and what did you determine about the
17 brakes on the Defendant's vehicle?

18 A. I applied a little scientific test.

19 Q. And what was that?

20 A. I couldn't get in the car. I'm a little large to get in there after its crushed.
21 Maybe before but what I did was I got a broomstick at the yard and I went
22 through the window with it and I put it on top of the brake pedal and I pushed
23 down on it really hard and I felt that vacuum go. If you've ever had your car
24 stall and put on brakes you feel that vacuum and I had that vacuum. I had a
25 perfectly good brake pedal.

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1 Q. Based upon everything that you did, which I believe you said was going to the
2 scene, looking at the vehicles, examining them, reviewing the photographs,
3 taking your own photographs. What were your ultimate conclusions about this
4 crash?

5 A. That the trooper's vehicle was stopped, he had his foot on the brake, the lights
6 were activated on the brake lights. That the Defendant's vehicle was not
7 applying brakes or taking evasive action at the time of collision and the
8 overlapping of the two vehicles when they hit is about ninety five percent so he
9 hit him pretty square almost a hundred percent on and when he was traveling
10 at a speed of at least eighty miles an hour, probably a hundred.

11 Q. Please answer any questions Mr. Howle may have.

12 A. Yes, ma'am.

13 THE COURT: Mr. Howle?

14 MR. HOWLE: Thank you, Your Honor.

15 CROSS EXAMINATION BY MR. HOWLE

16 Q. The light bulbs that you were looking at. Were those brake lights or parking
17 lights?

18 A. On?

19 Q. On the trooper's car?

20 A. Part of the brake light system.

21 Q. But that was one filament in the bulb or two?

22 A. One.

23 Q. Does that car have two separate lights like...

24 A. It has a series....

25 Q. ...parking lights come on and it's a brake.

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- 1 A. It has a series of lights back there.
- 2 Q. Okay, and the one that you looked at was just a parking light the first one
- 3 come on or brake light?
- 4 A. Brake light.
- 5 Q. How do you know that?
- 6 A. Because that's part of the make-up back there. They come on...all of them
- 7 come on back there.
- 8 Q. All of them come on?
- 9 A. There's a series of lights that go across there. Brake lights on the Intrepid.
- 10 Q. Well, you pulled two out. How many could you have pulled out?
- 11 A. Some of them were damaged so I couldn't tell. I pulled two out. Probably two
- 12 or three more I guess.
- 13 Q. What I'm asking is the two you pulled out was that the parking light element
- 14 and not another bulb that would come on to be more bulbs on to be the brake
- 15 lights?
- 16 A. It was a brake light bulb.
- 17 Q. No question about that?
- 18 A. Yes, Sir.
- 19 Q. Okay. You said that it appeared that the collision was head on?
- 20 A. No rear end.
- 21 Q. Rear end but I mean almost straight on?
- 22 A. Not necessarily...I stated that the overlapping was almost a hundred percent.
- 23 In other words, they almost met square. It was a little bit off set but not a lot.
- 24 Q. Okay, and what exactly was it that made the vehicle rotate as it did?
- 25 A. Because the vehicles were struck to the left side of the center mass of the

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1 trooper's car.

2 Q. So it struck more to the left side of the ...

3 A. No, Sir. The force that it had come into...because of the way the trooper's car
4 was angled so that put the center mass down here in the front so when it got
5 hit in the back this way straight in, there was more force to go this side of the
6 center mass than the other so it would rotate both vehicles clockwise.

7 Q. Did you make a determination of direction of the vehicle that hit the trooper's
8 vehicle? In other words, was it heading straight toward where the trooper's
9 vehicle ended up going or...

10 A. The vehicle hit the trooper pretty square in the back at impact where it was
11 before that I made no determination.

12 Q. Okay, and you certainly don't know what Eric was thinking of, what he was
13 looking at or anything when impact occurred?

14 A. I just know what the vehicle did.

15 Q. Thank you.

16 THE COURT: Re-direct?

17 MS. FANT: None, Your Honor.

18 THE COURT: All right, thank you, Sir. You may step down.

19 MR. BARGE: Thank you, Sir.

20 THE COURT: Now is everybody on the jury okay? If you need to take
21 a break, just raise your right hand. All right, Mr. Jackson and Ms. Fant, you can call
22 your next witness.

23 MS. FANT: Your Honor, at this time the State would call Lieutenant
24 Jim Wells.

25 CLERK: Place your left hand on the Bible and raise your right hand

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1 and state your name please.

2 MR. WELLS: My name is James Wells, Jr.

3 CLERK: Do you solemnly swear or affirm the testimony to the Court
4 to be the truth, the whole truth, and nothing but the truth so help you God?

5 MR. WELLS: I do.

6 CLERK: Please have a seat. Please state your full name and spell your
7 last name for the record.

8 MR. WELLS: James D. Wells, Jr. W-E-L-L-S.

9 DIRECT EXAMINATION BY MS. FANT

10 Q. Lieutenant Wells, can you tell us where you are employed?

11 A. I'm employed with the Florida Highway Patrol.

12 Q. And how long have you worked there?

13 A. Twenty-five years.

14 Q. What do you do with the highway patrol?

15 A. I run the office of equipment compliance and testing. It works out of our fleet
16 and property office. In that office I'm responsible for certifying speed
17 measuring equipment for admission into the courts in the state of Florida. I
18 advise our fleet manager on options and equipment to buy for our vehicles and
19 I'm also responsible for the set up of our vehicles where computers stands are
20 going to be, where radios are mounted and those kind of things in our
21 vehicles.

22 Q. Could you tell us about your educational background?

23 A. Yes, ma'am. In 1982, I graduated from Florida International University which
24 is in Miami, Florida with a Bachelor of Science degree in mechanical
25 engineering technology. That degree was awarded with high honors. After

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1 graduating the university within about thirty days I joined the Florida Highway
2 Patrol and went to the academy in Tallahassee. After I'd been on the patrol for
3 about three and a half years, I promoted to the rank of Traffic Homicide
4 Investigator. It's now corporal but at the time it was a different designation
5 and after I attained that rank I went to academy again for additional training in
6 crash investigation and reconstruction. After, well, I had some more training
7 after that too but it really isn't related to traffic homicide investigations. I was
8 a...I took some training with the drug enforcement administration and doing
9 drug cases and investigations. I've been an instructor for our side handle
10 baton. I was an instructor for DUI, driving under the influence, techniques.
11 How to detect and prosecute drunk drivers. I instructed people out of the
12 Panama City district to the Panhandle on that. Once I got...well, I'll stop there.

13 Q. The degree that you got your college degree, what was that in?

14 A. That was mechanical engineering technology.

15 Q. And just generally, what does a mechanical engineer do?

16 A. It has a lot to do with strength of materials. It has a lot to do with designing
17 parts whether they be static or moving, stationary or moving parts for their
18 strengths. For...some of the things that we did in our classes that would apply
19 to do this case we actually had labs where we took different materials and bent
20 them to see how they would deform and pulled them apart to see how they
21 would break and so those were some really valuable things that I learned in
22 that course. We also covered some pretty high level mathematics and physics.

23 Q. Have you had any specific training in crash reconstruction?

24 A. The traffic homicide investigation school that I took coupled along with the
25 practical field work that we had to do.

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1 Q. And could you describe for us your experience, your work experience in both
2 the field of mechanical engineering and how it would apply to your experience
3 in automobile crash reconstruction?

4 A. Dealing with a heavy amount of mathematics and physics that's all that's
5 involved as Corporal Barge testified it's the basic physical laws that are in
6 operation in a traffic crash. I had a train of thought.

7 Q. That's okay. The breadth of your experience. Number of years, potential
8 number of crash scenes. That type of thing.

9 A. Okay. I've worked about twenty-five crashes, twenty-five fatal crashes as a
10 homicide investigator before I promoted to sergeant. When I became a
11 sergeant in the Panhandle and, of course, during that time period I also
12 assisted other investigators with some of their crashes that they were working.
13 When I became sergeant, I then supervised traffic homicide investigators and
14 assisted them at their scenes and with their investigative reports and their
15 investigations. In 1992, I promoted to the rank of lieutenant and was sent to
16 Naples as a station commander and as a station commander I supervised
17 sergeants and homicide investigators and while I was there we had...I
18 conducted a training session for other homicide investigators at the Naples and
19 Ft. Meyers stations in how to gather evidence at the scenes so that we would
20 have good quality documentation of skid marks and other evidence at the
21 scene.

22 Q. Have you ever been qualified as an expert and testified in court?

23 A. Yes, ma'am, I have. Further...once I moved to our fleet office in 1998, we had
24 had...in 1997 a fatal traffic crash where one of our troopers was killed in a rear
25 end collision that involved a fire and we had another female trooper who was

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1 very severely injured and burned in similar circumstance. In fact, the two
2 crashes happened within five miles of each other on the same roadway. When I
3 got to our fleet office I asked permission to look into the subject of these types
4 of collisions and when our colonel found out that I wanted to do this, he not
5 only said I could he ordered me to. So in 1998 I began this investigation and
6 the results of that work was published in 1999 as a Florida Highway Patrol
7 rear end study. Around the country there were other agencies that were having
8 these types of crashes with our officers and my report was distributed through
9 a couple of different resources, international association chiefs of police and
10 the national association of fleet administrators and Arizona particularly had a
11 bad run with crashes like this and their attorney general for the State of
12 Arizona got together with Ford Motor Company and said, "Look we could
13 sue you over this but we'd rather just fix the problem" and so they agreed to
14 form a blue ribbon panel and when that happened the state of Arizona came to
15 Florida and asked if I would serve on that panel as the police...as the expert on
16 this subject for the police. While we were working at Ford one of the goals of
17 Arizona set out was that they wanted a fire suppression system for the police
18 cars in case something like this occurred again and two companies came
19 together to try and put this system together and couldn't get it to work and the
20 little research that I did on my own I had a theory and helped develop this
21 system and came up with a secondary chemical that sprayed out when a
22 system deploys to keep the fires from re-lighting. So I did that. I'm a member
23 of the society of automotive engineers. I started off as an associate member
24 and they actually have a ranked system based on your education and your
25 experience. I started off as an associate member and I'm now a full or regular

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1 member and I serve on one of the committees with them. Once the Blue
2 Ribbon Panel ended with Ford, the international association of Chiefs of Police
3 started a committee just to look at issues dealing with safety of police vehicles
4 and safety of officers at road side. A fact that many agencies are unaware of
5 because it's just started to recently occur within the last probably seven or
6 eight years more police officers are killed annually...

7 MR. HOWLE: Your Honor, this is interesting but has nothing to do
8 with his qualifications. I'm just object ...

9 THE COURT: It is a bit non-responsive. I believe the question was
10 whether or not he was qualified as an expert for...

11 MS. FANT: We'll go, Your Honor.

12 THE COURT: You can proceed with that.

13 MS. FANT: Your Honor, at this time I would offer Lieutenant Wells
14 as an expert in mechanical engineer and automobile crash reconstruction.

15 THE COURT: Mr. Howle, any questions of the witness on his
16 qualifications?

17 MR. HOWLE: Your Honor, I've looked at the resume and from that I
18 find him to be qualified.

19 THE COURT: All right. Ladies and gentleman, Lieutenant Wells is
20 qualified as a mechanical engineer...as an expert in mechanical engineering and
21 accident reconstruction and the instruction that I gave you earlier and how you treat
22 expert testimony applies to this witness as well. All right, Ms. Fant.

23 Q. How did you become involved in this case that we're talking about today?

24 A. I don't remember which staff member at our agency contacted me. Whether it
25 was the lieutenant colonel or the colonel himself informed me that this crash

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1 had occurred and asked that I respond to the scene with Corporal Barge and
2 Sargent Aspirin.

3 Q. And what did you do when you got to Sumter?

4 A. When we arrived at the Sumter Airport similar to Corporal Barge we were
5 escorted by...we were actually driven by a Sumter County Deputy out to the
6 scene. I also examined the scene and then proceeded to the yard where we
7 examined the vehicles and that's where I was more primarily involved then
8 doing the work at the scene.

9 Q. Generally, what type of inspection of the Defendant's vehicle did you perform?

10 A. What we were looking for in the Defendant's vehicle was there any mechanical
11 defect that could have caused this crash and so we were looking at tires, We
12 were looking at brakes. We were looking at the suspension and we were
13 looking just in general was there any issue with the vehicle that could have
14 caused the loss of control with the steering or something like that.

15 Q. Did you also examine Trooper Parker's vehicle?

16 A. Yes, ma'am, I did.

17 Q. And were you able to observe the damage done to his vehicle as well as the
18 damage to the Defendant's Thunderbird?

19 A. Yes, ma'am. Both vehicles were placed up on a lift and a full underbody
20 inspection was conducted on both vehicles.

21 Q. And is what you saw consistent with the Defendant's vehicle hitting Trooper
22 Parker's vehicle in a stationary position off the roadway?

23 A. Yes, ma'am.

24 MS. FANT: We're now going to show State's Exhibit 11 through 22.

25 These are photographs unobjected to by defense counsel, Your Honor.

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1 THE COURT: Exhibits 11 through 22?

2 MS. FANT: Yes.

3 THE COURT: Mr. Howle, do you have any objection to those photos
4 or those exhibits?

5 MR. HOWLE: None, Your Honor.

6 THE COURT: All right. 11 through 22 are in evidence without
7 objection.

8 Q. Lieutenant Wells, I'll ask that you step down. You can use the pointer there
9 for anything specific. What I'm going to ask is that we're going to show this
10 series of photographs. Please describe what we're looking at and why it was
11 important to you to look for that.

12 A. Okay. Can you zoom in on the...

13 Q. He's ...

14 A. Okay.

15 Q. He had to fix the antenna.

16 A. Can you zoom in on this area here? All right. This is the brake master cylinder
17 in the Defendant's vehicle in the Thunderbird and what you see here is we've
18 remove the cap to the brake master cylinder because we wanted to make sure
19 there was fluid in the brake system. And what you'll see is the fluid level is up
20 at the top which is exactly where it's supposed to be. Can you all see the level
21 of fluid? Obviously for a brake system to work you got to have a proper
22 amount of fluid in there.

23 Q. State's Exhibit 12.

24 A. Okay, what you see here...you can see in the next four photos or series of
25 photos of the actual brakes on the vehicle. This what you can see right in here

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1 is the brake ... This vehicle...kind of uncommon for a vehicle of its year and
2 make because it is a little older vehicle actually had four wheel disc brakes.
3 There's a braking system. What...it's a little hard to see in this particular print
4 but what we're looking for is to see how this are wearing okay. To see what
5 kind of condition these brakes are in. A lot of times you'll see in brake very
6 deep grooves or something like that often indicate that the pads were worn
7 down and you had metal to metal contact or something like that going over
8 the brake. We did not label which of these brakes they are because I can't tell
9 you which one is right front and which one is left front but we do have a
10 picture of each of the brakes and we'll just go through those. You could see
11 this metal is nice and smooth. You can see that there's no unusual coloring. A
12 lot of times particularly after high speed driving or pursuit or something like
13 that, the brakes will get so hot that the metal will actually begin to change
14 coloring and get kind of a blue hue and you're not going see that in any of
15 these brakes.

16 Q. This would be State's Exhibit 13.

17 A. And again here's a picture of another rotor and you notice the same smooth
18 appearance and no unusual coloring.

19 Q. State's 14.

20 A. This one doesn't print very good but you can see a little bit of the rotor here.
21 Again smooth and no unusual coloring.

22 Q. But you did check that yourself visually?

23 A. Yes, ma'am.

24 Q. So even though it's not on the photograph you did not find anything in looking
25 at it?

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1 A. Correct.

2 Q. And Defendant's 15? Excuse me, State's 15.

3 A. Here again this is a pretty good rotor, little bit of a groove here but nothing
4 unusual and certainly nothing that would indicate that the brakes needed to be
5 fixed.

6 Q. State's Exhibit 16.

7 A. The next thing we're look at is the steering and the suspension on the
8 Defendant's vehicle. What I want you to see in this photograph. This is the
9 garage where the vehicle was stored prior to us arriving at the Sumter County
10 maintenance yard. When the vehicle was pulled out you could see that the
11 wheels fairly straight to head okay and that's going to become important in
12 later photos.

13 Q. State's Exhibit 17.

14 A. There we put the vehicle up on the lift like I told you we were going to do and what
15 you can see here is that the wheels are definitely turned to the left of the vehicle. All
16 right. One of the things we did to check the steering was to actually turn the wheels
17 okay. We turned the steering wheel to see what kind of result we would get out of the
18 actual front wheels and you can see that they turned in proportion with each other
19 over to the left. Now if we can zoom in on these tires, I want to talk about the front
20 tires for just a minute. Okay, as you look across the tire notice even tread wear okay.
21 You don't see any cuffing along the edges, there's nothing funny going along in the
22 middle. All right, you might note that there's just a little bit of wear more on the edges
23 than in the center which indicates that perhaps these tires had been running a little bit
24 under inflated but there's nothing unusual showing here like the front end is out of line
25 or anything like that. If we could zoom in on the other tire. You see the same thing

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1 here. This tire is a little more worn than the tire that's on the left but again it's nice
2 and smooth across, a little bit more wear on the edges than in the center but there's no
3 cuffing, there's nothing to indicate that there's anything unusual going on with the
4 front end alignment or anything in the vehicle.

5 Q. This would be State's 18.

6 A. What you see here is some of the steering portion of this vehicle. This vehicle
7 had a rack and pinion steering system which is the rack right here and you see
8 the little boots here, the little rubber boots at the end of the rack and you see
9 the tire rod ends that connect to the wheels. All of this...even after this severe
10 collision it's still in place. There's no brake leaks of fluid. You see a little
11 moisture at the boots but with a vehicle this age that's not uncommon. But the
12 system is intact and still fully functional.

13 Q. The next one would be State's 19.

14 A. Okay, if we can zoom in right in this area. What you're seeing is the left front
15 suspension and the only significant defect or the only notable defect that we
16 only found on this vehicle is right here and this is a locator arm for the
17 suspension. If this was the...this axle piece here, the lower axle piece okay.
18 This piece comes back from the front of the car like this. Now what this piece
19 does is keeps this piece from moving in this direction okay. Now, what you'll
20 notice is there's a little piece of rubber bushing right here. And you'll notice
21 there's a little space between that bushing and the lower axle arm. What that
22 means is that there was a little bit that that left front tire could move back and
23 forth and what will happen is when the Defendant puts on the brakes, the force
24 of that brake is going to pull that back as far as it will go which will actually
25 start to turn the wheel a little bit to the left under hard braking. So if the

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1 Defendant were to hit hard on the brakes you would expect this vehicle to pull
2 a little bit to the left.

3 Q. This would be State's Exhibit 20.

4 A. What you're seeing here is the right front suspension. This bushing was in
5 good shape and there's also a little extra backer piece on the end of this
6 locator rod behind the axle that isn't present on the right side or on the left
7 side. I'm sorry.

8 Q: State's 21.

9 A. Okay. What you're looking at here is the rear suspension of the vehicle and
10 again this is kind of an unusual vehicle for its age because this vehicle has an
11 independent rear suspension. There's not a solid axle coming across here like
12 you see on a pick-up truck or like a Ford Mustang or something like that. This
13 is actually a better handling suspension. It's a more expensive suspension and
14 that's why you typically don't find it. All the pieces here are in good repairs. If
15 we can zoom in on this tire. What you're going to notice here is it looks like
16 there was rubbing right along this tire. The fender is pushed in on that tire so
17 as the vehicle was moved around after the collision in the maintenance yard to
18 get it up on the lift, the tire actually caused this but the wear across the tire is
19 even, there's no cuffing, there's no unusual wear at the edges to indicate there
20 was any problem with this. If you'll zoom down a little bit. One thing you'll
21 notice is right here on this boot there's a little bit of fresh fluid and this boot
22 was leaking. This is a constant velocity boot. I don't know if you've ever had
23 your CV joints replaced in a front wheel car but that's what this is. It's just in
24 the back in this particular car.

25 Q. And finally State's 22.

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1 A. This is the left axle from the left wheel, the left rear. Again, there's no defects
2 noted here. It's all in good condition and one piece. The tire exhibits good
3 even wear across its width. There's no unusual cupping or anything like that to
4 be found here.

5 Q. Now when you were at the maintenance facility did you also check the vehicle
6 the brake pedal pressure for the vehicle, the Defendant's vehicle?

7 A. No, ma'am. I witnessed Corporal Barge do that.

8 Q. And that was his broomstick maneuver I believe?

9 A. Yes, ma'am.

10 Q. And does that indicate to you that the brakes were function?

11 A. It was an additional thing in addition to all the things that we saw with the
12 rotors and the fluid level and that.

13 Q. Now based upon everything you examined and what's shown in the photos,
14 what did you conclude about the shape of the Defendant's vehicle?

15 A. There were no defects that I could find in this vehicle that could have caused
16 this crash.

17 Q. And you had been in here as we have had this trial today. Did you also watch
18 the video of the car chase?

19 A. Yes, ma'am. I have viewed the pursuit video.

20 Q. And what was significant to you about the video?

21 A. There were three maneuvers that the Defendant executed during the pursuit
22 that were maneuvers that we would consider advanced maneuvers or non-
23 routine maneuvers. Things generally that most citizens, most drivers would
24 only do maybe once or twice in their life time in order to try and avoid a
25 collision and the first thing that I saw was the threshold braking that he did on

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1 the interstate presumably in an attempt to get the pursuing deputy to rear end
2 his car. The second thing that I saw that I personally have never tried was
3 passing the semis in the median okay and the third thing that I saw was driving
4 across the median and proceeding up an entrance...exiting off an entrance
5 ramp. Those things were all very significant maneuvers and while...when
6 you're watching that driving was perhaps not the quality that you've seen in
7 movie stunt work. The maneuvers were all accomplished without losing
8 control of the vehicle.

9 Q. And does watching the tape again lead you to believe that there was no
10 mechanical defects?

11 A. Yes, ma'am.

12 Q. What is...could you define for us or tell us what a crown in the roadway or is
13 also known as super elevation?

14 A. Yes, ma'am. A lot of times when roadways are built particularly two lane
15 roadways, they have what they call a crown and the road is elevated in the
16 center and lower at the edges and what that does is it allows when it rains and
17 you all get heavy rain here just like we do in Florida, it allows the rain to run
18 off the roadway and keep from causing puddles on the roadway so that you
19 can drive more safely.

20 Q. So in layman's terms, the middle of the road is a little bit higher than the rest
21 of the roadway?

22 A. Yes, ma'am.

23 Q. Now I'm going to ask you to step up in and look at State's Exhibit 10 with
24 me. This is 527 which I believe you went to the scene and saw that.

25 A. Yes, ma'am.

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1 Q. And, excuse me, the crown or super elevation in this roadway would be where
2 the yellow line is? Is that correct?

3 A. Yes. The highest part of the roadway is normally in the center of the roadway.

4 Q. And what would a super elevation or crown in the roadway tell you about the
5 Defendant's car in any possible drifting motion?

6 A. Well, what we've heard today is witnesses say that the Defendant was driving
7 in the southbound lane.

8 Q. That would be the left lane.

9 A. So he was driving in the left lane. Well, if the roadway is crowned and soaked
10 from center, then what happen is the car would tend to go down the slope. If
11 for some the reason the driver passes out or something like that generally
12 that's what happens is that the car goes off the roadway down the slope okay.
13 So if his car was to drift, I mean he's not in control, you would expect if this
14 roadway is crowned, the vehicle to drift to the left. Again, when we looked at
15 the brakes, if he braked hard, then we'd expect the car to pull to the left. So
16 everything that we've seen so far would tend to take the car away from the
17 direction that it went.

18 Q. You can be seated again. So what we've talked about or you observed the
19 crush damage of the vehicles.

20 A. Yes, ma'am.

21 Q. You noted that...did you also check the roadway and look at the roadway for
22 any physical evidence of maneuvers, skid marks, things like that?

23 A. No, ma'am. I was more intent on when I was at the scene on looking at what
24 physically had happened with the vehicles. Where they had traveled and things
25 like that. I didn't get actively involved in that part of it.

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- 1 Q. But you're aware that none of those marks were down?
- 2 A. Yes, ma'am. I have observed that testimony.
- 3 Q. And you heard Corporal Barg's testimony about the hot shock. Are you
- 4 familiar with hot shock?
- 5 A. Yes, ma'am.
- 6 Q. And your own testimony is that there was nothing wrong with the Defendant's
- 7 vehicle other than the minor defect you referred to?
- 8 A. That's correct.
- 9 Q. Given all of that evidence and your training and experience and expertise, what
- 10 did that cause you to conclude about this crash?
- 11 A. The only way that vehicle could have struck the back of the trooper's car was
- 12 if it was steered into the back of the trooper's car.
- 13 Q. Please answer any questions Mr. Howle may have?

14 THE COURT: Mr. Howle?

15 MR. HOWLE: Thank you, Your Honor.

16 CROSS EXAMINATION BY MR. HOWLE

- 17 Q. You don't know Eric Ridel do you?
- 18 A. No, Sir, I do not.
- 19 Q. Do you know what he was thinking?
- 20 A. No, Sir, I do not.
- 21 Q. You don't know how long he had been up?
- 22 A. No, Sir, I do not.
- 23 Q. Was he on drugs?
- 24 A. I do not know.
- 25 Q. You don't know anything? So what you're saying is because you didn't find

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- 1 any direct evasive action, that you think it was steered into the vehicle?
- 2 A. No, Sir. I believe what I testified was that either under hard braking or perhaps
- 3 someone falling asleep I would have expected the vehicle to travel in the
- 4 opposite direction then it did.
- 5 Q. How about if he was on the right hand side of the road?
- 6 A. Then you would be on the other side of the crown and the vehicle would drift
- 7 off to the right.
- 8 Q. So you don't know exactly where this car was at one time was in the left hand
- 9 lane but you don't know if it started to going back to the right and got far
- 10 enough on the crown that it would be effected to go that way?
- 11 A. I do not know at what point the vehicle crossed the crown or how it came to
- 12 do that?
- 13 Q. So there are a lot of other explanations other than Eric steering his car into the
- 14 back of that car?
- 15 A. That would not be consistent with my opinion.
- 16 Q. Not consistent with your opinion? Nothing further, Your Honor.

17 THE COURT: Redirect, Ms. Fant?

18 RE-DIRECT EXAMINATION BY MS. FANT

- 19 Q. Just to clarify one point. On the photos that we observed and your view of the
- 20 tires on the vehicle.
- 21 A. Yes, ma'am.
- 22 Q. Other than the slight wearing on the sides, was there any damage to any of the
- 23 tires to indicate a blow out or any type of incident like that on the vehicle?
- 24 A. The right front tire was deflated on the vehicle but it was a ragged gash that
- 25 was consistent with damage that would have occurred during the collision.

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1 Q. Thank you.

2 THE COURT: Any questions on that point, Mr. Howle?

3 MR. HOWLE: None, Your Honor.

4 THE COURT: Thank you, Sir, you can step down.

5 MR. WELLS: Thank you.

6 MR. JACKSON: Your Honor, we have one more witness today. I
7 believe that there is one point of law that we need to discuss.

8 THE COURT: Prior to that?

9 MR. JACKSON: Yes, Sir.

10 THE COURT: All right. Would you all come up for just a second?

11 THE COURT: We need to take a brief recess for just about five
12 minutes. There's a matter I need to discuss with the lawyers. The next witness will
13 take us to the end of the day and don't be alarmed. We won't be running I trust much
14 any past 5:30. If that is of any concern for any of you, you might need to make a
15 phone call. I would ask you to hold off and bear with me a little bit longer. But do not
16 discuss the case in the jury room. We will have you back out in just a few minutes.
17 We'll all remain in the courtroom and continue to work but we'll get you back out in
18 five minutes.

19 (Jury exits the courtroom)

20 THE COURT: All right, Mr. Jackson, Ms. Fant, Mr. Howle, you ready
21 for the jury?

22 MR. JACKSON: Your Honor, if I could just have one minute with
23 some of the family members.

24 THE COURT: Sure.

25 MR. JACKSON: We're ready, Your Honor. Thank you.

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1 THE COURT: All right. Mr. Howle, you ready?

2 MR. HOWLE: Yes, Sir, Your Honor.

3 THE COURT: All right. Bring in the jury.

4 (Jury enters the courtroom)

5 BAILIFF: Your Honor, we have all the jurors and alternates present in
6 the Courtroom.

7 THE COURT: Thank you, Sir. All right, Mr. Jackson and Ms. Fant,
8 you can call your next witness.

9 MR. JACKSON: Thank you, Your Honor. The State calls Dr. Joel
10 Sexton.

11 CLERK: Place your left hand on the Bible and raise your right hand
12 and state your name please.

13 DR. SEXTON: Dr. Joel Stephen Sexton.

14 CLERK: Do you solemnly swear or affirm the testimony to the Court
15 to be the truth, the whole truth, and nothing but the truth so help you God?

16 DR. SEXTON: I do.

17 CLERK: Please state your full name and spell your last name for the
18 record.

19 DR. SEXTON: Dr. Joel Stephen Sexton. That's S-E-X-T-O-N.

20 DIRECT EXAMINATION BY MR. JACKSON

21 Q. Good afternoon, Dr. Sexton.

22 A. Good afternoon.

23 Q. Tell the ladies and gentlemen where you live?

24 A. I live in Newberry, South Carolina.

25 Q. And you came down here from Newberry today?

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1 A. That's correct.

2 Q. What's your occupation?

3 A. I'm physician with specialization in pathology and subspecialization in forensic
4 pathology.

5 Q. And would you tell us a little bit about your educational background.

6 A. I graduated from the University of Virginia and then served three years in the
7 Navy since I was on a Naval Scholarship. In 1961, I moved to Charleston.
8 Attend the medical university at that time it was a graduate school in
9 chemistry. After getting a masters in chemistry I went to the medical university
10 in medicine graduating in 1968. Then I proceeded a residency and internship in
11 that field in 1968 I became licensed in the state and 1972 I became national
12 board certified in anatomic pathology, clinical pathology, and forensic
13 pathology. I then stayed on and taught at the medical university in the
14 department of pathology in charge of the forensic section of the department of
15 pathology from '72 to 1983 when I moved to Newberry.

16 Q. And in your experience as a doctor how long have you been practicing in
17 forensic pathology?

18 A. Ever since 1968.

19 Q. And you've been testifying in other cases throughout the state since then?

20 A. That's correct.

21 Q. All right, Your Honor, at this time I would offer him as an expert in the field
22 of forensic pathology.

23 THE COURT: Mr. Howle?

24 MR. HOWLE: We concur, Your Honor.

25 THE COURT: All right. Dr. Sexton is qualified as an expert in the field

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1 of forensic pathology. Ladies and gentlemen, my prior instructions as to how you are
2 to consider expert testimony applies to Dr. Sexton's testimony as well.

3 Q. Dr. Sexton, would you educate the jury a little on just what pathology is. The
4 study of pathology?

5 A. A pathologist as I mentioned earlier first trains in medicine and then studies
6 pathology which is the study of disease. In pathology though instead of
7 examining patients we examine tissue. Tissue removed at surgery to determine
8 whether a person has cancer or some other condition. Tissue removed at the
9 time of autopsy again to determine any sort of disease or illness and then in the
10 field of forensic pathology to understand what caused the death and what
11 specific injuries might be present and what caused those injuries as well as any
12 disease or illness. In addition, a pathologist supervises a laboratory where
13 blood, urine, and spinal fluid are examined to make sure its done properly
14 under the right controls so that there are accurate determinations and to help
15 advise your physician as to the significance of the various tests that are done
16 and their results.

17 Q. What exactly is an autopsy?

18 A. An autopsy is basically a complete examination of the body. We ask that the
19 body be brought just as the...the body is at the time of death is pronounced.
20 We take external photographs to document what we see. We examine the
21 clothing if it's present and preserve that clothing so it can be examined by law
22 enforcement at their crime lab in Columbia. We then photograph the body
23 again externally after removing the clothing and then clean the body if there is
24 anything there that might hide some injury and photograph specific injuries and
25 do a complete internal examination including collecting various samples of

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1 blood and spinal fluid and bile and tissues so that they can be analyzed again at
2 the state law enforcement division for various drugs or chemicals. And we also
3 look at it microscopic signs in some cases of tissue removed at autopsy and all
4 of this is recorded both in photographs and the dictation that we do and the
5 written report that we issue as well as in diagrams and tables.

6 Q. Dr. Sexton, did you in this case conduct an autopsy on Senior Trooper
7 Jonathan Parker on his body?

8 A. Yes, I did.

9 Q. And when did you conduct the autopsy if you recall?

10 A. That was on the 17th at 9:30 in the morning. 17th of May in 2005.

11 Q. And would that have been the request of our Sumter County Coroner, Verna
12 Moore?

13 A. Yes, that's correct.

14 Q. And where did you conduct the autopsy?

15 A. We asked that the bodies be brought to Newberry since we do over eight
16 hundred a year. They bring them in there so we can stay in that one location.

17 Q. All right. If you would tell the ladies and gentlemen of the jury what the
18 condition of the body was in when it was brought to your lab?

19 A. The body showed external burning. We found out later after the examination
20 this was all after death or postmortem burns but there were burns to the
21 external surface of the body and much of the clothing had been burned.

22 Q. All right. Did you do an external examination?

23 A. We did.

24 Q. And if you would tell us about that and what your findings were?

25 A. There was not much to see other than the burning externally but we did

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1 examine and surprisingly enough since the body is at least 70% water the brain
2 is nearly 80% water then the internal organs are quite well preserved even a
3 body that may look to be badly burned and so we were able to do an external
4 examine and found nothing other than injuries due to this burning of the body
5 after death. And then we did a complete internal examine.

6 Q. And tell us what your findings were on the internal examine.

7 A. The internal examine revealed that all the internal organs were in their natural
8 state and were preserved without injury. As far as the chest and abdomen. The
9 only injury was to the head. As mentioned earlier in the testimony any time a
10 body is subjected to a tremendous force, a change of inertia so that that body
11 is put in motion, the brain is what generally suffers from that. In order to
12 protect your brain, it floats in fluid. There's fluid constantly being produced
13 inside the brain, the cerebral spinal fluid that goes through the system of
14 ventricles inside the brain, little cavities, and comes out the bottom of the brain
15 and then circulates all way around the brain. The brain is also held in place by
16 little veins and arteries that go between the covering of the skull, the internal
17 covering of the skull called the Dura, and the surface of the brain and that's
18 what feeds that Dura and also in some cases communicates with the brain. So
19 when a body is put into motion from being stationary, a lot of the force is
20 transmitted to that brain so it tries to stay stationary as the body moves and in
21 so doing it tears the little vessels that are there around the surface of the brain
22 and it actually compresses some parts of the brain. In this case, the part that
23 was mostly damage and there was damage to the entire portion of the brain in
24 various areas but the most significant part was what we refer to is the brain
25 stem. The front of our brain controls our ability to think, the middle portion of

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1 the brain controls our ability to do a lot of our movements. The one portion of
2 the base of the brain, the cerebellum, keeps our equilibrium. At the very base
3 of the brain, the brain stem, is where all of those fibers from our hands and feet
4 and elsewhere in the body, go into the brain and come out of the brain. So a
5 little bit of damage there can stop our heart and our lungs because that's the
6 center. The animals that have smaller brains have primarily a brain stem that
7 keeps them functioning their heart and lungs and so damage to that area can
8 abruptly stop the heart beat and stop the breathing and essentially cause almost
9 immediate death which we found in this case. It was what we call primary
10 hemorrhage or hemorrhage in the interior of the brain stem not just from the
11 tearing the vessels externally but from the forces being great enough to
12 actually tear the tissue inside that brain stem and we refer to that as contusion
13 because if a person is alive at the time injury occurs to some part of the body
14 then the heart's pressure pushing that blood through the vessels there and the
15 vessels are torn, forces blood outside the vessels so we cannot wipe it off
16 when we see this injury. We can't wash it off. It's actually like a bruise you
17 would have on your arm from being struck in that location. And so the
18 contusion of the brain was the cause of death in this case and would have
19 caused immediate death.

20 Q. And how were you able to rule out other things?

21 A. When we do an autopsy of a person that's been in a fire whether they have
22 burns or not, often times the cause of their death is the gas, the carbon
23 monoxide which is colorless, odorless and tasteless, that gets into their airway
24 is absorbed into the body and the hemoglobin which is the red part of the
25 blood cell that carries oxygen to our tissues, has a greater affinity for that

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1 carbon monoxide and so it produces carboxyhemoglobin and prevents the
2 body from being able to get oxygen to the tissue. In this case there was no
3 carboxyhemoglobin present. No indication that any air got into the lungs with
4 the carbon monoxide in it. There was also no soot in the airway which is
5 another thing we see in a person that they're close enough to fire to get soot in
6 their lungs even if they're not burned. So there was no evidence that he
7 breathed in any of the smoke or flames from the fire.

8 Q. So, Dr. Sexton, what expert medical opinion in the cause of death in this case
9 would be?

10 A. The cause of death we refer to is closed head injury. Meaning trauma to the
11 head itself causing contusion of the brain stem due to the collision of the two
12 vehicles in which this person was a driver of that vehicle.

13 Q. All right, Sir. That's all the questions I have for you, Dr. Sexton. If you would
14 answer anything Mr. Howle has.

15 THE COURT: Mr. Howle?

16 MR. HOWLE: Your Honor, I have no questions.

17 THE COURT: Thank you, Dr. Sexton. You may step down.

18 DR. SEXTON: Thank you, Your Honor.

19 MR. JACKSON: Your Honor, could I ask permission for Dr. Sexton
20 to be excused?

21 THE COURT: Mr. Howle?

22 MR. HOWLE: I have no objection, Your Honor.

23 THE COURT: Dr. Sexton, you're excused if you would like to leave.

24 Thank you, Sir.

25 DR. SEXTON: Thank you, Your Honor.

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1 THE COURT: Mr. Jackson?

2 MR. JACKSON: Your Honor, may I ask the Court about a
3 stipulation?

4 THE COURT: All right. Do you want to come forward?
5 (Counsel approach bench)

6 THE COURT: All right. Ladies and gentlemen, as I indicated to you
7 earlier evidence comes to you in several different forms. Testimony from the witness
8 stand or it could come in a form of deposition which we won't have in this case or it
9 can come to you in a form of exhibits or by stipulation. The parties have stipulated
10 that Dr. Sexton's examination was that of Jonathan Parker. Is that correct, gentlemen?

11 MR. JACKSON: That's correct, Your Honor.

12 MR. HOWLE: Yes, Your Honor.

13 THE COURT: Any additional witnesses or evidence, Mr. Jackson, Ms.
14 Fant?

15 MR. JACKSON: Not today, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, we're going to break
17 for the day. It's now 5:25. I'm going to ask you to come back here tomorrow
18 morning at let's make it 9:45. That will give me and the attorneys some time to talk
19 about some additional matters that will gear us up and fully move us throughout the
20 day if necessary we may conclude the case by tomorrow anyway but that will give us
21 some extra time. Be back in your jury room at 9:45. Please this evening do not discuss
22 the case. I'll remind you of that again because your oath is extremely important that
23 your decision in this case is to be based on the evidence and the law that you hear and
24 see in this courtroom. All right. Thank you very much. I'll see you tomorrow morning
25 at 9:45.

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1 (Jury dismissed for the day)

2 THE COURT: All right, Mr. Jackson, Ms. Fant and Mr. Howle. The
3 reason why I said 9:45 is because I'm getting ready to give you...give you time and a
4 chance to digest. It's a proposed charge. It is not...it doesn't mean that I will charge
5 every thing in there word by word but the concepts are the way I charge. I'm going to
6 give you some time to look at that and...what are your intentions, Mr. Jackson, as far
7 as any witnesses or concerns not that you have to commit but what do you think we'll
8 accomplish tomorrow?

9 MR. JACKSON: Your Honor, if I put anybody else up it will not be
10 more than two people. Certainly not...maybe one, maybe two not more than two.
11 We're just going to regroup and see if there is anything else we need to hit but it
12 won't be more than two.

13 THE COURT: All right. Just making sure. All right, Mr. Howle, of
14 course then after that you can go under your defense accordingly. What I wanted to
15 do if we could get here about 9:15, it's for me preliminarily what's in that charge
16 because I want to make sure nobody loses sight of the fact that he can certainly offer
17 other points of law to you. But I wanted to give the benefit of that so we wouldn't
18 catch you cold tomorrow.

19 MR. HOWLE: Okay.

20 THE COURT: All right. Okay, I'll see you folks at 9:15. We'll have
21 the jury back in at 9:45 for everybody else's benefit. All right. Thank you very much.
22 (End of Day)

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1 (Wednesday, June 6, 2007)

2 THE COURT: All right. Mr. Jackson, Mr. Howle, after our conference
3 this morning we need to put on the record the and I know it's a bit premature since
4 the State hasn't rested. Put on the record what the defense wants to charge on the
5 issue that we discussed in chambers. Hopefully over the night both of you had the
6 opportunity to read the charge that I've prepared. Mr. Jackson and Ms. Fant this
7 morning gave me some law that they wanted tailored to the malice charge and I'll
8 probably charge but I'm not going to charge in specific words that an automobile is a
9 deadly weapon. I'm going to charge that ordinary objects are not normally considered
10 to be deadly weapons and certainly become deadly weapons depending upon how
11 they're used. I want the facts since an automobile was obviously used here and the
12 jury can draw logical conclusions as they see fit but I'm not going to comment on this
13 fact. Now, Mr. Howle, talk to me about manslaughter. Obviously, up until today the
14 indictment is murder, failure to stop for a blue light resulting in death. You indicated
15 this morning about twenty minutes ago that you've rethought your position on a lesser
16 included charge.

17 MR. HOWLE: Your Honor, initially there had been some discussion
18 about a reckless homicide which is not a lesser included offense so we knew we could
19 not do that. The involuntary manslaughter we would like to have considered and be
20 given as instructions the lesser included offense.

21 THE COURT: All right.

22 MR. HOWLE: There's a case that came out several years ago I think
23 the last is King.

24 THE COURT: Kahn.

25 MR. HOWLE: Well, Kahn is the one that we referred to there but

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1 there's a case that Judge Cooper had before him in a similar case that would seem to
2 require the request for that on behalf of defense counsel.

3 THE COURT: Involuntary manslaughter is "the killing of another
4 without malice and unintentionally". All right to that point it's conceivable that the
5 evidence might fit that. At least if you take the evidence in the light most favorable to
6 the Defendant, then the trouble comes with the remainder of the definition. All right.
7 Involuntary manslaughter is "the killing of another without malice and unintentionally
8 while engaged in either (1) an unlawful act not amounting to a felony and not naturally
9 tending to cause death or great bodily harm". All right. How, Mr. Howle, would the
10 facts of this case taken in the light most favorable to the Defendant if we want to use
11 that wording. How would that happen if it's an unlawful act, conceivably obviously
12 leaving the portion of the road in of itself is an unlawful act. Not amounting to a
13 felony and especially this last part. "Not naturally tending to cause death or great
14 bodily harm".

15 MR. HOWLE: Your Honor, I realize we've heard testimony in regard
16 to the speed of the vehicle but just as you made some reference to the...an item being
17 used in a way that's not normal as a deadly weapon which we would argue that the
18 automobile in its normal use in course is not a deadly weapon and just driving down
19 the road itself would not be a situation that would meet that definition. The main
20 reason I asked for that as a lesser included offense, Your Honor, was because as I see
21 the case law I have an obligation to ask for anything that is a lesser included offense
22 that the court will consider and I realize that there's some definition problems in
23 regard to that but I still feel I need to put it before the court and request it.

24 THE COURT: All right.

25 MR. HOWLE: Because the Supreme Court has indicated.

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1 THE COURT: I guess the, all right, and the second component, the
2 component involuntary manslaughter is the killing of another without malice and
3 unintentionally while engaged in a lawful act with reckless disregard for the safety of
4 others. I don't think there is any evidence to that...the act in which Mr. Ridel was
5 engaged was lawful. So it certainly doesn't meet the second component and my
6 dilemma, Mr. Jackson, Ms. Fant is number 1 on the State versus Reese case definition.
7 Is there any evidence that this fits within the definition of killing of another without
8 malice. I know that's a jury issue so I'm giving the defense that and unintentionally
9 I'm giving the defense the benefit of a doubt on that but engage in an unlawful act
10 which he was, not amounting to a felony and not naturally tending the cause of death
11 and great bodily harm. Mr. Jackson, would you like to be heard on that?

12 MR. JACKSON: Your Honor, I believe I could probably sum it by
13 saying this. If I had charged him with involuntary manslaughter and tried to prove to
14 a jury that his driving did not endanger lives...

15 THE COURT: Tend to cause death or great bodily harm.

16 MR. JACKSON: Cause death or bodily...you would throw me out of
17 Court. It would be a directed verdict and that's an interesting argument to make but
18 it's kind of the other side of the coin but his actions on that video and the facts of this
19 case do not fit under that definition of involuntary manslaughter and I simply think
20 under the evidence of this case that it should not be charged.

21 THE COURT: All right, Mr. Howle, I see exactly where you're
22 coming from. I just and, of course, I was presented with this about twenty-five
23 minutes ago and obviously it's my job to apply the facts to the law here, a lesser
24 included charges warranted if number 1, the lesser, supposed lesser included offense is
25 in fact the lesser included offense. Involuntary manslaughter is not a classic definition

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1 of lesser included offense but, of course, it is started to be treated as one so it is
2 treated as one. I can't charge it however, if the facts of the case simply don't allow it
3 to fit and my decision here, Mr. Howle, and certainly you could preserve that
4 argument for appeal but I just don't think it fits the facts of this case. Even if all of the
5 inferences are taken into Mr. Ridel's benefit I'm just not permitted under law in my
6 view to charge it in this case. All right, Mr. Jackson, what I'm going to do is while
7 you folks are arguing, it's my understanding we're getting close to that point, I'm
8 going to review your malice submission?

9 MR. JACKSON: Yes, Sir.

10 THE COURT: I'm getting ready to say your malicious submission but
11 your malice submission. I'll probably read that in there your request.

12 MR. JACKSON: Yes, Sir.

13 THE COURT: Mr. Howle, in the chambers you indicated that you did
14 not have any actual request other than the involuntary manslaughter?

15 MR. HOWLE: Yes, we were provided a packet of different charges
16 that Your Honor had given us and I went through those.

17 THE COURT: And I'm not, you know, I'm not going to charge that a
18 car is a deadly weapon.

19 MR. JACKSON: Yes, Sir.

20 THE COURT: I'm not going to do that. Is there anything else that we
21 need to review? I know we...the jury is going to come back, you're going to rest in
22 front of the jury?

23 MR. JACKSON: Yes, Sir.

24 THE COURT: And then I'll send the jury back out and I'll take the
25 blame for that. Obviously that's just the normal thing we have to do. And then, Mr.

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1 Howle, you can place your motion for the record and I will inquire to you as to
2 whether or not Mr. Ridel would be testifying if he does I will admonish him
3 accordingly and if he chooses not to I will advise him accordingly and then bring the
4 jury back in and allow you to rest and then go straight to argument. Then I'll mark
5 motions made at the end of your case to the extent that the rules require that.

6 MR. HOWLE: Thank you.

7 THE COURT: Is there anything else that we need to establish or plan
8 on before bringing the jury back in?

9 MR. JACKSON: Nothing from the State, Your Honor.

10 THE COURT: All right. Okay, Mr. Bradley bring them in.

11 (Jury enters the courtroom)

12 BAILIFF: Your Honor, we have all the jurors and alternates present in
13 the courtroom.

14 THE COURT: Thank you, Sir. Ladies and gentlemen, please accept
15 my apologies and it's my apology for keeping you in your jury room. Some times as
16 you know from your ordinary lives when you make plans you have to plan say a time.
17 It takes time to plan. That's what we've been doing. I don't want you to think that
18 we've been doing nothing. The lawyers and I have actually been working since shortly
19 after 9:00 this morning and what we have done is hopefully is to successfully stream
20 line things to save a great deal of time on the back end and I know that when you're in
21 the room that's twenty people, by forty people, it's a pretty stressing thing to be in
22 that room. I have been on jury duty myself so I know that it's not a great deal of fun
23 but believe me we have not been wasting your time. We are going to proceed with the
24 trial at this time and Mr. Jackson, does the State have any additional witnesses or
25 evidence that they want to present?

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1 MR. JACKSON: Your Honor, the State rests its case.

2 THE COURT: All right. Ladies and gentlemen, obviously some times
3 even folks sitting up here in black robes don't foresee everything. I told you about this
4 little blue book several times. It's got rules in it. One of the rules is whether I like it or
5 not I got to send you right back down to your jury room so I can address an issue
6 with the judges, excuse me, with the lawyers that I can address with them before Mr.
7 Jackson said what he said and in other words he's doing exactly what he's supposed
8 to do under the rules and now the same rule book requires me to send you back. All
9 right. It will probably be relatively brief but the rules require that nonetheless and I'm
10 going to talk about this rule book a little bit more. Please bear with me. This is not...I
11 told you it wouldn't be like television. Television you'd stand up and screaming and
12 hollering and do it all in front of me and everybody would act like you weren't there
13 but that's not the way we do it and real life so please bear with me. I'll have you back
14 in just a few minutes. And please when you come back if you want bring soft drinks,
15 coffee, or water feel free to do that.

16 (Jury exits the courtroom at 10:29)

17 THE COURT: All right, Mr. Howle, do you have any motions?

18 MR. HOWLE: Your Honor, in regard to the charge of murder, I
19 would like a motion for directed verdict in that under the indictment itself and by
20 definition is required to be a show of willfulness or willfully done and the case is
21 presented by the State is more we can't prove that was not willfully done. I mean, it's
22 certainly reversed. Since we can't show how this happened it must have happened
23 willfully. In other words, I know there's testimony of speed and there's testimony of
24 no skid marks and things of that nature but there's still no testimony to show that he
25 just willfully ran into this automobile. I just think that without that aspect of it that the

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1 murder charge itself is defective and a directed verdict should be granted.

2 THE COURT: All right, Sir. I am respectfully denying your motion but
3 the case law is and the charges would be malice could be inferred with the use of a
4 deadly weapon. The jury will be charged that an ordinary object or an object is not
5 normally considered to be a deadly weapon but can become one. Since malice can be a
6 verb from that then I'll deny your motion on that basis. Also malice can be applied to
7 conduct showing a total disregard for human life. I understand where you're coming
8 from on the question of willfulness, of course, it's your position that there's no
9 evidence of intent or intentional act or a willful act. I think that in this context, taking
10 the evidence in the light most favorable to the State, that your motion is denied. It's
11 going to obviously be a question persuading the jury that malice was there but I can't
12 grant your motion because it's a matter of law so I'm not...anything else?

13 MR. HOWLE: Nothing further, Your Honor.

14 THE COURT: All right. While we have the jury out let me inquire to
15 you as whether or not the defense will be producing any evidence, testimony, or other
16 evidence or, and specifically whether or not Mr. Ridel will be testifying in his defense
17 in this particular case.

18 MR. HOWLE: Your Honor, Mr. Ridel will not be testifying and we
19 will not be putting up any other evidence.

20 THE COURT: All right, Mr. Ridel, would you please stand? All right,
21 Mr. Ridel, we've reached the stage of the trial where you may present your defense.
22 Do you understand that?

23 DEFENDANT: Yes, Sir.

24 THE COURT: All right. You have the right to claim certain
25 protections granted to you by the Fifth Amendment of the Constitution. Do you

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1 understand that?

2 DEFENDANT: Yes, Sir.

3 THE COURT: And the amendment states in part and I'll read it and
4 then paraphrase and in pertinent part it states that "no person shall be compelled in
5 any criminal case you be a witness against himself. Do you understand that?

6 DEFENDANT: Yes, Sir.

7 THE COURT: In other words it means you have the right to remain
8 silent. Do you understand that?

9 DEFENDANT: Yes, Sir.

10 THE COURT: This means you can't be required or forced to testify in
11 this case. In other words, the State could not call you as a witness. Your lawyer can't
12 call you as a witness if you don't want to testify. Do you understand that?

13 DEFENDANT: Yes, Sir.

14 THE COURT: Nobody can make you testify and that the Fifth
15 Amendment right that you have is a personal right and no one can waive the right
16 except for you. Do you understand that?

17 DEFENDANT: Yes, Sir.

18 THE COURT: All right. If you decide that you want to testify, you'd
19 be subject to the same rules that govern the testimony of other witnesses and you can
20 be examined by your own lawyer and then cross examined by the solicitor. Do you
21 understand that?

22 DEFENDANT: I understand.

23 THE COURT: And that would be on any relevant issue in this case. In
24 addition, if you have any convictions involving dishonesty or false statement or for
25 crimes that are punishable by imprisonment for more than one year and I determined

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1 that the proffered value of those crimes outweigh the prejudicial effect on you. Those
2 prior crimes can be introduced to attack your credibility or your believability. Do you
3 understand that?

4 DEFENDANT: I understand.

5 THE COURT: All right. If you decide to testify the decision on your
6 part must be made what we call freely, voluntarily, knowingly, and intelligently. In
7 other words you got to come in keep your eyes open with all the cards on the table.
8 Do you understand that?

9 DEFENDANT: Yes, Sir.

10 THE COURT: All right, and, of course, you have to come with the
11 knowledge of the consequences and the fact that you have to waive your Fifth
12 Amendment right. If you decide not to testify I will tell the jury that they cannot give
13 the fact that you failed to testify any weight whatsoever and a matter of fact I can't
14 use the word failed or failure to testify. In other words the jury will be told that they
15 cannot use the fact that you did not testify against you in any manner. Do you
16 understand that?

17 DEFENDANT: Yes, Sir.

18 THE COURT: Normally I tell them that more than once probably more
19 than twice. Do you understand that?

20 DEFENDANT: Yes, Sir.

21 THE COURT: All right. I'll tell the jury that there is to be absolutely
22 no prejudice to you because you did not testify. Again it's left entirely up to you as to
23 whether or not you do testify. All right, if you do testify I'll also tell the jury certain
24 things about that but primarily if you don't testify I tell the jury that they cannot use
25 that against you at all. You can talk to your lawyer, you can talk with anyone else

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1 connected with this case, family, friends, or anyone else but the final decision is up to
2 you. Now have you understood every thing I've explained to you?

3 DEFENDANT: Yes, Sir.

4 THE COURT: Have you talked to your lawyer as long as you wanted
5 to and as often as you've wanted to about this issue and whether or not you will
6 testify?

7 DEFENDANT: I have.

8 THE COURT: All right. Do you have any questions at all of me or
9 your lawyer at this time about whether or not you will testify?

10 DEFENDANT: No, Sir.

11 THE COURT: All right. Do you want to testify?

12 DEFENDANT: No, Sir.

13 THE COURT: All right. Is this decision then made after conferring
14 with your lawyer and has this decision been made freely and voluntarily and
15 intelligently?

16 DEFENDANT: Yes, Sir.

17 THE COURT: All right. All right, anything else, Mr. Howle?

18 MR. HOWLE: Nothing at this time, Your Honor.

19 THE COURT: All right, thank you, Sir, you may have a seat. All right,
20 Mr. Howle, Mr. Jackson, and Ms. Fant, anything else before we bring in the jury?

21 MR. JACKSON: Nothing from the State, Your Honor.

22 MR. HOWLE: Nothing from the defense, Your Honor.

23 THE COURT: Mr. Howle, we'll bring in the jury and then I will have
24 you...I'll ask you whether or not the defense has any evidence or testimony and you
25 can rest and then just for the record so we won't have to send the jury back out I'll

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1 mark all necessary motions heard and denied and then we'll proceed with arguments.

2 All right, Mr. Jackson?

3 MR. JACKSON: Yes, Sir.

4 THE COURT: How long are you going to need?

5 MR. JACKSON: I would...

6 THE COURT: Well, listen, how long are you going to want and then
7 how long are you going need?

8 MR. JACKSON: Your Honor, I hope I won't go past a half hour.

9 THE COURT: All right. If you do, that's fine.

10 MR. JACKSON: Yes, Sir.

11 THE COURT: I just want to have an idea because if the jury
12 depending on how much coffee they've had to drink...if they..you'll be able to tell if
13 any of them are swirring.

14 MR. JACKSON: Yes, Sir.

15 THE COURT: If they are, I'll just use my own judgment as to whether
16 or not we can take a break between your argument and Mr. Howle's argument. Mr.
17 Howle, I'm not going to hold you to any particular time either but I assume that you
18 would take some where in the neighborhood of that amount of time or maybe a little
19 bit more?

20 MR. JACKSON: Yes, Sir.

21 THE COURT: All right, then, Mr. Jackson, is there any dispute that
22 Mr. Howle does, is permitted to go last?

23 MR. JACKSON: No dispute, Your Honor.

24 THE COURT: All right, you've probably been studying that quite
25 carefully but there's no dispute...defense has not produced any evidence, not even

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1 produced any exhibits. Is that right?

2 MR. JACKSON: Nor can I comment on it.

3 THE COURT: And let's make sure that we don't even inadvertently or
4 by implication or whatever you to call it violate the golden rule to the argument. In
5 other words, put yourself in the position of so and so. You understand what I'm
6 talking about it?

7 MR. JACKSON: Yes, Sir.

8 THE COURT: All right, because some times that's just human nature.
9 We you've got twelve folks that you're trying to convince of something that you ask
10 them to put themselves into the position of the allegedly victim in this case so, Mr.
11 Howle, thirty minutes or so. Mr. Jackson, Ms. Fant, thirty minutes or so. Will you be
12 doing all the argument, Mr. Jackson?

13 MR. JACKSON: Yes, Sir.

14 THE COURT: All right. Anything else?

15 MR. JACKSON: No, Sir.

16 MR. HOWLE: Nothing further.

17 THE COURT: Ask the jury if they're ready and if they are bring them
18 in. And while he's gone let me put on the record that Mr. Ridel has freely, voluntarily,
19 and intelligently waived his right to testify to the extent I have to make that finding.

20 (Jury enters the courtroom at 10:40 a.m.)

21 BAILIFF: Your Honor, we have all the jurors and alternates present in
22 the courtroom.

23 THE COURT: All right, thank you. Mr. Foreman, ladies and
24 gentlemen of the jury. All right, Mr. Howle, does the defense have any evidence that it
25 wants to present?

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1 MR. HOWLE: No, Your Honor, the defense rests at this time.

2 THE COURT: All right. All motions have been marked heard and
3 disposed of and we'll now proceed to the argument stage. Ladies and gentlemen, as I
4 told you before in our little rule book and in the course of the development of civil and
5 criminal procedure over the years of the trials come in several stages. First of all, jury
6 selection which we've done. Second of all is opening statements by the lawyers which
7 we've done. Next is the presentation of evidence which we've done and then is the
8 arguments of counsel which we're getting ready to do right now. I will tell you again
9 that what the lawyers say to you by way of argument is not evidence. For example, if
10 an attorney gets up here today and starts talking about evidence that doesn't square
11 with your recollection of what that evidence is, your collective recollection, then
12 you're to go with what you remember the evidence to be. The purpose of an argument
13 as opposed to an opening statement, is a chance for the attorneys to argue to you
14 inferences and conclusions that they think you should draw from the evidence that you
15 have seen and heard. Again, what the lawyers say is not evidence. Mr. Jackson or Ms.
16 Fant on behalf of the State will go first and then after they conclude the defense
17 through Mr. Howle if he so chooses may present his closing argument to you as well.
18 After that point, I will probably give you a brief break and then I will give you the
19 charge on the law and you will be left to deliberate the case. I will warn you, however,
20 that after we do take a break following the argument it won't be very long. And again
21 I'll ask the bailiff as a matter of fact to go back there and frankly ask you if you're
22 ready and when you're ready after we take a break after the arguments, then we'll
23 bring you back out. We want to make sure that during the charge that you're perfectly
24 comfortable and that your minds don't wander that you hear everything that I have to
25 say because again that is the last stage of the trial short of your deliberation in this

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1 particular case. I'll also review a verdict form with you and then you will, Mr.
2 Foreman, on signal given by the bailiff be free to deliberate the case. I will continue to
3 ask you and instruct you that up until the time I tell you you can deliberate, don't start
4 discussing anything about this particular case. All right, Mr. Jackson, Ms. Fant, is the
5 State ready to present closing?

6 MR. JACKSON: May it please the Court?

7 THE COURT: Yes, Sir. Mr. Howle?

8 MR. JACKSON: Mr. Foreman, ladies and gentlemen of the jury, we've
9 come to the closing part of the case and I told you in the very beginning and I want to
10 tell you here that at the beginning of these closing statements it's been an honor to
11 represent the Parker family and the extended family of Jonathan Parker, which is the
12 highway patrol in this case. I've been doing this for eighteen to twenty years. I've
13 thanked every jury I've every spoken to. There's a little something different about this
14 one and I want to clear the air here at the very beginning. Senior Trooper Jonathan
15 Parker was an officer killed in the line of duty. My purpose here today is to prove
16 elements of murder and the elements of failure to stop for a blue light resulting in
17 death and you'll not find when the Judge charge you on the elements of those crimes
18 that being an officer killed in the line of the duty is an element. It's not an element. It's
19 not a consideration and there's been some underlying current, some overtone. That I
20 want a murder conviction because it was an officer in the line of duty. I don't want
21 that. It's got nothing to do with it. I want the death of Trooper Parker treated like
22 anybody else. Any other victim. We're not here for special treatment because of
23 conditions in which he died. I don't want to be treated any other than if when the
24 brakes were hit on I-95 when that truck went to the right of the road if he had rolled
25 and died. And I don't want it treated other than when those eighteen wheelers were

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1 coming down 95 that they hit each other and died I don't want it treat it any
2 differently than that. We don't want to discount because of what he was doing in the
3 line of duty. We don't want preferential treatment. On the flip side of that, I want you
4 to run from, I want you to rebuke the thought that maybe because he's an officer and
5 they do this for a living that he assumed the risk. That's what officers do. It's a
6 dangerous business. We're sorry it happened. Don't go to either of those extremes.
7 It's my duty to prove this case beyond a reasonable doubt and that's what Jonathan
8 Parker wants me to do. He pursued the law and he upheld the law and the law will
9 bring this case to an end.

10 Now, I thank you ahead of time, for a verdict that will speak the truth
11 and bring justice because this isn't just Eric Ridel's day in court and it is. It's Eric
12 Ridel's day in court but it's just as much Jonathan Parker's day in court. Treat us
13 evenly. Treat us equally. That's what we ask and I thank you ahead of time. I've never
14 spoken on that but it's appropriate here.

15 Let me talk a little bit about the law in this case and as I go through my
16 comments I'll talk about some law and I'll talk about some facts and I'll talk about
17 some theories. In the very beginning I told you that law enforcement officers have a
18 duty and a responsibility to apprehend, to pursue and apprehend criminals. Now Eric
19 Ridel is a criminal over here. He did an armed robbery in Walterboro, South Carolina
20 and the officers in this case had a duty and responsibility. Hey, it's what we pay them
21 to do. To engage in and pursue and apprehend a criminal. That's their duty and their
22 responsibility. When that BOLO went out and it went out as a strong armed robbery
23 we now know that ultimately after investigation it was an armed robbery. He pled to
24 an armed robbery. But after that BOLO went out it was their opportunity, their
25 responsibility, their duty to respond, respond in time, respond as a team and stop him

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1 and bring him into custody. And would you look at all the agencies that worked
2 together to carry out that duty and responsibility. The Colleton County Sheriff's
3 Department. The Clarendon County Sheriff's Department. The Manning Police
4 Department. The Turbeville Police Department. The South Carolina Highway Patrol.
5 The Sumter County Sheriff's Office. The Sumter County Fire Department. Doesn't it
6 make you feel good that whatever you were doing on May the 16th of 2005 they were
7 doing their job and if you don't leave this case with anything else, have an
8 appreciation for what they do. You may teach, you may be a doctor, you may work in
9 the business world, you may be a housewife, but you go about your daily duties and
10 so do they. Have an appreciation for the training, the communication skills, the
11 professionalism. There's no foul words on those tapes. There's no foul play here. I bet
12 you say thirty years ago we wouldn't have this trial. But our officers are professionals
13 and they go by the law and they brought this case to you so that you can speak for
14 them.

15 I also told you in the opening that I was going to present witnesses.
16 They sit up here and they'd tell you what happened and I put them up here so that you
17 could judge. See, you're the jury and you can judge their appearance, you can judge
18 their demeanor, you can watch their body language, you can see their facial
19 expressions, and you can communicate with them from live testimony. And more than
20 anything else it allows you to judge their credibility and the Judge is going to talk
21 about credibility and he's going to tell you that some witnesses can be biased, some
22 witnesses can be prejudiced, some witnesses will have a reason to come up here and
23 tell you a story, some people got nothing to hide, they'll tell it all but it's your
24 responsibility and only you to judge credibility. You can believe everything a witness
25 says, part of a witness says, or nothing at all. That's your province and let me talk

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1 about three things on credibility. The Charleston Police Department, Officer
2 McDevitt, and the Florida Highway Patrol, Bill Barge and Lieutenant Wells, when it
3 came time to investigate that part of this case and the crashed collision analysis need
4 to be done, we didn't want the local people doing it. They may have a biased or a
5 prejudice and so outside agencies helped us to take that issue out so when it came to
6 you it was clean and the other law enforcement witnesses. Let me tell you, they put
7 their life on the line every day and if their life on the line is not worth what they word
8 is on this stand, we've got no reason to be in here. And you heard the testimony of
9 Mack Kennedy and then you heard the audio of what went on and then you saw what
10 it yourself and everything has fallen into place. They've got no reason to come in here
11 to make anything up. If they did, they'd be caught on tape, caught on video. It
12 happened the way they said.

13 And the last thing I want to say about credibility is Herbie Smith.
14 Herbie Smith. The only non law enforcement witness we had other than Dr. Sexton
15 and Herbie Smith comes up here and he's just as honest and genuine fellow we've
16 ever had in Court. I knew he had me. I've been there before. I pulled right over. I got
17 my stuff out. I was speeding. That's the way you stop for a blue light. That's the way
18 you stop for a blue light. He's got no enemies to go after. He's got no friends to
19 reward. He told you like he saw it. If Eric Ridel had stopped at mile marker 113 like
20 Herbie Smith stopped on 527, we wouldn't be sitting here. Credibility of a witness.

21 I'm want to talk now about the law of charges. I told you in the
22 beginning we've got two charges out of these facts. Failure to stop for a blue light
23 resulting in death and murder. Let's talk about failure to stop for a blue light resulting
24 in death because I told you from this stand you could convict on that from testimony
25 alone. I told you words alone would allow you to convict on that case. Without the

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1 diagrams, without the audio, without the video, without the maps, without the lights.
2 You could convict on that word alone. There is six evidence. Number one, the
3 Defendant's driving the motor vehicle. Number two, on a road street or highway of
4 South Carolina. Number three, signal to stop by law enforcement officer by a blue
5 light and/or siren. Number four, he did not stop. Number five, and when driving
6 performed an act of forbidden by law or neglected a duty imposed by law in the
7 driving of the vehicle. In other words, traffic infractions, traffic violations, and number
8 six is end death results. The words alone will convict on that. It's undisputed that Eric
9 Ridel was driving that car. It's undisputed that I-95 from Summerton to the 527 exit is
10 a highway in the State of South Carolina. It's undisputed that from I-95 to Skinner
11 Road, Highway 527 is in the State of South Carolina and it's through Clarendon and
12 Sumter Counties. It's undisputed that not one, not two, not three, maybe four law
13 enforcement officers had on blue lights on sirens, marked cars, unmarked cars and
14 when they came up on Senior Trooper Jonathan Parker his lights were on too
15 signaling that man to pull over. It's undisputed that he didn't stop and if you wanted
16 to be crazy enough to think that because he hit the car and had to stop that counts, he
17 kept running on foot. He still didn't stop and then there's the traffic violations.
18 Speeding, improper lane change, failure to signal, improper passing, unlawful cross of
19 the median, driving the wrong way, unlawful driving on a one-direction road,
20 improper vehicle tag, no vehicle registration. Just some of them. You only have to
21 find one. And finally, he caused death. Failure to stop for a blue light resulting in
22 death. Words will convict on that but there's a bigger charge. And I've told you that
23 actions speak louder than words and that actions, his actions, will convict him of
24 murder. His actions, his choices will empower you to convict him of murder. Let's
25 talk about murder.

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1 What is murder? Murder is an unlawful killing of another. Malice of
2 forethought. Unlawful killing. That may sound odd to you. We have lawful killings.
3 We have justified homicides. We have self defense when you have to kill somebody. It
4 doesn't apply here. There's nothing lawful about the death of Senior Trooper
5 Jonathan Parker. This is an unlawful killing. Skip to the end of malice of forethought.
6 Let's talk about forethought. In the law you have to have malice for murder but
7 there's no time sequence. We have to have malice for three minutes and twenty-two
8 seconds prior to the commission of murder in order to get the charge. It doesn't work
9 that way. Malice is a state of mind. It comes from the hard end of the mind. It can be
10 developed just like that. You could think to yourself that from the time he did that
11 armed robbery to the time he hit those brakes and the time he went past those
12 eighteen wheelers to the time he went to through the median and came up on 527 to
13 the time he went down, you can disregard that all you want to. If you decide that when
14 he veered over and hit that trooper in the back of the car, he developed malice and he
15 could do it that quick. There's no time sequence for when your mind tells you that
16 your heart is evil and your acts follow. Now let's talk about malice. Malice is acting
17 with an evil heart. It's intentional wrongdoing. It's extreme recklessness. It's danger.
18 It's disregard for the safety of others. It's wicked. That's what it is and I have to show
19 it to you. I have to prove it to you and the law let's me do it in different ways. The
20 first way is what we call an express malice, express malice. I'm going to kill you.
21 Bam! That's expressed, malice, I'm going to kill you then Bam! No express malice in
22 this case. Nothing like that. Well then we have implied malice and we have inferred
23 malice. Inferred malice under the law simply says that by the use of a deadly
24 weapon...by the use of a deadly weapon you can infer malice. In other words if I don't
25 say, "I'm going to kill you" and I present a pistol and kill you the fact that I used a

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1 pistol infers malice. This is a deadly weapon. Your Honor, for demonstrative purposes
2 I have one. If I show the court. It's clear. This is a pistol. "I'm going to kill you". This
3 is a deadly weapon. If I didn't say I'm going to kill you. The fact that I got it and can
4 use it and will use it and use it because you know it's dangerous. I've got it in my
5 hand and you're worried about it. You know it's dangerous and so does the law. The
6 use of this pistol with nothing else would infer malice. A hunting knife. Also used in
7 cases for murder. The possession of this hunting knife infers malice. Knives have
8 practical ordinary daily uses. But the fact that I have it and use it in a bad way absent
9 anything else allows you to infer malicious intent. In this case, the weapon is a car and
10 under our law this is a deadly weapon. Under the ordinary use it carries children to
11 school, it takes old people to the hospital. It gets folks to work. It reunites loved ones
12 on holidays. Not on May the 16th 2005. It was a deadly weapon and the law will allow
13 you to infer malice from this use of this weapon the way Eric Ridel drove.

14 And then we have implied malice. Implied malice comes from actions. I
15 told you actions speak louder than words and I'm going to drive it in. It comes from
16 your actions. It comes from your conduct. When nothing else applies...and let's look
17 and see what he did and you don't have to tend to hurt this person. Your acts just
18 have to be intentional so that everyone knows, every reasonable person knows, if you
19 don't stop that car you're going to kill somebody and he does. It doesn't have to be,
20 "I'm going to kill that trooper". It's anybody. Malice. I wanted take the malice and I
21 want to take the facts and walk you through them. Catherine if you'll join me please.

22 May the 16th 2005 in Sumter County headquarters which would be off
23 Highway 378. Here's Highway 378 as it comes in it by passes around Sumter Pike
24 Road and you have the headquarters and highway patrol. On 378 the headquarters of
25 the highway patrol where Senior Trooper Jonathan Parker he reported to work that

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1 Monday morning with First Sargent Sinclair and they begin doing paperwork. It's
2 kind of ironic they were working on fatality paperwork. And things were peaceful
3 and calm in Sumter, South Carolina. And then in another part of the world in
4 Walterboro, South Carolina Eric Ridel makes a conscience decision to commit an
5 armed robbery and as I told you the series of events that played out turned that good
6 day into something very ugly. Because he did that armed robbery...and look, he made
7 the decision to do that. He made the decision between north on I-95. Nobody asked
8 him to do that. His actions, his conduct brought him in our direction and law
9 enforcement responded as they have a duty and responsibility to do when a BOLO
10 went out. Let everyone know to be on the look out. And meanwhile back in Sumter
11 the BOLO was received by radio transmission and it's a long ways away right now
12 and so First Sargent Sinclair and Senior Trooper Jonathan Parker they just kind of
13 monitor it and they continue with their paperwork. And the next thing that happens is
14 at the 113 mile marker, the 113 mile marker because the Clarendon County Sheriff's
15 Department has listened to the BOLO which is what they are supposed to do and
16 positioned themselves out there in case that driver comes up the interstate. They see
17 him coming. Mack Kennedy and Todd Avant a marked car and unmarked car. They
18 see him coming up. You know when he goes by them they eyeball each other. They
19 see him and he sees them and they pull in and they get up behind him and it's his
20 decision to kick it in and to take off. Ten zero, subject didn't stop. They put on their
21 blue lights and sirens the pursuit begins because he chose not to stop. Within the first
22 mile or two he does his first evasive maneuver. He slams on the brakes. You watched
23 the video. You all can carry it back there and take a look at it. We've seen it a lot.
24 You need to. He hits the brakes and I know officers get caught up here. It's difficult
25 at times when you get to questioning Mack Kennedy said, when I first asked him

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1 about it from here to the wall and then Mr. Howle asked him I think he got to two
2 hundred yards. You looked at the video. Look at the right side of the highway, the
3 interstate. You'll see there are three to four maybe five white lines...line, line, line, line
4 as you go up the interstate that separates the two cars you just the distance for
5 yourself. It's there. He slammed on those brakes for one reason and one reason only
6 and that's to get rid of that officer that's behind him. He almost runs the fellow off the
7 road that's on the right side lane. Do you think he cared? If that guy had turned over
8 and died in that truck, do you think he would stop and rendered aid? Maybe. Maybe
9 he just drifted over. And then the pursuit goes on. When you get up here 113 to, 113,
10 excuse me, to the 119 exit which is Jerry's Truck Stop between here and here, you see
11 him on the video. He's trying to drive and reach over here and do something and the
12 officer calls it in. You look. He knows what he's doing. When he's doing that there's
13 nobody in the right lane on that video and he actually goes all the way to the right
14 lane. He keeps doing, he gets close to the car, he comes back. He's in control. He is
15 the lead person in that pursuit and he comes on up to the 119 mile marker and the
16 other officers join in and then come on up and their approaching Black River right
17 here. Wait a minute. Black River. Approaching Black River Swamp where it gets.
18 And about that same time what's going on back in Sumter? Jonathan Parker and First
19 Sargent Sinclair hearing the officer and they realize the chase is going on and they left
20 Sumter headquarters and they're going up 378. What are they going to do? They're
21 headed up 378 to go to 95 because that's where they need to cut him off so he doesn't
22 get any farther north. Chief Garrett of Turbeville with that trooper already up here at
23 highway patrol, I mean, at the rest stop and sheriff's deputy trying to stop him. Trying
24 to contain him. They're going up here and by the time he's getting to Black River,
25 which would be right here, by the time the troopers get to Black River, the Defendant

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1 is coming up heading Black River Swamp. In that tight spot, in that tight spot. You
2 saw it. You see that eighteen wheelers in that tight spot. Can you believe that? Two
3 eighteen wheelers with guard rail on the left and you look at his taillights. They never
4 come on. He never hits the brakes. Look at that eighteen wheeler in the left lane. You
5 see his brake lights come on. He's scared to death and he kicks it in and gets around
6 him. Can you believe it? Malicious? Malicious based on fatal mischief? You bet. Some
7 of the worse kind. You think he would have stopped and rendered aid if those two
8 eighteen wheelers had collided and he would have stopped when he saw those law
9 enforcement vehicles would he had stopped and come back to help? I don't think so.
10 His heart or his mind would not allow him to do it. He was bent on mischief.

11 And after that, after that maneuver comes the big one. Here comes the
12 big one. When he comes right at Black River Swamp and the trooper is coming out of
13 Black River Swamp here, what's he do? What's he do? No indication to anybody. No
14 left turn signal not that you would. Some speed of a hundred miles an hour. Do you
15 know why it was a hundred, a hundred and five, he's car was going faster. If it would
16 we'd have a faster chase than we do. I submit to you he was topped out but if we've
17 been faster...he set the speed not the officers. When he gets up here then what's he
18 do? He comes across that median like nothing you've ever seen. Just puts it down
19 and goes through. You look for the brake lights. They aren't there. He just ran it
20 through. He's in control. Through that median up the other side, northbound on
21 southbound traffic. You look at what those other innocent people are having to do to
22 save their own lives. Look at the lives he's endangered. Look at it. It's malice. And he
23 goes up the entrance ramp left on 527. He thinks he's got them shaking now but they
24 get off just like they're trained and they come on and stay on the pursuit and as he's
25 coming up 527...as he's coming up 527...thank you, Catherine. What's Jonathan

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1 Parker has been listening to the radio and he's heard although he's headed up to 378,
2 he's heard that Eric Ridel has crossed and gotten on 527 headed north towards
3 Sumter. Just in time to make a right turn at Dabbs Cross Roads. Go through a thirty
4 five mile an hour sign and pull a U-turn and sit and wait. Of course enter stage Herbie
5 Smith who pulls off thinking he's fixing to get a blue light ticket. What a good man
6 and he sees Parker pull a U-turn and then he sees what we've all heard about. Now
7 Jonathan Parker made that U-turn and he sat on the side of the road front end two to
8 three feet off the road back in a safe distance off the road and he's facing...he's got his
9 blue lights on and he's sitting in an upright position. He's got his seatbelt on. He's got
10 his foot on the brake, the car is in gear. He's ready to either apprehend the suspect if
11 he stops, which is what he was signaling to do, or join in and ultimately take over the
12 chase. That's what he was ready to do. And like a trained officer he is he calls in and
13 tells them, "I'm here and I see him coming up behind me". Some seven seconds he's
14 hit like a speeding bullet. Wham! Ninety five to a hundred percent square in the back.
15 He would've seen him coming. At not less than eighty miles per hour. How do you
16 know that Bill Barge? Well, I know it's not less than eighty miles an hour because of
17 physics and if one object hits another and they go further they share that force and rate
18 times time equals distance and if they hit right here the bad guy's car ends up here in
19 the least amount of miles per hour is because the force had put it there is eighty miles
20 per hour. But I discounted for the reduced speed ahead sign that he plowed over. I
21 can't account for how much that slowed him down and when he hit that first bunch of
22 trees and clipped some and they held him back some. I can't account for how much
23 speed that decreased and when he rolled around and hit those two big pine trees and
24 bounced off and rested on the side of the road next to the ditch, I can't account for
25 how much speed that reduced and how much force that took away. But all things even

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1 if it had just been impact to where he landed eighty miles an hour. We know he had to
2 be going a lot more. The force of the impact caused the trooper's car over thirty five
3 hundred pounds to catapult eighteen feet. Catapult eighteen feet. Airborne. The force.
4 The force and I believe the phrase that they used was maximum engagement. The
5 force from his vehicle striking the trooper's when it hits here they share the force and
6 at some point they equalize and then start slowing down . Bam! Equalize start slowing
7 down. At fifty five inches. Fifty five inches the trooper's car went from here to here.
8 It's going forty miles an hour. You get a NASCAR race car driver say, "I can have
9 you doing forty miles an hour in fifty five inches" he'd buy your ... man that's getting
10 it. So much force that it literally tore the brain stem causing almost sudden death.
11 You've heard of whiplash? That's the mother of all whiplash. There's got to be an
12 explanation there. There's got to be a reason that this car would come over and do
13 that. When Randy Garrett said it was in the left lane again northbound southbound
14 traffic. When it comes across and rams into the back of that patrol car. There's got to
15 be a reason. How about the potholes? We got potholes? None. Got cracks in the
16 concrete in the pavement? None. Maybe there some speed bumps or some places
17 where they filled potholes and it's made the road uneven and it will cause somebody
18 to swerve. None. Maybe the visibility was bad and wouldn't have known that trooper
19 was there. Well, let's go back and do a demonstrative tape and find out. You could
20 see a long ways. Maybe there was oil on the road or some foreign substance that
21 caused him in high speed to just slip on over there. Not there. Not there. Maybe
22 there's some sign of evasive...you know when a car comes up somebody wants to
23 avoid hitting something they're going to turn. They're going to turn. They're going to
24 hit the brakes. There's going to be some evidence somewhere where those tires turned
25 sharply and whatever advanced speed it was. We'll find it. It's not there. It's just not

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1 there. Maybe there's some evidence of an evasive maneuver. I mean the trooper is off
2 the car. He's in the left hand lane. He's got to come all the way over here. My God he
3 could just go straight. It's not there. Let's check his brake lights. Surely he put on
4 his brakes to try and avoid him. The bulb states it's not there. You look back when he
5 hit those brakes on I-95. You'll see that thing light up on the back of the car. Two
6 brake lights. They were operational. They were never used again.

7 Hey, you know, maybe something is wrong with the car. Must be the
8 suspension. Must be the steering. Must be the brakes. Must be the axle. Must be the
9 tires. They checked it all. Nothing wrong with that vehicle. Nothing whatsoever. The
10 vehicle was at intersection was pristine and the trooper could be seen for a long ways.
11 He was off the road. They didn't find anything. Anything except what they call
12 steering input. The direct response of a vehicle. The actions of the driver. Actions
13 speak louder than words. But why? Why? He rnm into some crazy...you know, I'm
14 going to kill him and take myself out. He tried to sideswipe just another dangerous
15 maneuver. I don't know. I've been working on it for two years. I don't know. You're
16 not going to figure it out either. But the thing is it doesn't matter. Why does it matter?
17 Because the intent in this law is the intent of his actions and the law is you can't go
18 under the brain of some person and dissect it and find out what their intent was and
19 we will recognize that which is why a jury like you or whatever faith brought you here
20 gets to decide, we can't look in his brain and figure out why but we can look at his
21 actions and see that he did it.

22 There's an old commercial. Snickers commercial. A little candy bar out
23 there chop it up in slices and then come out together like a slinky. It said no matter
24 how you slice it up Snickers comes up peanuts. No matter how you slice this case it
25 comes up malice. Trooper Parker was on the side of that road. He called in, 'I'm here

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1 and I see him coming up behind me". A1-18 ten four. A1-18 ten four. We'd been
2 waiting to hear his answer for over two years. We'll accept it from you. Thank you
3 very much.

4 THE COURT: All right. Thank you, Mr. Jackson. Does anyone on the
5 jury need to take a break at this time for any reason? Mr. Howle?

6 MR. HOWLE: Thank you, Your Honor. Mr. Jackson and Ms. Fant.
7 Ladies and gentlemen, I appreciate your attention. Obviously this is an emotional trial
8 and the way things happen, Mr. Jackson come up here and tell the story and he can
9 put that emotion in it and I can't object to that. What happened happened in regard to
10 a loss of life. But I want to go through a lot of what he said because there are more
11 than one interpretations for some of these things, a lot of these things as a matter of
12 fact. Solicitor has charged Eric with a failure to stop for a blue light which resulted in
13 death and murder. These are the two charges on the indictment. The murder count
14 and I read part of this to you when we first began the case, it says that Eric Ridel did
15 in Sumter County on May 16th feloniously, willfully and with malice of forethought
16 and it goes on through. The second part where it picks up is what the Solicitor wants
17 to emphasize. That the trooper was in his car, he was hit by a car traveling at a high
18 rate of speed that resulted in his death and he can tell the story and he can tell...I can't
19 explain this and I can't explain that but fortunately the law requires some of these
20 things to be explained. You can't just say what happened, I don't know what
21 happened so it must be this. Now, there's no question that Eric Ridel was driving that
22 car. There's no question he was going at a high rate of speed, impacted the car and
23 the trooper was killed. That's not being contested. That's not why Eric Ridel is in
24 court today contesting at all. He is contesting the charge of murder in regard some
25 willful and intention to drive into and killed this officer. Now the Solicitor wants to

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1 say it was willful because he can't explain why he ran into the car. So if we can't
2 explain why he ran into the car, he must have meant to run into the car. Well, it's just
3 not that simple. You know, he had a team from Florida come down here and do the
4 reconstruction. Very professional. They talked about the excessive speed which they
5 were able to show and they showed that there were no skid marks. It doesn't show he
6 intended to run into the car and I'll talk about that later even though...even without
7 any skid marks. But one of the officers made this comment about the three driving
8 moves on the interstate and the Solicitor also wanted to comment on those to say,
9 "well, there's your malice right there. Look how he's moving around and doing this
10 movement and everything". Whatever happened out there doesn't have anything to do
11 with right before the impact with that patrolman's car. That's where the murder
12 charge comes in. Not what was going on down the interstate. I don't care what you
13 think of his driving there and what he was doing. That's not the murder charge. The
14 murder charge is on 527. Now Officer Kennedy told you when he first started the
15 chase and was following there were a number of times that he saw him reaching over
16 in the car. He didn't know what he was reaching over there for. Whether it was
17 something in the car, putting money in his pocket that he had taken, whatever it might
18 have been. It's also shown on the tape there's a number of times when he goes off the
19 shoulder and whatever else so the Solicitor can argue for these wonderful moves most
20 of which I think just miraculously happened could have just as easily not been pulled off
21 like that. There's also a lot of driving that obviously is not under control and he even
22 made the comment on the stand when I asked and he said he had some control and
23 then the Solicitor kind of followed up on that. He kind of tightened it up a little bit.
24 The same thing with that distance. First time on the stand he said two hundred yards
25 and the Solicitor asked him a few more questions. He tightened it up from here to the

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1 back of the courtroom. Then you can look at it. But I want you to think. A car
2 is...two cars are going almost a hundred miles an hour and he wants to say the car is
3 no further than here to the back of the courtroom, slams on brakes, and he wouldn't
4 hit him? It was a further distance than that. But that really doesn't have nothing to do
5 with the murder aspect that I want to talk about it. Now when Officer Garrett was on
6 the stand and he was one of the officer's did the pursuit and was actually the first one
7 that came upon the...when they had been the collision and he said, "Oh, I know what
8 his intentions were." Officer Avant got up here and he said, "I got police instinct. I
9 know it was murder". Ladies and gentlemen, that may well be how they see it but
10 fortunately that's not how the law works. You don't charge somebody with murder
11 just because, "oh, I just think it was" or that's not coming...the emotion they may
12 have felt as fellow police officers I can understand but they just...the comment like
13 that that's not professional police work. Now the Solicitor talked about the credibility
14 and let's look at the expert witnesses and things that he had on there because I'm not
15 questioning their credibility in regard to their factual information they gave. When
16 Trooper Sinclair was up here he talked about the video they had made to show the
17 distance that you could see that light going on if you're going down 527 to show
18 there was some reaction time. Now, the only thing about that video it was made from
19 the vehicle that was going the speed limit. So if you watch that video it might be eight,
20 nine, ten seconds as you go along and you could see the lights sitting over there. The
21 only thing is that car wasn't going the speed limit. It was going eighty miles an hour
22 or faster. So that distance that covered there is a great deal quicker. So don't be
23 mislead by having all this time to see something over there whatever that might have
24 been. The Solicitor said it happened the way you saw it but you didn't see the
25 collision. Now, one of the things that Corporal Barge did when he was up here talking

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1 about the reconstruction and what they did. He pulled out these light bulbs to
2 show...we can show whether his brakes lights were on. The interesting thing is on one
3 hand they're saying that Eric Ridel never had his brake lights on but his wrecked car
4 the brake lights are on. Now, he said they're going the wrong way for the impact
5 which has to mean that there was impact just as the car began to rotate the brakes had
6 to be on at that time because that's the direction that those filaments were going.
7 Now, the brakes weren't on at impact but they're on almost instantaneously after.
8 Virtually right after the impact the brakes are on. Now, if Eric Ridel was going to
9 purposely drive into the trooper's car to kill him to kill himself whatever that purpose
10 might have been, why would he put the brakes on immediately after he hit the car?
11 Could it be that he was driving down 527, he told you about that move he made,
12 going up the wrong ramp and he's turning down 527. He doesn't know whether
13 Kennedy made that exit or who is following him. But he's going 527 and he looks in
14 that rearview mirror to see if he's still being pursued. All right, Officer Kennedy says
15 he's reaching over to put money in his pocket, whatever he's doing in the car and he
16 looks up and he's gone over to that right hand side and he's right on top of the
17 officer's car and he takes that foot and he reaches to go on the brake. The impact is
18 almost the exact time as when he would be putting the brake on but just that instant
19 when he hits then his foots on the brake. Now, that's a possibility. It's not just a wild
20 theory. That could have easily happened. See the State has only tried to show you
21 what they cannot explain. If they can't explain it then it must have happened this other
22 way. You know, we don't see marks where he tried to turn the wheel this way. We
23 don't see brake lights coming from way down the road or something like that. So,
24 therefore, he must have purposely meant to run into the officer and that's just an
25 assumption that is not right and that's not what the law requires. The law requires

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1 proof beyond a reasonable doubt. Now, I told you at the beginning it's a senseless loss
2 of life. There's no question about that. But no matter what you think of Eric Ridel
3 that just doesn't make it murder.

4 All connections that the Solicitor wants to point to is lack of physical
5 evidence. Lack of physical evidence but no comment on Eric Ridel's state of mind. He
6 just wants to say I don't know that must mean he meant to do it. Well, not a single
7 witness the State has put up professes to know anything of what Eric Ridel was
8 thinking on that particular day. Now, if you remember from the time line when the
9 first lady got up from Colleton County she said the call came in about 10:16 so
10 whatever happened in Colleton happened before then. The collision itself happened
11 about noon. Now this is a two hour period of time that Eric Ridel has been driving
12 this car. Not just the fifteen minutes you see on the video. That's the very end of it.
13 But the two hours he's been doing whatever evasive actions or driving down the road
14 or anything that's been happening. So for two hours he's been on the run from
15 Walterboro. Whatever adrenaline had sustained him at the beginning was now
16 exhausted. Eric's fancy driving that you might have seen on the interstate doesn't
17 mean that he ran into that trooper's car intentionally. The fact that a mechanical
18 problem couldn't be found in the car. That doesn't mean he ran into him intentionally.
19 Lacks skid marks. That doesn't mean it was intentional and certainly we can't explain
20 it any other way which is basically what the Solicitor is saying. It doesn't mean that it
21 was intentional.

22 Again, I know this is an emotional case and in no way am I trying to
23 make less of the chase and all of that stuff that happened prior to that but don't just
24 look at a film, or the chase, or see these...not stopping for the blue light and just say,
25 "well, there's no other explanation. He must have meant to kill that trooper". I submit

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1 to you the evidence does not show that. There is no way in the world that the
2 Solicitor has proved beyond a reasonable doubt that that was the intention and that
3 definition of...all this malice expressed or implied aside, there is no willful act on Eric
4 Ridel's part to take the life of Jonathan Parker. Thank you very much.

5 THE COURT: All right. Ladies and gentlemen, it's 11:30. We're going
6 to take a brief recess at this point and I will then...when you come back out I will give
7 you the charge on the law. That charge will probably take up to thirty minutes so I
8 want you to be completely fresh when you come out. After that we'll send you out
9 and I will make sure that, frankly the rules could provide that lawyers can object to
10 portions of the charge or request for me to charge you things that I may have left out
11 unintentionally or otherwise to protect their rights under the law. Don't discuss the
12 case in your jury room. That time is coming very soon but to do so now would be
13 again a violation of your oath. Don't discuss the case. I will have you back out
14 probably six or eight minutes. Thank you very much.

15 (Jury exits the courtroom at 11:32 a.m.)

16 THE COURT: Thank you. Have a seat. All right, Mr. Jackson. Sorry
17 to jump the gun on you. You get what you needed?

18 MR. JACKSON: No, Sir. No, sir, I didn't. Thank you for letting me
19 try.

20 THE COURT: All right. You ready for the jury?

21 MR. JACKSON: Yes, Sir.

22 THE COURT: Mr. Howle?

23 MR. HOWLE: Yes, Your Honor.

24 (Jury enters the courtroom at 11:44 a.m.)

25 THE COURT: All right. Is that everybody, Mr. Bradley?

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1 BAILIFF: Yes, Sir, Judge.

2 THE COURT: Thank you, ladies and gentlemen of the jury for your
3 patience throughout this trial. It's now quarter to twelve and probably within the next
4 thirty minutes I will have completed my charge. I did want to tell you, however, that
5 the charge on the law it's going to be in some respects a little bit dry. It's an integral
6 part of this whole process. It's not an opportunity for me to speak. It's not an
7 opportunity for me to use big words to impress you. It's purely and simple...purely
8 and simply an opportunity for me to deliver to you what the law is as it is applied to
9 this case in the State of South Carolina. Don't let your attention wander. The charge
10 will be over with before you know it and you may, in fact, learn some things about
11 what the law is and especially it's important for you to listen to the charge because the
12 State of South Carolina and the Defendant being entitled to a trial at your hands that
13 will result in a fair and impartial verdict based on the evidence in the law. Logically,
14 you should listen very carefully to what the law is.

15 You will keep in mind, ladies and gentlemen of the jury, that the State
16 of South Carolina has charged the Defendant, Eric John Ridel with two counts in this
17 particular matter. First of all with the count of the murder and second of all the count
18 of failure to stop for a blue light resulting in death. I will remind you that the
19 Defendant in response to this indictment has entered a plea of not guilty to both
20 charges and by that plea he denies all of the charges set forth in the indictment. And as
21 I explained to you earlier the indictment which you will have with you in the jury
22 room is simply a charging document. It is not proof of anything and the mere fact that
23 the Defendant has been indicted or otherwise charged with a crime or with two
24 crimes. In and of itself is proof of nothing. Again, you must take the evidence in this
25 case as you have heard it and determine whether or not under the law the State of

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1 South Carolina has proven the Defendant's guilt beyond a reasonable doubt.

2 Now what are you entitled to consider in reaching your conclusions in
3 this case. You are to consider the testimony of the various witnesses that have
4 testified in this case and you can consider the exhibits that have been introduced into
5 the record during the course of this trial. Now the Defendant comes into this trial
6 cloaked or clothed with the presumption of innocence and the presumption of
7 innocence carries and continues to be on the shoulders of the Defendant throughout
8 the case and the presumption of innocence entitles the Defendant to a verdict of not
9 guilty unless and until it is dispelled by evidence that satisfies you beyond a reasonable
10 doubt that he is guilty of the offense or one of the offenses or both of the offenses
11 charged and again, the State has the burden of proving each and every element of the
12 alleged crimes beyond a reasonable doubt. Now, ladies and gentlemen, under the
13 constitutional laws of the state, you are the sole finders of the facts in this case. I told
14 you at the beginning that when you go back to your jury room to deliberate, I will not
15 go with you to talk about the facts. Mr. Jackson and Ms. Fant won't go with you. Mr.
16 Howle won't go with you. Nobody is going to go with you even if we wanted to.
17 Even if we demanded access to your jury room. We can't go in there because it's
18 against the law. Because you twelve folks will deliberate this case are charged with
19 this extremely important responsibility of determining what the truth is. Necessary, as
20 I told you in the beginning, you are the judges of the credibility or believability of the
21 witnesses who have testified in this case and in determining credibility you can
22 consider things such as and I'll list these for you and you may notice that from time to
23 time I will read the law to you it's because even though we can have an intelligent
24 discussion of fifteen minutes on what the law is, I'm required to in fact read it to you.
25 So that's why it's presented like this.

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1 Now, what can you consider in determining credibility? You can
2 consider what was the manner and appearance of the witness who testified. Was he
3 straight forward or was he hesitant in answering questions? How did the witness come
4 to know the facts that he testified to or what was his ability to know those facts? Is
5 there some reason a witness would want to give testimony which would help or hurt
6 one side or the other? In other words, was the witness biased or prejudice? Was the
7 testimony of a witness strengthened or weakened by other testimony or evidence? As
8 I told you earlier, you can believe as much or as little of each witness's testimony as
9 you think appropriate. You can believe the testimony of a single witness against that
10 of many witnesses. You can believe part of what a witness says. You can disbelieve
11 one hundred percent of it or you can accept parts and reject the rest. And the fact that
12 testimony is not uncontroverted, or excuse me, the fact that testimony is not
13 controverted does not mean you have to accept it as truth. You can still gage the
14 credibility of a witness to determine the believability of the facts offered through the
15 testimony. Purely and simply in going through this process you have one mission and
16 that is to seek the truth regardless of its source as long as it comes from evidence
17 introduced in this particular trial. Now, believe it or not there are two types of
18 evidence and I would venture to say that you have probably heard both of these types
19 of evidence. One type of evidence is called direct evidence. Now, what's direct
20 evidence? It's the testimony of a person who claims to have actual knowledge of a
21 fact such as an eye witness. In other words, "I saw this. I heard this and I touched
22 this". That's direct evidence. Now, what is circumstantial evidence? That's the other
23 kind of evidence. So we have direct evidence and we have circumstantial evidence.
24 Circumstantial evidence to give you a slightly tricky legal definition is proof of a chain
25 of facts and circumstances that indicate the existence of a fact. I'll give you an

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1 example. We're sitting here today in a closed room. I know you may be in your jury
2 room that does have a window but just imagine if you will that we've been sitting in
3 here for six hours with no indication what the weather is outside. If one of the bailiffs
4 walks in the back door shaking an umbrella that's wet and water is splashing around
5 all over the place. Did you see it raining outside? No. But you saw him walk in
6 shaking off an umbrella. You can circumstantially infer that it's raining outside. Now,
7 did you have direct evidence that it was raining? No, you didn't but you had direct
8 evidence that he had a wet umbrella. So that's an example of circumstantial evidence.
9 I will further charge you that the law makes absolutely no distinction between the
10 weight or value to be given to either direct or circumstantial evidence. More is a
11 greater degree of certainty and requires a circumstantial evidence than of direct
12 evidence. You weigh both these types of evidence the same. In other words, what
13 convinces you of its truth. Now, after weighing all the evidence in your mind's eye
14 because it's purely a mental process. If you are not convinced of the guilt of the
15 Defendant on either or both counts of the indictment beyond a reasonable doubt, you
16 must find the Defendant not guilty. Now you have heard the testimony of a witness
17 who has special or witnesses who have special knowledge, skill, experience, training
18 or education in particular fields and who have given their opinions as experts as to
19 matters in which they are skilled. We talked about this before. In determining the
20 weight to be given, an opinion given by an expert you should consider the
21 qualifications of the expert, the credibility of the expert, there's that word again. In
22 other words, you can consider whether or not to believe that witness just like you
23 would a lay witness. You can consider the reasons given for the opinion advanced by
24 the expert. You are not bound by the opinion given by an expert. Again, you give it
25 the weight to which you deem it is entitled. Now the value and effect of expert

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1 testimony is a matter to be solely determined by you the jury. No mere opinion of an
2 expert can be accepted. In of itself is truthful or reliable but again it must be weighed
3 by you and convince your judgments beyond a reasonable doubt with the same force
4 and effect as any other fact proved in this case before you can rely upon it as a basis
5 for conviction. You must consider the expert testimony again in the same manner if
6 you would consider the other evidence in this case.

7 I've used the term a few times already about weighing evidence. As the
8 sole fact finders you should have listened closely to all the evidence and use your good
9 judgment in determining how to weigh that evidence and you will hear me saying
10 more than once during the remainder of this charge, use your common sense in
11 weighing evidence in this particular case and reaching your conclusions. There is no
12 book. I've talked about this blue book up here numerous times. I'll talk about it again.
13 There is nothing in that book and there's nothing in any book that tells the jury how to
14 weigh evidence. It's purely and simply a mental process. Evidence weighs with you
15 that convinces you of its truth regardless of from where it came as long as it came
16 from this trial. Your objective is to find the truth and again that's your sole objective.

17 Now during this trial you and I have certain duties to perform. You are
18 probably tired of me telling you that you are the sole judges of the facts but that is the
19 part of our criminal justice system that makes it the best in the world. You twelve
20 people who will deliberate this case are the sole judges of the facts. You are to
21 consider only the competent evidence before you. Now, I have the job of ruling on the
22 admissibility of certain evidence offered during the trial. So our jobs in some respects
23 come together. And again, you are to consider only the competent evidence that
24 comes into evidence. If there was any testimony that I ordered to be stricken or that I
25 ordered you to disregard, you have to disregard that testimony. You are to consider

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1 only the testimony that has been presented from the witness stand or otherwise in the
2 form of documentary exhibits and any stipulations of counsel which there have been a
3 couple in this particular case. Now I have the job under the Constitution and the law,
4 same Constitution and law that makes you the judges of the facts, I have the job of
5 charging you on the law and in that regard you have to accept the law as I give it to
6 you. You cannot base your decision in this case and chaos would result if you based
7 your decision in this case or any case on what you think the law is or on what you
8 think the law should be. You must accept the law as I give it to you even if you think
9 that that's not the law or if you think that that's not the way the law should be. Now if
10 you have any idea of what the law is or what the law ought to be other than what I tell
11 you, put what you think out of your mind and that is what you must do in abeyance
12 with your oath.

13 Now, I cannot intimate to you, I cannot state to you, I cannot
14 comment on or make any statement to you about what I think the facts are or what I
15 think the truth is since you are the sole judges of the facts. You are not to infer from
16 anything that I have said, anything that I have done or based on any ruling that I have
17 made that I had any opinion about what the facts are because frankly, ladies and
18 gentlemen, I do not. The law doesn't allow me to have an opinion about the facts and
19 when you come into the courtroom after you have reached a verdict I will tell you that
20 you have fulfilled your duty and based your verdict according to the law and the
21 evidence provided at the deliberation process goes as it is designed to go. Now, again,
22 it's your job to determine the effect, value, weight, and truth of the evidence presented
23 during this trial.

24 You have heard perhaps the lawyers and perhaps me at the beginning
25 of the trial talk about or used the terminology burden of proof. Now, in a criminal

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1 prosecution of this type or in a criminal prosecution of any type, the State, that means
2 the prosecution, has the burden of proof. The Defense has no burden whatsoever
3 because the Defendant is presumed innocent. Now in this state the prosecution must
4 prove their case to the standard of proof beyond a reasonable doubt before a finding
5 of guilt may occur at your hand. If the State fails to meet this burden, the Defendant is
6 entitled to an acquittal or a verdict of not guilty as to either count of the indictment on
7 which the State has failed to meet the burden of proof on. So I'll tell you again. If the
8 State fails to meet its burden of proof as to either count of the indictment, the
9 Defendant is entitled to a verdict of not guilty on that particular count. I will tell you
10 later that the counts of the indictment stand alone. For example, at the end I will tell
11 you that you can find the Defendant guilty of one and not guilty of the other, guilty of
12 both, or not guilty on both. Again, they stand independent of one another. Now,
13 again, the Defendant has pled not guilty and that plea puts the burden of proof beyond
14 a reasonable doubt on the State. A person charged with committing a criminal offense
15 in this state is never required to prove himself innocent or not guilty. I charge you that
16 it is an important rule of law that the Defendant in a criminal trial no matter what the
17 seriousness of the charge may be will always be presumed to be innocent of the crime
18 for which the indictment was issued unless guilt has been proven by evidence
19 satisfying you of that guilt beyond a reasonable doubt. Now you noticed probably that
20 I have been somewhat repetitive but in many respects what I tell you these thing
21 overlap, intertwine so that's why I tell you things more than once. Now the
22 presumption of innocence does not end when you begin your deliberations but it
23 accompanies the Defendant throughout the trial and until you actually reach your
24 verdict and that verdict form is signed. So the presumption of innocence follows until
25 that point. The presumption of innocence again is like a robe of righteousness that

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1 remains over the Defendant's shoulders until the evidence has convinced you of guilt
2 beyond a reasonable doubt and that brings me to the point of telling you what
3 reasonable doubt is. We've gone through several definitions and everybody in the jury
4 box may know. I know what that is but let me tell you what the law says reasonable
5 doubt is. It is not an imaginary doubt or a fanciful doubt. It is not a weak doubt. It is a
6 substantial doubt. It is a doubt which the words imply. It is a doubt for which you can
7 and it can give or assign a reason based on testimony and evidence in this case. A
8 reasonable doubt is not any source of doubt. A reasonable doubt is a doubt which
9 makes an honest, sincere, conscientious juror in search of the truth hesitate to act
10 proof beyond a reasonable doubt is proof which leads you firmly convinced of the
11 Defendant's guilt. If you have a substantial doubt for which you can give or assign a
12 reason as to the guilt of the Defendant, then he is entitled to a verdict of not guilty.
13 Reasonable doubt may arise from evidence which is in the case or it can arise from the
14 lack of or absence of evidence in the case and you the jury must make the
15 determination of whether or not reasonable doubt exists as to the guilt of the
16 Defendant as to either or both counts of the indictment. Now we'll charge you that
17 the very fact that the jury engages in a full and free discussion or deliberation in the
18 jury room on the issue of guilt or non guilt with the normal flow of the conversation
19 that you may have on these subjects does not in of itself mean that there is reasonable
20 doubt in this particular case or as matter of fact in any other case. Now, ladies and
21 gentlemen, the term or the terminology criminal intent is also something that has been
22 referenced in this courtroom and it also has a definition and I'm going to tell you that.
23 I will tell you that criminal intent is a necessary element of each crime that must be
24 proved by the State beyond a reasonable doubt and criminal intent there's always the
25 matter of that must be determined by you the jury from the circumstances surrounding

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1 the situation. There's no way to prove intent to a mathematical certainty. Again,
2 there's nothing in that blue book that tells you, "All right, here's what we go by to
3 check off if the State has proven intent". In other words, it is again, a mental process
4 for you to engage in. There's no way medical science can take apart a person's brain
5 to determine to what she or he had in mind on any given occasion. So the law says
6 that criminal intent may be inferred from circumstances that have been shown to have
7 existed both before and after the pertinent facts. That's how you make a determination
8 of whether or not the element of intent has been satisfied by the State beyond a
9 reasonable doubt. Criminal intent is a state of mind that operates jointly with an act or
10 omission in the commission of a crime. It is a mental state of conscience wrong doing
11 so it's up to you again to determine what the Defendant intended to do based on
12 circumstances shown to have existed. Now I'll tell you again that the State must
13 prove criminal intent beyond a reasonable doubt just as the State must prove every
14 element beyond a reasonable doubt as I previously explained to you.

15 Now I instruct you further that the fact that the Defendant did not
16 testimony is not a factor to be considered by you in any way in your deliberation and
17 in your consideration on the question of the guilt or non guilt of the Defendant. The
18 fact that the Defendant did not testify must not be considered by you in any manner
19 whatsoever. As a matter of fact, it cannot even been mentioned by you during the
20 course of your deliberations. A Defendant has the Constitutional right to remain silent
21 and the assertion of this right must not be considered by you in your deliberation.
22 Under your oath your to draw no conclusion whatsoever from the fact that the
23 Defendant in this case did not testify. The fact that the Defendant did not testify again
24 should not even be discussed by you in the jury room. The burden of proof remains on
25 the State and again the Defendant is not required to prove his innocence.

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1 Now, the Defendant in this particular case is charged with murder. The
2 State must prove beyond a reasonable doubt that the Defendant killed another person
3 with malice or forethought. Malice is hatred, ill will or hostility toward another
4 person. It is the intentionally doing of a wrongful act without just cause or excuse and
5 with an intent to inflict an injury or under circumstances that the law will infer an evil
6 intent. Malice of forethought will not required that malice exists for any particular
7 time before the act is committed but malice must exist in the mind of the Defendant
8 just before and at the time the act is committed. Therefore, there must be a
9 combination of the previous evil intent and the act. Now, I will charge you that malice
10 of forethought may be expressed or inferred. These terms expressed and inferred do
11 not mean different kinds of malice but merely the manner in which the malice may be
12 shown to exist. That is either by direct evidence or by inference or circumstantial
13 evidence from the facts and circumstances which are proved. Expressed malice is
14 shown when a person speaks words that is expressed. There is hatred or ill will for
15 another or when the person prepared before hand the duty act which was later
16 accomplished. For example, lying in wait for a person or any other act of preparation
17 is an example of expressed malice. Now malice as an essential ingredient of murder
18 does not necessarily import ill will toward the individual who died but signifies rather
19 a general malignant recklessness of the lives and safety of others or a condition of the
20 mind which shows a heart regardless of social duty and fatally bent on mischief. Now
21 malice may be inferred from conduct showing a total disregard for human life. Inferred
22 malice may also arise when the deed is done with a deadly weapon. A deadly weapon
23 is any article, instrument, or substance which is likely to cause death or great bodily
24 harm. Now whether an instrument has been used as a deadly weapon depends on the
25 facts and circumstances of each particular case even if the object used is not normally

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1 a weapon in its ordinary use. Ordinary objects may become deadly weapons when the
2 facts show that they have been used to inflict serious bodily harm or death. And again,
3 it's for you, ladies and gentlemen, to determine beyond a reasonable doubt whether an
4 automobile in this case was used as a deadly weapon. The law says that if one
5 intentionally kills another with a deadly weapon, the implication of malice may arise. If
6 facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to
7 your satisfaction, this inference would be simply an evidentiary fact for you to take
8 into consideration along with other evidence in the case and you should give it such
9 weight as you determine it should receive only the count of murder in the indictment.

10 Now, what the Defendant intended to do and this again is somewhat
11 repetitive but we spoke a few minutes ago about criminal intent and the context of the
12 charge of murder. What the...I've spoken to you again about the criminal intent. The
13 State need not prove specific intent to kill the victim in order to prove the charge of
14 murder. Rather some general criminal intent such as previously described is sufficient
15 to sustain a finding of guilt on the charge of murder. Criminal intent can be proved in
16 the context of murder by acts and conduct from which you may naturally and
17 reasonably infer an intent to have existed.

18 Now, ladies and gentlemen, the Defendant has also been charged with
19 failing to stop for a blue light resulting in death and before I get into that I want to ask
20 you, ladies and gentlemen, if you would just stand and stretch your legs for just a few
21 minutes because I've been talking for about twenty minutes. Stand and stretch your
22 legs and we're probably about sixty percent of the way through the charge. If you
23 don't want to stand, that's fine. If you do, go right ahead.

24 Again, ladies and gentlemen, the Defendant is charged with failing to
25 stop for a blue light resulting in death. In order to prove this crime, the State must

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1 prove beyond a reasonable doubt a few things. First, that the Defendant was driving a
2 motor vehicle. Also, that the Defendant was driving the motor vehicle in a road,
3 street, or highway. The State must also prove, and again all of these are beyond a
4 reasonable doubt, the State must also prove that the Defendant was signaled to stop
5 by a law enforcement vehicle by means of a siren or flashing lights. It doesn't have to
6 be both. Also, the State must prove beyond a reasonable doubt that the Defendant did
7 not stop. Now, the State must also prove that in addition to the other things that I just
8 mentioned, that the Defendant was performing acts forbidden by law or neglecting
9 duties imposed by law in the actual operation of the vehicle. And also, the State must
10 prove that death resulted. Now in determining whether or not there are mitigating
11 circumstances which would justify the Defendant's failure to stop for the blue light,
12 you may consider actual road conditions, actual road side conditions, other conditions
13 such as lighting and weather, officer driver and/or passenger safety, and other
14 circumstances that you believe to reasonably mitigate the alleged violation. Now an
15 official signal requiring a motor to stop may be a siren or flashing light, as I indicated
16 to you earlier, both are not required. I further charge you that an attempt to increase
17 the speed of a vehicle or in some other manner avoid the pursuing law enforcement
18 vehicle is signaled by siren or flashing light, may be considered as evidence of failure
19 to stop for a blue light. However, it is merely an evidentiary fact to be taken into
20 consideration by you along with all of the other evidence in this case and should be
21 given the weight that you think it's entitled to. Now, ladies and gentlemen, I further
22 charge you under the laws of this state that a person shall not drive a vehicle on the
23 highways at a speed greater than its reasonable and true under the circumstances as
24 S.C. Code Section 56-5-1520. I further charge you that code section provides that
25 speed must be so controlled to avoid colliding with a person, vehicle, or other

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1 conveyance on or entering the highway in compliance with legal requirements and the
2 duty of a person who use due care. I further charge you that under that same code
3 section, except when a special hazard exists that requires lower speed a vehicle...a
4 person shall not operate a vehicle on a highway at a speed greater than seventy miles
5 an hour on an interstate highway or at a speed greater than fifty-five miles an hour in
6 other locations or other sections of highways that are not interstate highways. Now
7 the driver of a vehicle shall consistent with the requirements that I just read you drive
8 at an appropriate reduced speed when crossing an intersection or a railway grade
9 crossing or when approaching and going around a curve, hill crest, or traveling upon a
10 narrow bridge or narrow or winding roadway. I further charge you that right of way is
11 the right of one vehicle or pedestrian to proceed in a manner in preference to another
12 under such circumstances as to give rise to danger of collision unless one grants
13 precedence to another. I charge you that a motorist has a duty to yield a right of way
14 to other vehicles who are lawfully established in the roadway. I further charge you
15 that whenever a vehicle has been divided into two or more roadways by leaving an
16 intervening space or by physical barrier clearly indicating a divided section of road that
17 no person or every vehicle shall be driven only upon the right hand roadway unless
18 directed or permitted to use another roadway by official traffic control devices or
19 police officers. No vehicle shall be driven over, across, or within any sub dividing
20 space except for an opening in the physical barrier or at a cross over as established. I
21 further charge you that with regard to one way roadways the Department of
22 Transportation and local authorities may establish or may designate any highway,
23 roadway, or part of a roadway to proceed in one direction or at all times to be
24 indicated by official traffic control devices. I charge you that upon a roadway
25 designated for one way traffic a vehicle shall be driven only in the direction designated

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1 at all or such times as shall be indicated by those traffic control devices.

2 Now, I further charge you that the driver of a vehicle over taking
3 another vehicle or proceeding in the same direction shall pass to the left at a safe
4 distance and shall not again drive to the right until safely clear of the over taking
5 vehicle. I further charge you that upon all roadways of a sufficient width a vehicle
6 shall be driven only upon the right half of the roadway except when over taking and
7 passing another vehicle proceeding in the same direction. I further charge you that no
8 person shall turn a vehicle or move right or left upon a roadway unless and until such
9 movement can be made with reasonable safety nor without giving appropriate signal.

10 Now, ladies and gentlemen, I've already told you the Defendant has
11 been charged with murder and failure to stop for a blue light resulting in death. I
12 charge you that these two counts or charges as you've heard them referred to are
13 separate and distinct and must be considered by you individually and your verdict on
14 one does not control your verdict on the other.

15 That concludes the basic portion of the charge, ladies and gentlemen
16 and Mr. Foreman, you're going to be in the jury room with all of the documentary
17 evidence and with your good common sense and judgment. Those are the weapons
18 that you carry in with you to reach a true verdict in this particular case. You will also
19 have with you a verdict form. Now, the verdict form which I will have for you in the
20 jury room has the caption of this case on it. It says, "State of South Carolina versus
21 Eric John Ridel" and it has a identifying number on it what we call a docket number. It
22 has the word "Verdicts" on it. It has question number 1. As to the charge of murder
23 we the jury unanimously find the Defendant...it's got two choices. One is not guilty,
24 one is guilty. Your verdict on both of these counts must be unanimous which means
25 you all must agree. It is not a majority proposition. It's not anything but all twelve of

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1 you unanimously agreeing. Again, as to the charge of murder the choice is not guilty
2 or guilty whichever the unanimous decision that the jury is you check or "x" the
3 appropriate box. Question Number 2 states as to the charge of failure to stop for a
4 blue light resulting in death we the jury unanimously find the Defendant not guilty,
5 guilty. You check the appropriate box. Mr. Foreman, there is a place for you to sign.
6 It says, "I certify this decision was the unanimous decision of the jury". Then you sign
7 it and then you will knock on the door and let the bailiff know that you have reached a
8 verdict. If during the course of your deliberations you have any questions, you will be
9 provided with a note pad. The foreman is to write those questions or that question
10 down, the question will be delivered to me, and there is a process believe it or not
11 under the rule book for us to go through and addressing the questions if you have any.

12 Now, in the course of your deliberations, Mr. Foreman, you do not
13 have any exclusive authority or any greater authority than any of your jurors. You are
14 simply number 1, spokesperson for the jury in case the need arises. You are also in
15 charge of conducting orderly deliberations. Let everyone speaks that wants to speak
16 for as long as that person wants to speak. In other words, you do not have the
17 authority to cut off debate. Everyone has a chance to speak that wants to speak.
18 Now, ladies and gentlemen, you have extremely serious responsibility lying ahead of
19 you. Again, the case has been tried according to the rules. It has not been tried like
20 you would see on television. These lawyers know the rules and these lawyers have
21 followed the rules and they have followed the rules very well. The case has been
22 presented to you and at some point in the very near future it's going to be in your
23 hands to decide. Now, I'm not overly dramatic in saying this. The...you are citizens of
24 the Sumter County community. The State of South Carolina is entitled to a fair and
25 impartial verdict at your hand. The Defendant, Eric John Ridel, is entitled to a fair and

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1 impartial verdict at your hand. Your verdict is not to be the result of passion,
2 prejudice, sympathy or any other motive that is not found in the evidence or the law.
3 You have no friends to reward and no enemies to punish. Your verdict has to speak
4 the truth and again, the conscience of the community is in your hands. Again, insofar
5 as the State is concerned and insofar as the Defendant is concerned. Your verdict
6 must speak the truth. How do you get there? You listen to the evidence, you weigh
7 the evidence, you apply it to the law as I've given it to you, you use your common
8 sense in doing all that it comes wrapped up in this verdict form which is going to
9 signed by the foreman as being the unanimous decision of you the jury. That's how we
10 get to this point.

11 Now, I think during the course of this trial you probably have come to
12 appreciate the way our justice system works. In just a moment I'm going to let you go
13 to your jury room. I'm going to tell you one more time don't discuss the case because
14 under those rules and that blasted blue book requires me now to talk to these lawyers
15 and give them the opportunity to request additions to the charge. Because there may
16 be some things believe it or not after all you've heard there may be some things that I
17 left out. So I'm going to ask you to go to your jury room at this time. You can begin
18 your deliberations, Mr. Foreman, when the bailiff knocks on the door and brings
19 exhibits to you. Obviously it's 12:20. It's nearing lunch time. We're going to have
20 lunch ordered in for you and you will eat in the jury room. I will tell, Mr. Foreman, if
21 during the course of your deliberations someone happens to excuse himself or herself
22 to use the restroom you got to stop with your deliberations because nobody can say
23 anything or continue with deliberations unless all twelve of you are present. Again, if
24 you have any concerns...I'm not going anywhere. The lawyers aren't going anywhere
25 so if you have any concerns or questions those can be relayed to me. I can't tell you

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1 again how important your oath is because this is the only way that our system of
2 justice can survive is to have twelve jurors who are ready, willing, and able to follow
3 the evidence and the law in reaching a decision. Thank you in advance and you can
4 retire in your jury room. Do not discuss the case. We should have everything to you
5 shortly. Thank you very much. And if the two alternates will remain back.

6 (Jury exits the courtroom at 12:22 p.m.)

7 THE COURT: Mr. Jackson and Mr. Howle, are there any exceptions
8 or additions? Mr. Jackson?

9 MR. JACKSON: Nothing from the State, Your Honor.

10 THE COURT: Mr. Howle?

11 MR. HOWLE: Your Honor, I don't have any exceptions other than the
12 fact that we did ask for instructions as to the involuntary manslaughter.

13 THE COURT: All right.

14 MR. HOWLE:...and I just renewed our request.

15 THE COURT: All right, I respectfully deny that. Before I let you folks
16 look at the exhibits to make sure everything is in order let me speak to the alternates.
17 Ladies, unfortunately, in our system alternate jurors are required in most instances and
18 they were required in this particular case. Either one of you or both perhaps would
19 step in place of a juror who was...had fallen ill or otherwise not been able to report for
20 jury duty and that's why you had to be here through the presentation of evidence and
21 during the jury charge. As it sits all twelve of your fellow remaining jurors are still
22 here so it's not permissible under the law for you to be in the jury room while they
23 deliberate the case. I don't know, Mr. Jackson, what the plans are for the remainder of
24 the week. I don't know who is in charge of that, Mr. Corbett, or whoever but I would
25 assume that they've already called back today or...

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1 MR. JACKSON: I don't know what's going on next door, Judge. I can
2 run and check if you would like me to.

3 THE COURT: If you folks could remain behind for probably a few
4 more minutes I'll get your...Mr. Bradley will get your reporting instructions and let
5 you know when you are to call the number that you have but your service in this case
6 is concluded. You can go on about your business ---I always make sure that I pay
7 attention to how the alternates are paying attention because it's possible that would
8 have stepped into the juror and we tried a case in Greenwood three weeks where we
9 had two alternates and after the first day for a four day trial both alternates were in
10 place because two the jurors weren't able to attend. As it so happens in this case your
11 service wasn't needed any further. Thank you very much. You can wait for Mr.
12 Bradley. You can walk with Mr. Bradley and he can tell you when to call that number.
13 Again, thank you for your time in this case.

14 All right, if the lawyers would meet with Ms. Winfield and check on
15 the exhibits and make sure everything is in order. I believe that the only exhibit that
16 was offered and excluded might have been the seatbelt apparatus?

17 MR. JACKSON: Yes, Sir.

18 THE COURT: All right. So check on that and then the bailiff can let
19 the jury know they can deliberate. I'll just make note of the time and if you would let
20 me know...

21 THE COURT: ...noted that Mr. Bradley tells me that all of the exhibits
22 are in order and there was one misprint on the verdict form. It was referred to State of
23 South Carolina, Plaintiff, we're taking that off. Everything in order for the Jury?

24 MR. JACKSON: Yes, Sir.

25 THE COURT: Mr. Howle?

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1 MR. HOWLE: Yes, Sir.

2 THE COURT: All right. If you could let the jury know, Mr. Bradley,
3 they can begin to deliberate and I will let you and Mr. Campbell orchestrate the food..

4 MR. BRADLEY: Yes, Sir.

5 THE COURT: Okay. Thank you. All right. Thank you, ladies and
6 gentlemen.

7 THE COURT: Thank you very much. Have a seat. All right, Mr.
8 Jackson, Ms. Fant, and Mr. Howle, I understand we have a verdict.

9 MR. JACKSON: Yes, Sir.

10 THE COURT: Is there anything that needs to be put on the record
11 before we bring the jury in?

12 MR. JACKSON: Nothing from the State, Your Honor.

13 MR. HOWLE: Nothing at this time, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, I know that this is an
15 emotional situation. I would request and perhaps direct everybody in here that
16 whatever the verdicts may be just to refrain from any audible outburst at all so that we
17 can maintain order and then we'll continue to deal with the trial in an orderly manner.
18 All right, you can bring in the jury.

19 (Jury enters the courtroom at 2:38)

20 BAILIFF: Your Honor, we have all the jurors present in the
21 courtroom.

22 THE COURT: Thank you, Sir. Mr. Foreman, I understand the jury has
23 reached a verdict.

24 FOREMAN: We have, Your Honor.

25 THE COURT: Are verdicts on both counts unanimous?

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1 FOREMAN: Yes, Sir.

2 THE COURT: All right, Sir, please hand the form to the bailiff. All
3 right, Sir, you can publish the verdict. Mr. Ridel, would you please stand?

4 BAILIFF: The State of South Carolina, County of Sumter in the Court
5 of General Sessions, Indictment Number 2006GS43330, the State of South Carolina
6 versus Eric John Ridel, Defendant. As to Question Number 1 as to the charge of
7 murder we the jury unanimously find the Defendant guilty. As to Question Number 2
8 as to the charge of failure to stop for a blue light resulting in death, we the jury
9 unanimously find the Defendant guilty. Signed Foreperson Reames?

10 FOREMAN: Yes, Sir.

11 BAILIFF: Dated June the 6th, 2007. Is this your verdict? So say you all
12 by raising your right hand please. Thank you.

13 THE COURT: All right. Thank you, Sir. All right. You can have a
14 seat, Mr. Howle and Mr. Ridel. Mr. Jackson, is there anything you would like to take
15 up before this jury is discharged? Before the jury is discharged?

16 MR. JACKSON: Nothing from the State, Your Honor.

17 THE COURT: All right, Mr. Howle?

18 MR. HOWLE: Your Honor, I don't know if this matters before or
19 after but I have several motions and I think we discussed it that I have ten days to file
20 such motions?

21 THE COURT: Yes, Sir. Would you like the jury to hold?

22 MR. HOWLE: No, Sir.

23

24 THE COURT: All right. Ladies and gentlemen, thank you very much
25 for your attention throughout this trial. As I indicated to you during my jury charge

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1 it's been a difficult case and all of you, all twelve of you have paid extreme attention
2 to all of the testimony and evidence in this case and your duties as jurors as far as this
3 case are concerned are concluded. However, there may be a need for your services
4 further this week in the large courtroom. We're going to undertake at this point the
5 sentencing phase of the trial and you are certainly approved to remain. I understand
6 that the balance of the panel has reported back to the large courtroom and your
7 service will not be needed down there today but if you would if you depart before the
8 sentencing, I would ask you to call the number that you have after 6:00 today and you
9 will receive additional instructions. If you would like to remain for the sentencing, I
10 do have one request and that is that you remain in your jury box and not leave the jury
11 box before the sentencing. If you would like to leave, you can do so at this time. All
12 right any objection to that, Mr. Jackson, Mr. Howle?

13 MR. JACKSON: No, Sir, Your Honor.

14 MR. HOWLE: No, Your Honor.

15 THE COURT: Ladies and gentlemen, if you want to leave you
16 certainly can. You can stay and Mr. Bradley can show you out the door and get your
17 identification badges again call the number back at 6:00 regardless of whether you
18 stay or depart at this time. All right, is there anyone who would like to leave at this
19 time? Ms. Fant, do you have the sentencing sheets?

20 MS. FANT: Yes, sir.

21 THE COURT: All right, we'll be glad to hear from the State on
22 matters of sentencing.

23 MR. JACKSON: Thank you, Your Honor. Your Honor, since you've
24 been through the trial I'm not going to dwell on anymore of the facts or the evidence
25 at hand. I would like to offer a prior criminal record of the Defendant for the Court's

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1 consideration. 1989 he had a conviction up in Connecticut for burglary in the third
2 degree and 1999 burglary in the second degree and failure to appear. Also in '99 he
3 plead to burglary in the first degree and got sentenced to ten years. He spent six years
4 in prison and four years probation. Your Honor, he was on probation for that when he
5 was down here committing the crimes that he did here. In addition to the armed
6 robbery that the jury was aware of on May the 16th he committed a strong armed
7 robbery in Jasper County the day before which would have been Sunday the 15th.

8 THE COURT: Has he been...so that would be obviously apart from the
9 Colleton County?

10 MR. JACKSON: Yes, Sir. He did a strong armed robbery in Jasper on
11 the 15th. He did an armed robbery in Walterboro on the 16th. When he was returned to
12 their jurisdiction from ours, he pled to both and he got a thirty year sentence on the
13 armed robbery and a fifteen year sentence concurrent for the strong armed robbery.
14 Your Honor, it was also where he actually was driving under suspension for his
15 license to drive was suspended by the State of Connecticut. He wasn't even supposed
16 to be behind the wheel. And that's all we have for his prior record. We do got some
17 folks from the victim's family who would like to address the Court perhaps someone
18 from the law enforcement.

19 THE COURT: All right, Mr. Jackson, of course you and Ms. Fant
20 have the right to address the court as well.

21 MR. JACKSON: Yes, Sir.

22 THE COURT: All right, you can...if anyone who would like to use the
23 microphone we may have one available and that's entirely up to you folks on how
24 you want to handle that.

25 MR. JACKSON: Sure, sure. Your Honor, they've got a picture of

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1 Jonathan Parker they would like to place out.

2 THE COURT: And I would like to request....matter of fact direct
3 anyone who does want to speak let's make sure that your statements are directed to
4 me and not to Mr. Ridel. That way we can maintain...continue to maintain order.
5 Your name, ma'am.

6 MRS. PARKER: I'm Carol Parker. I'm Jonathan's mother. In the
7 winter of 1975 I found out I was pregnant with Jonathan. You can imagine my
8 surprise because I had three other children who were sixteen, fourteen, and thirteen.
9 Having another child was the last thing on my mind. At the age of thirty-five I sure
10 didn't want to start all over again but as that precious life began to stir within me I
11 knew this baby was going to be a blessing and he really was. On
12 Jonathan Wade Parker was born. My husband and I chose the name Jonathan because
13 it means a gift from God. At nine pounds, six ounces and twenty-three inches long
14 Jonathan was truly a beautiful healthy gift from God. As the years went on Jonathan
15 grew tall and handsome. He did so many things and he was interested in so many
16 things. History, the Civil War. He was also a re-enactor. He loved hunting and fishing,
17 wood working, and did beautiful leather work. He loved dogs, bird watching, boating,
18 and antiques. He was a life guard, played golf, and loved sailing. It's impossible for
19 me to remember to name everything that John loved to do and everything he was
20 interested in reading about. As Jon grew up it became apparent that his passion in life
21 was law enforcement. He attended the Citadel for almost three years and then he
22 decided to become a deputy with the Sumter County Sheriff's Department. He
23 eventually worked on the K-9 unit with his four-legged partner named Munch.

24 After two and a half years with the Sheriff's Department he became a
25 state trooper with the South Carolina Highway Patrol. He was thrilled and he was

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1 proud. As Jonathan sat on the side of road that sunny Monday morning, May 16, 2005
2 he had no idea that in less than in an hour he was to give his life and service for the
3 people of Sumter County and South Carolina. With one thoughtless, senseless act of
4 selfishness by a total stranger, Jonathan's life here on earth was snatched away and in
5 that instant two families were forever changed. Jon was taken away from a wife who
6 loved him dearly. From a father who was so proud of him. From siblings who adore
7 him and from friends and co-workers and the community who loved and needed him
8 and from me his mother who cherished him and nurtured him and loved him with my
9 very breath.

10 Although Jonathan was my youngest child he was the child that lived
11 here in town with me. He was my friend and confidant. I might not see him on a daily
12 basis but I knew he was always available to me should I have a problem. I shared my
13 life with him in Sumter. While my other children are just as precious to me they are
14 scattered across the country from Alaska to Florida, Jon was simply here close by and
15 always available.

16 The past two years have been extremely difficult and I am finding the
17 grieving process continues. My life has been forever changed. It was an unwanted
18 change and a change I pray that doesn't happen to other mothers. I believe that it was
19 because of this deep grief that I suffered a stroke on May 31st of last year. I've always
20 enjoyed good health and certainly was not a likely candidate for a stroke. Since my
21 stroke I have been forced to retire from a great job that I had for over twenty-two
22 years at Shaw Air Force Base and the course of my life has again been changed once
23 more. This whole year has been very difficult being hospitalized for a month with a
24 stroke and in constant rehab followed by twelve months of out patient rehab this has
25 been a very expensive price to pay for my grief and the loss of Jonathan has been costly

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1 in other ways. It has cost me and others who loved him broken hearts. How can I
2 describe a mother's broken heart? And yet I know I'm not alone in my sorrow and
3 grief how can I measure the cost? Certainly not in dollars and cents but rather in days
4 and moments lost with my precious son. As I continue to grieve I realize that the loss of
5 Jonathan two years ago will continue to result in more loss. You see I will never see
6 the precious grandchildren that could have been. I will never experience Jon's silly grin,
7 his big hugs, and the security of knowing he's just a phone call away and I will never
8 see my Jonathan again until that day when God takes me home. Through all this
9 tragedy I've been overwhelmed by the outpouring of love and compassion from my
10 family, friends, and community. I am truly amazed to learn over and over of the impact
11 that Jonathan had on others during his brief twenty-nine years on this earth. Jon was a
12 kind hearted, compassionate guy who wouldn't hurt anyone intentionally. He was
13 certainly a giver and indeed his life though over on this side of heaven continues to
14 have a positive impact and I continue to be so very proud of him. I want the Defendant
15 to know what a kind and caring person Jonathan was. He wouldn't intentionally hurt
16 anyone not even the Defendant. If Jon had had a chance to talk with the Defendant that
17 day he more than likely would have tried to help him in any way that he could.

18 Your Honor, considering the Defendant's actions and the choices he
19 made on May 16, 2005, it is important to me that the Defendant should be sentenced to
20 the maximum penalty under the law for demonstrating an absolutely no respect or no
21 regard for the law or law enforcement and for human life in general. I want to see
22 justice for my son, Jonathan, and justice for all law enforcement officers who risk their
23 lives daily whenever they put on their uniform. Thank you, Your Honor.

24 THE COURT: Thank you, ma'am. All right, Mr. Jackson. Mr. Jackson,
25 anyone else?

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1 MR. JACKSON: Yes, Sir, we have some more. Thank you.

2 MRS. PARKER: Your Honor, Ladies and gentlemen of the jury, when I
3 was nineteen years old I met the man that I was going to marry, Jonathan Parker.
4 When I first saw him across the college classroom I knew he was the one I had been
5 waiting for. I remember the thoughts the first time I saw him. He's tall, he's cute, and I
6 like his haircut. On Saturday, February 19, 2000 Jon and I were married. It was the
7 happiest day of my life. We had so much to look forward to. Our whole lives lay ahead
8 of us to dream and plan and love. We were going to have a family. We both wanted a
9 son named Luke and a little girl named Olivia. We were going to have a wonderful life
10 together, bear our kids together, spoil our grand kids, and grow old together. But a
11 little over five years later on May 16, 2005 Jon was killed and all of our hopes and
12 dreams died with him. I'll never forget that day. That Monday morning began like
13 many other mornings at our house. Jon was starting back on day shift after a long
14 month on night shift. I was relieved because that meant that Jon would be home with
15 me at night so those bumps in the night wouldn't matter to me because Jon would be
16 home and protect me from any danger. Jon always gave me a sense of security because
17 he was such a big guy and was intimidating in stature. Jon got up first that morning
18 since he had to be signed on the radio at 6:00 that morning. Normally when Jon would
19 get up to shower I would wake up just enough to be aware of what was going on
20 around me. That morning I was groggier than usual and didn't even know Jon was up.
21 I don't recall hearing Jon fumbling around in the bathroom and was startled from my
22 sleep when he came to kiss me goodbye. As I heard the clang of Jon's handcuffs going
23 down the hall I had no idea that would be the last time I would see or speak to him or
24 that I would never hear his handcuffs clanking as he returned home from work. If I had
25 known what was to come that day I would have never let him go. Trooper Jonathan

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1 Parker was a man who strived to serve the citizens of South Carolina. A man who
2 prided himself in being a South Carolina State Trooper. Trooper Parker wanted to feel
3 that he was in some way contributing to the State and make it a safer place for all of us
4 to live. But Trooper Parker was more than an officer sworn to uphold the laws of the
5 State of South Carolina, he was my husband, my friend, my life, my everything and the
6 five years that Jon and I married his enthusiasm for his job never waned. He loved what
7 he did and looked forward to going to work. Jon told me that his field training officer
8 told him not long after he joined the patrol that if someone shakes your hand and
9 thanks you for giving him a ticket, then you've done your job. Jon truly believed that
10 because when he had those types of interactions with the public he would come home
11 and tell me about it and his face would light up like a child's face on Christmas
12 morning. Jon's commitment to his job was made quite evident on May 16th when a call
13 came out about a chase in progress. He didn't hesitate to go and help fellow brothers in
14 law enforcement. The previous week Jon had the hard task of working several fatalities
15 wrecks so I knew that most of his day would be stuck in the office working on his
16 paperwork. I called him that morning around 10:45 to let him know I was on my way
17 to a scheduled appointment for 11:00. He didn't answer so I figured he was in the
18 office working on paperwork. Around 11:30 I was out of my appointment and on my
19 way back to work. I called Jon on my way back to make sure he was going to be able
20 to get to our house to let the dogs out but again he didn't answer. I returned to my job
21 and went on about my usual activities. I knew once Jon saw on his phone that I had
22 called him twice and he would call me back to see how my day was going and to see
23 what our dinner plans were for the evening. I waited for line 16 the one that Jon always
24 called me on to flash with an incoming call but it never rang. A little bit later I was on
25 the phone with a customer when I turned around and saw my dad standing behind me.

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1 I asked daddy why he was there and he said there's been an accident. I remember the
2 immediate sense of panic I felt. I asked daddy who had been hurt and I never in a
3 billion years thought it would be Jon because bad things don't happen in Sumter
4 County and if they do they happen to other people not us or so I thought. Daddy told
5 me know that it was Jon. I asked him how bad it was and he told me he didn't know.
6 At that point I became frantic so daddy took me to one of the conference room at
7 work. While I the room I called the highway patrol office to see if I could find anyone
8 who could tell me anything about what was going on. There was no answer. I could
9 see the front of the office building from the conference room where we were waiting
10 and a few moments later I saw an unmarked highway patrol car pull up in the parking
11 lot. I watched as Jon's Sargent got out of the car. He came into the conference room
12 where I was and as soon as he walked into the room I saw his face. I knew that Jon
13 was dead. Later that evening the coroner came by my house to offer her condolences
14 and to give me something that she believed belong to Jon. She handed me a small
15 plastic bag and when I looked at it contents initially I couldn't tell what it was. Upon
16 further inspection I realized that it was Jon's wedding band. It was melted, tarnished.
17 Nothing like what I remembered it looking like. Jon never took it off. He would say he
18 felt naked if he didn't have it on. This is the first bit of actual proof that I received that
19 something had happened to Jon and it was the most horrible realization. It was at that
20 time I found out that an autopsy would have to be done. My body and mind were
21 completely overloaded. If an already horrible situation could be possibly be made any
22 worse it was at that moment. Finding out that an autopsy was going to be done on
23 someone you love and care about. You don't carry out the scientific reasoning behind
24 it. It was intrusive, a further violation of Jon and I had no say in the matter. The one
25 thing that I was grateful in finding out after the autopsy was that Jon died immediately

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1 and not aware of the car burning. The first night of Jon not coming home was the first
2 of many difficult nights. My parents and brothers stayed with me that night so I
3 wouldn't have to be alone. It didn't feel right being in our bed and Jon not being there
4 with me. I hated the thought of Jon being somewhere alone. I should be with him I
5 thought. I hated the thought of me being without him and him without me. I was lost
6 without him. The days that followed was just the beginning of an emotional roller
7 coaster I had been forced on. At twenty-eight years old I was having to go to the
8 funeral home to make funeral arrangements for my twenty-nine year old husband. I was
9 having to go to a cemetery to pick out the final resting place for my husband and
10 myself. I was having to decide what kind of funeral Jon would be happy with. I was
11 having to make all these decisions without the one person whose input I value most,
12 Jon's. This entire situation was so surreal. Jon and I should be planning our family not
13 me planning his funeral. This is not how life was supposed to be. In the days leading up
14 to Jon's funeral there was a constant flow of people coming and going. There was food
15 everywhere at the house but I didn't care. I didn't want to eat or sleep. I felt like
16 everyone was staring at me. I didn't want to be looked at as that poor young widow. I
17 just wanted to go back to my life before. I just wanted to wake up from this nightmare
18 and have my husband back. Over the next few days I would attend the wake and
19 funeral for Jon. I wanted so badly to see him so that I could say goodbye to him so that
20 I would know that it was really real. I wanted to hug and kiss him one last time. I was
21 denied that. I was told that it would not be a good idea for me to see him. No one ever
22 went in to any detail why it wouldn't be a good idea. They just said it wasn't. It months
23 later before my brain allowed me to process the severity of Jon's...the burns Jon's body
24 sustained that day. That made everything that much more unbearable. Two weeks after
25 Jon was killed I went back to my job working only half days. I don't even know why I

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1 went back. My parents felt that I needed to get back into some type of routine one that
2 would require me to get up in the morning and be some place instead of being in bed
3 most of the day or sitting around the house alone. I was just occupying a chair at work
4 when I was there. I was there in body but my mind was a million miles away. Some
5 days I didn't even make it until noon because it was just too hard being there in the
6 place where I had learned that Jon had been killed and deal with the constant sorrow
7 that I felt in the environment that I viewed as not being a safe one. I couldn't even
8 look at my phone at work and not think about Jon. Any time I saw line 16 light up on
9 my phone, I would always think it was Jon calling me since that was the line he often
10 times called me on. I eventually ended up having to tape something over my phone so
11 my mind wouldn't be tricked into thinking it was Jon. I only stayed at my job for two
12 months after Jon was killed even though I was fond of the people I worked with I felt
13 like I could not help customers when I couldn't even help myself.

14 That summer I was so angry and agitated with everyone. I just wanted
15 to scream at everybody so maybe, just maybe they would have some idea how badly I
16 was hurting on the inside. I felt myself being envious of seeing couples because they
17 had the opportunity to grow old together and Jon and I didn't get that chance. I was
18 jealous of expectant mothers because they were experiencing something that Jon and I
19 never got to experience together. I was angry at women my age who still had their
20 husbands to come home to at night. I was angry at Jon for being where he was that
21 day. I was angry at God for allowing this to happen to Jon. I was broken physically,
22 mentally, and spiritually. I wanted to cut myself off from the rest of world because I
23 hated seeing people going on with their lives when I was spinning my wheels everyday.
24 It literally made my world stop on May 16, 2005 and theirs should have too. Some
25 days I would cut the ringer off of my phone because I didn't want to talk to anyone. I

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1 would tell people when they asked how I was doing that I was okay but that was far
2 from the truth. Everything about me was in complete shambles. My heart felt like it had
3 been placed in a box (coughing distrubance) as far as it could be. I hurt so badly.
4 Everything about existing without Jon in my life was unbearable and tried as hard as I
5 could not to (coughing distrubance). I didn't look at the house that Jon and I shared as
6 being a home anymore because he was not there. The majority of that summer was
7 miserable the outside only added to my misery. I had decided I was not going to pay
8 anymore and do things around the house that I felt that I could do myself. That
9 summer I would cut the grass in the heat of the day and would think about how I hated
10 everything about my life. One afternoon when I was working in the yard I had to back
11 Jon's red F150 truck out of the garage in order to get the push mower out. I was on
12 the other side of the yard when I looked up and saw Jon's truck sitting in the driveway.
13 Even though I backed the truck out myself I thought when I saw the truck in the
14 driveway that Jon was home. To this day when I am driving through town and I see a
15 red F150 I always look up to see if it's Jon. I wonder if I'll ever stop doing that?
16 Immediately after Jon was killed I felt I needed to visit the cemetery as often as
17 possible. At the time, I felt it was the only way I could be close to him. Often times I
18 would sit there in disbelief crying what seemed like endless tears by my beloved
19 husband's grave site. At our age shouldn't we be home together planning our weekend,
20 what to eat for dinner, how are we going to use our vacation days from work? I never
21 thought at my age I would be picking out grave marker or picking flowers to put at the
22 cemetery. As time passed I began to focus more on the memories that Jon and I made
23 together and the home that we shared over five years. Now I hold on to those
24 memories for those are things that can never be taken from me and I am thankful for
25 those memories. But at the same time I am sad for other things we could have

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1 experienced together making new memories. Jon would have celebrated his 30th
2 birthday in October 2005. I reach my own 30th birthday this year and so I've now lived
3 longer than my dear husband got the chance to. I miss him more than words can say I
4 want my husband back. I want to awaken from this nightmare that goes on and on and
5 on. Jon and I were cheated out of all of our hopes and dreams by the selfish, foolish
6 actions of a man who must have hated life as much as Jon and I loved it. Jon's death
7 was so unbelievable. So bizarre because Jon's vehicle was engulfed in flames. I was not
8 able to see him, to hold him, to kiss him one last time. He left for work that morning
9 and he never came home. So here I am today. I'm still grieving going through the
10 motions but I don't know how to really live and celebrate life without my Jon. I'm lost
11 without him. As this trial draws to a close and the jury retires to weigh the evidence
12 and reach a verdict, it occurs to me that although I have anxiously anticipated this trial,
13 at the end of the day nothing has changed for me. I still don't have my husband and
14 never will again. I'll never will again feel his warm embrace or hear him say, "hey,
15 babe" when he returns home from work. However, I will feel some comfort if I may
16 know that the Defendant spends the rest of his life behind bars without the possibility
17 of parole. Only then will justice be served on Jon's behalf. Thank you.

18 THE COURT: Thank you, ma'am. All right, Mr. Jackson.

19 MR. JACKSON: I believe Chief Garrett would like to address the Court
20 at this time.

21 THE COURT: Mr. Garrett?

22 MR. GARRETT: Yes, Sir. Thank you. Your Honor, a few weeks after
23 Jonathan's death that I struggled with everything that happened that day. Jonathan
24 over the years our friendship regardless when I called on him or had supper with him or
25 if I ever needed him for anything, he never failed. He was always there for me. I could

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1 depend on him. For weeks I felt like I let him down. I never felt that helpless in my life
2 and I don't know if I ever will again. This past May, May 2nd, my nineteen year old
3 daughter for her birthday, she's in school, she's in college. She's made the Dean's list,
4 she studies pre-law. I called and told her I would meet her in Sumter because after
5 class I'd take her out to supper or do anything that she wanted to do. I tell this story
6 because Jonathan made an impression on her life, other people's lives other than mine.
7 Until this past May I didn't know the impression he had made on my nineteen year old
8 daughter. She met Jonathan when she was eleven through her mother working with the
9 highway patrol and working with Jonathan day in, day out, they became friends, and at
10 that time my eleven year daughter used to go to work with her mother from time to
11 time. When Jonathan was working he would come in and she would be doing
12 homework before mother got off and Jon made a big deal about homework and the
13 grades and stuff that she had been able to maintain and all through her years in high
14 school and in college. But I didn't realize until that night I took her out to supper that
15 she told me about Jon. I know during the weeks that I struggled with his passing, she
16 was there to comfort me and I'm a father as a young child, she was seventeen at the
17 time and comforting me. I was very proud of her. But I'm extremely proud of the story
18 she shared with me the night of her birthday about the impressions that Jonathan made
19 on her. We talked about the upcoming trial. She would even ask me if I was ready and
20 I told her yes, I was ready. And then she said, "Daddy, you told me that we can do
21 anything we wanted to do tonight, that I wanted to do. And I said that's right. She
22 said, "Have you been able to go to Jonathan's grave side since he passed?" And I told
23 here, "No. Not since the funeral". And she told me about a recent gathering of troopers
24 and the deputies and all of us at a supper that she heard one of them comment that he
25 had a beautiful stone at the grave site. She said, "As part of my birthday, Dad, I want to

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1 go to the cemetery and I want to see it with you. So we did. It was a beautiful stone.
2 It's just one contribute to Jonathan and who he was and the impression that he made
3 on people. My late mother always said that the true measure of a man is one that can
4 show compassion, outpouring of compassion and not hide it. She said man. She said a
5 real man is one that can show his compassion to children. Jonathan did that and I never
6 got to thank him. Ms. Parker, Susan, I think you all for the son you had and the
7 husband you had for the impression that he made on my daughter, my youngest
8 daughter and Mr. Ridel, I want to say I hope you learn something from this but Your
9 Honor, trully, he deserves to spend the rest of his life in prison is my feeling and I thank
10 you for your time.

11 THE COURT: Yes, Sir.

12 MR. GARDNER: May it please the Court, Your Honor. We have at
13 the Sumter Sheriff's Office, we would like to first of all express our deep concerns and
14 our condolences to the family. Jonathan worked with us for two and a half years and
15 certainly it was a harmonious relationship. We just can't say enough about his services
16 with the Sumter Sheriff's office. He is truly missed and we know that although a
17 verdict has been rendered, no one has won here today and it's a tough situation and we
18 pray that your sentencing will be justice not only for the Sheriff's office and the State
19 of South Carolina but for the family. He has certainly been an inspiration to all of us.
20 We thank you and pray our mercy on the Defendant as well. Thank you.

21 THE COURT: Thank you, Sir. Corporal Roark.

22 MR. ROARK: I can tell you exactly what I did on May the 15th, 2005.
23 The reason I can tell you that is what took place on May the 16th, 2005. I can't tell you
24 what I did this past May because the impression of losing the 45th trooper in the line of
25 duty in the seventy-seven years of our existence leaves an ever lasting mark on both the

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1 Parker family and the highway patrol family. I can tell you that since that time we had
2 an opportunity to hire seven hundred fifty troopers since Jonathan's senseless death.
3 And I can tell you that each time that I speak with those young troopers and talk about
4 our core values and selfless service, integrity and responsibility. I can tell you that those
5 three words epitomize Jonathan Parker. I will also tell you that I take the opportunity
6 to tell each young trooper before they put this uniform on that the actions they take
7 reflect on those forty-five people. Mr. Ridel, made a decision on May the 16th. Mr.
8 Ridel made the decision to commit a robbery, flee police, drive recklessly. He made a
9 decision to put everybody around him and law enforcement got in his way. Jonathan
10 Parker had long made a decision. To protect the citizens of South Carolina. Jonathan's
11 decision to go assist other law enforcement was the right decision. I submit to you that
12 Mr. Ridel's decision was a grave decision. As Major Gardner said there's no winners
13 here. This will be with us, will be with Susan, it will be with Mr. And Mrs. Parker for
14 the rest of their lives. In my twenty-six years in law enforcement I've dealt with many
15 families that have lost many people in many different ways and I can tell you sudden
16 death is a horrible death. You know we talk about people suffering with cancer. We
17 talk about people suffering with diseases and although that's tragic that family has an
18 opportunity for that last goodbye, that family has the opportunity to be with that family
19 member prior to death. Mr. Ridel robbed the family of that opportunity and I submit to
20 you, Your Honor, that the sentence that you're charged with handing down should be
21 a type of sentence that will not allow Mr. Ridel to ever walk as a free man again.
22 Thank you.

23 THE COURT: Thank you. Mr. Jackson.

24 MR. JACKSON: Your Honor, the crime of failure to stop for a blue
25 light resulting in death, the State of South Carolina is asking the Court to issue a

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1 maximum sentence of twenty-five years. Consecutive to the thirty to fifteen that he's
2 already serving. And for the murder of Senior Trooper Jonathan Parker we're asking
3 for life sentence without the possibility of parole. Thank you for hearing us, Your
4 Honor.

5 THE COURT: All right. Mr. Howle. Be glad to hear from you and Mr.
6 Ridel if he chooses and anyone else who would like to speak on his behalf.

7 MR. HOWLE: Thank you, Your Honor. Your Honor, I don't profess
8 to know you know just how...I mean I can see the impact this has on all the family and
9 all the friends that he has had but I will tell you this from the first time I talked with
10 Eric, there was true remorse. This was an act of a man who has had a drug problem for
11 his adult life. He did not complete high school but he did get his GED and he's a
12 certified mechanic. He was ASC qualified in 1991. Had several jobs and was doing real
13 well and got hooked on heroine. His father pretty much stopped having anything to do
14 with him. Unfortunately, that led to some local crimes and they got a little more serious
15 and he got the sentence that he served six years in jail. When he got out he was going
16 back to some halfway houses and places like that and the drug people were there. He
17 got back onto drugs. His daddy was trying to help him. They seemed to have kind of, I
18 don't know, the father started feeling like he had maybe not been there for him, had not
19 been whatever happened. But started showing a lot more concern. The dad knew. He
20 said, "I can't, I can't...I can't break his habit. I can't bring him around". He had some
21 friends who lived on the side of Atlanta and he was going to come down to Atlanta to
22 stay with them. He would work in that area and get away from the people he knew up
23 there in Connecticut. The car he was driving he actually bought. He bought it from the
24 fellow he was working with at Sparking Image. The title had not been transferred. The
25 tags on the car obviously were some other car. They were already on there when he

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1 bought the car. He came down and he went...he came down the interstate but he went
2 on to Myrtle Beach. He found some drugs in Myrtle Beach. I think he spent a day or so
3 there. Came down through Savannah and his plans was he was still going on over to
4 Atlanta. He was about out of money. He was on drugs that day when he committed
5 this and throughout this entire pursuit that ended up in the collision. Your Honor, I
6 respect the jury's verdict and I realize they heard the evidence and that was their
7 decision. I am convinced that Eric did not try to take his life that day. That he did not
8 try to kill Jonathan Parker in that car. And whether it was the effect of the drugs or not
9 paying attention or the two hour chase he was exhausted, I don't know. I don't think
10 Eric knows. He really can't recall a whole lot about what happened in those last few
11 minutes. The only thing I can add beyond that, Your Honor, is every time I have
12 spoken to him, when I talk to him any other place he truly has remorse about what
13 happened and I think he may want to address the family.

14 THE COURT: Mr. Ridel?

15 DEFENDANT: I don't know what to say. I mean, what I've done is a
16 horrible thing and if I could switch places I would. If I could go back to that day I
17 would have pulled over. If I had known anything like this would have happened...I had
18 no intentions of hurting anyone that day. I just want to say sorry to the family. Sorry to
19 the State of South Carolina. Sorry to the Court. I didn't mean to kill this man. I didn't
20 want to hurt no one that day and I deserve what I get to be quite honest with you
21 because I've accomplished nothing in my life and the man has and I haven't. So I
22 basically deserve whatever I get, you know. In my eyes I had to wake up and look at
23 myself in the mirror every morning and prison life is one thing but looking yourself in
24 the mirror and knowing what you've done, it's something I've got to live with, you
25 know, and like I said I've accomplished nothing. I wasn't a good son. I wasn't a good

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1 husband. I wasn't a good brother. I wasn't a good uncle. I wasn't a good nothing. I
2 just want everyone to know the jury made their decision. I just want everyone to know
3 that I did not purposely kill that man. I have a lot of bad things on my record but I
4 don't have any violence on my record. It's not in me to hurt people. I've got a lot of
5 bad things on my record. But when it came down to hurting people for money I didn't
6 do it. That's pretty much all I have to say, Judge.

7 THE COURT: Thank you, Sir. Mr. Howle, anything else?

8 MR. HOWLE: Your Honor, we'd just like the Court to be aware that
9 he received the thirty year sentence for something that happened that same day in
10 regard to for an ongoing circumstance and we'd like the Court to take that into
11 consideration and determine how much sentence it imposes at this time.

12 THE COURT: All right. The statute governing sentence for murder
13 obviously reflects a mandatory minimum of thirty years is that correct?

14 MR. JACKSON: That's correct, Your Honor.

15 THE COURT: I think that if you ask Mr. Jackson and Ms. Fant even if
16 Major Gardner had not said a word about it, Mr. Jackson and Ms. Fant would not
17 come up to someone today and say, "We won this trial" because what Major Gardner
18 said is one hundred percent correct. The State of South Carolina did not win today. At
19 best, the State of South Carolina obtained a conviction and even though obviously the
20 lawyers from both sides performed admirably but as Major Gardner said this is not a
21 win. This is an awful situation that's culminated in a jury of twelve folks in Sumter
22 County who have issued a verdict that speaks the truth. And the prosecution has
23 received the convictions that they sought but I don't think Mr. Jackson or Ms. Fant
24 would say believably we won. There's no way in the world that anyone could ever
25 remotely understand what the family of Trooper Parker is going through. Everyone in

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1 this courtroom has probably suffered a loss of one kind or another but no one could
2 ever intimate that they understand exactly how they feel. Mr. Ridel has indicated to me
3 that he did not intentionally kill Trooper Parker. Whether or not you call it intent,
4 whether or not you call it malice, reckless disregard, intent on mischief, the jury has
5 received the charge and applied that charge to the facts of this case and have in fact
6 found him guilty of murder. Mr. Ridel says that he has not ever committed any crimes
7 of violence before and be that as it may he has now and that's one of the things I'm
8 taking into account. As I listen to the victim's family I certainly didn't have any
9 particular sentence in mind. As I listen to Mr. Ridel I did not have any particular
10 sentence in mind and I guess whether or not you accept a plea of guilty on possession
11 of cocaine charge or a peeping tom charge, or issue a sentence in a case like this. The
12 hardest job of all as you know is sentencing. I'm prepared to do that in this particular
13 case. Mr. Ridel appears to be a well spoken young man. 36 years old according to the
14 information that I have. He's indicated quite freely that he thinks he deserves whatever
15 punishment he gets and as you all know I do have some discretion under the law
16 imposed sentences on failure to stop for a blue light resulting in death of up to twenty-
17 five years in prison and mandatory minimum on the murder conviction of thirty years
18 up to a sentence of life. Now I don't take that responsibility lightly. Mr. Ridel, the
19 sentence of the Court for the conviction of murder is that you spend the balance of
20 your natural life in the custody of the South Carolina Department of Correction
21 without the possibility of parole. That sentence will run or actually the failure to stop
22 for a blue light resulting in death you will serve a consecutive twenty-five year
23 sentence. Both of those sentences will run consecutively to the armed robbery and
24 strong armed robbery thirty plus fifteen concurrent sentences that you're currently
25 serving now. Mr. Howle, I've given you ten days that you requested on the post trial

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1 motions and Mr. Jackson, is there anything else for me to dispose of before this matter
2 is concluded?

3 MR. JACKSON: Nothing from the State, Your Honor.

4 THE COURT: Mr. Howle?

5 MR. HOWLE: Nothing further at this time.

6 THE COURT: All right. Mr. Ridel, I don't take any pleasure in issuing
7 this sentence. I think it does justice. I have to take things as I see them and in this
8 particular case I think that the sentence I've imposed is a just sentence. All right. Thank
9 you very much.

10 MR. JACKSON: Thank you, Your Honor.

11 THE COURT: If everyone would remain seated until the jury departs
12 and I will also request the jury that for the balance of this week not to discuss this case
13 with anyone who is connected with the trial. I know that the attorneys will abide by
14 that request. You can go home and discuss it with anyone else that you want but I
15 would prefer and it's my request to you that for the rest of the week you not discuss
16 this case with anyone else that you do have prior, excuse me, additional jury services
17 this week. Thank you again for your time. Certainly everyone here thanks you for the
18 time that you spent on this case. Thank you.

19 THE COURT: Mr. Jackson, Ms. Fant, anything else from the State?

20 MR. JACKSON: Nothing from the State, Your Honor.

21 THE COURT: All right, Mr. Howle, anything else from the defense
22 other than the ten days that I granted you for your motions?

23 MR. HOWLE: No, Your Honor.

24 THE COURT: All right. Ladies and gentlemen, if you are also present
25 in the courtroom if we would make sure that the process of filing in and out of the

HEARING

301

1 courtroom continues to be in orderly manner and I do thank every single person in this
2 courtroom who has conducted himself or herself in a very professional manner. Thank
3 you for the court staff for making sure order was maintained. All right. Thank you very
4 much, ladies and gentlemen.

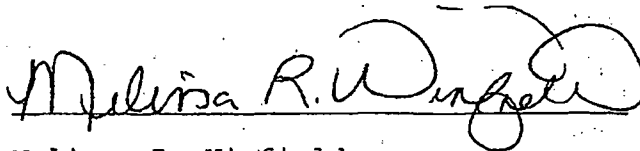
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CERTIFICATE

This is to certify that the hearing in the matter of The State of South Carolina vs. Eric Ridel, consisting of 302pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 20th day of November, 2007.

A handwritten signature in cursive script, reading "Melissa R. Winfield", written over a horizontal line.

Melissa R. Winfield
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

RECEIVED

OCT - 6 2011

RECORDED

Referred to

M. W. M's

2011 OCT -4 PM 3:22

Answered _____

2011-CP-43-1855

STATE OF SOUTH CAROLINA

County of

SumterErio J Ridel #315658

Full name and prison number (if any) of Applicant,

vs.

State

Name of Respondent.

In the Court of Common Pleas

CERTIFIED TRUE COPY
OF ORIGINAL FILEDSherry J. Smith
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAAPPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Sumter Lee
2. Name and location of Court which imposed sentence Sumter Court
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2006 - 65-43-330
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-6-07
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. Sumter Court
 ii. Callenton County
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Still pending
 ii. _____
 iii. _____

(c) the date of each such result:

- i. Still pending
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) I didn't get a fair trial
 (b) ineffective counsel
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) I asked for a change of venue, my
 (b) lawyer told me he did it, but didn't
 (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? yes Direct Appeal
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court? no

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Petition for writ of Certiorari Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 1/6/11
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Jack Howle - Esquire
Sumter County Public Defender 29150
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. All above
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

A new trial

19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA

County of Sumter2011 OCT -4 PM 3:22
VERIFICATIONJ. BELL
CLERK OF COURT
SUMTER COUNTY, S.C.

I, Eric J. Ridel, being duly sworn upc
oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that
cludes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked i
application; and that the matters and allegations therein set forth are true.

E. J. RidelSWORN to and subscribed before me this 22day of Sept19 2011Eugene Keitt (L.S.)
Notary Public

My Commission Expires April 4, 2016

My Commission Expires: _____

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Eric J. Ridel, hereby apply for leave
proceed in this action without prepayment of fees or costs or security therefor. In support of my application I decl
under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

E. J. Ridel
Applicant

SWORN or affirmed to and subscribed before me this

22day of Sept19 2011Eugene Keitt
Notary Public

My Commission Expires April 4, 2016

My Commission Expires

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

2011-CP-43-1855

Eric J. Ridel, #315658,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 4, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted for (1) Murder and (2) Failure to Stop for a Blue Light Resulting in Death (2006-GS-43-0330). Jack Howle, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable George C. James, Jr. Applicant was found guilty, and on June 6, 2007, Applicant was sentenced to life imprisonment.

A notice of appeal was filed and an appeal perfected. Applicant's convictions were affirmed. State v. Ridel, Op. No. 2009-UP-434 (S.C. Ct. App. filed September 9, 2009). Applicant's Petition for Rehearing was denied on October 26, 2009. Applicant's Petition for Writ of Certiorari was denied by the South Carolina Supreme Court on January 6, 2011. The Remittitur was sent on January 12, 2011.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "I didn't get a fair trial."
2. "Ineffective counsel."
 - a. "I asked for a change of venue, my lawyer told me he did it, but didn't."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

For purposes of this Return, Respondent interprets all allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Jan. 11, 2012

State of South Carolina	)	In the Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	2011-CP-43-01855

Eric J. Ridel,

Plaintiff

vs.

State of South Carolina

Defendant.

Transcript of Record

December 10, 2012
Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Judge

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

Megan E. Harrigan, Esq.
Attorney for the Defendant

Charles T. Brooks III, Esq.
Attorney for the Plaintiff

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
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Direct Cross Redirect Recross	
Eric Ridel	
Mr. Brooks	5
Ms. Harrigan	12
Jack Howle	
Mr. Brooks	14
Ms. Harrigan	18
Decision by the Court	22
Certificate Page	23

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>

- NO EXHIBITS -

1 MS. HARRIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. HARRIGAN: Your Honor, the next case is *Eric Ridel*
4 *vs. The State of South Carolina*, Docket No. 2011-CP-43-
5 1855. Applicant was indicted for murder and failure to
6 stop for a blue light resulting in death. Jack Howle
7 represented him.

8 On June 5, 2007, Applicant proceeded to a jury trial
9 before the Honorable George C. James, Jr., where he was
10 found guilty as indicted on both counts. Judge James
11 sentenced Applicant to life imprisonment for murder, and a
12 consecutive 25 years for failure to stop for a blue light
13 resulting in death.

14 A notice of appeal was filed and an appeal was
15 perfected on his behalf. Applicant's convictions were
16 affirmed. Applicant petitioned for a rehearing, which was
17 denied on October 26, 2009. Applicant's petition for writ
18 of certiorari to the South Carolina Supreme Court was
19 denied on January 26, 2011. The remittitur was set on
20 January 12, 2011, and he filed a timely application for
21 post-conviction relief on October 4, 2011, with the sole
22 allegation that trial counsel was ineffective for failing
23 to move for a change of venue.

24 The State made it's return on January 11, 2012, and
25 he's represented in this action by Charles T. Brooks III.

DIRECT EXAMINATION BY MR. BROOKS - ERIC RIDEL

5

1 THE COURT: Okay. Mr. Brooks.

2 MR. BROOKS: We're ready to begin, Judge. We'll call
3 Mr. Ridel to the stand.

4 THE COURT: All right. If you'd come on forward.

5 ERIC J. RIDEL, having been first
6 duly sworn, testifies as follows:

7 THE BAILIFF: State your name, please, and spell your
8 first and last name.

9 THE WITNESS: Eric Ridel, R-i-d-e-l.

10 THE COURT REPORTER: First ---

11 THE COURT: Very good.

12 THE COURT REPORTER: --- first name?

13 THE WITNESS: Eric.

14 THE COURT REPORTER: Spell it, please.

15 THE WITNESS: E-r-i-c.

16 MR. BROOKS: Ready, Judge?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION BY THE MR. BROOKS:

19 Q Mr. -- Mr. Ridel, before we begin, I want to make sure
20 you understand that you got to speak up, and you got to say
21 "yes," "no," "yes, sir," "no, sir," because the court
22 reporter has to take it down.

23 A I understand.

24 Q Just want to make sure you understand that.

25 Now, you've brought this post-conviction relief

1 application. Jack Howle was your lawyer; is that correct?

2 A Correct.

3 Q And that was in this trial here in Sumter County, in
4 front of Judge James; is that correct?

5 A Correct.

6 Q You've raised several allegations requesting this new
7 trial, and one of which in particular that stands out is
8 you feel that Mr. Howle should have requested a change of
9 venue; is that correct?

10 A That's correct.

11 Q Can you -- why do you think that that was important in
12 your case and his failure to do so prejudiced you?

13 A Well, the -- the -- the first time I met Jack Howle,
14 the first thing I asked him -- he said he was going to put
15 a bunch of motions in. The first thing I asked him was I
16 wanted a change of venue. Reason why was because this man
17 was born and raised in this county, and I didn't believe
18 that 12 people could -- I -- I could have a fair trial.

19 So Jack Howle told me -- he said, "Yes. I'm going to
20 put all these motions in, and I'm going to do that."

21 The following time I seen Jack I said, "Jack, did you
22 put that in?"

23 "Yeah, yeah. It's all taken care of."

24 A year goes by; I -- I get sentenced out of another
25 county. I'm sitting in prison; another year goes by, and

DIRECT EXAMINATION BY MR. BROOKS - ERIC RIDEL

7

1 we go in trial in Sumter.. I asked Jack Howle about it. He
2 said, "Ah, I didn't put it in."

3 Now, the whole time I'm -- I'm assuming that this
4 motion has been put in, and basically there was nothing I
5 could do at that point.

6 Q Okay. Now, I -- I noticed in -- in your application
7 that that -- is that really the only issue you had with
8 this particular case ---

9 A No.

10 Q --- was ---

11 A I have other -- I have other issue with ---

12 Q Okay.

13 A --- being that there was 150 police officers in the
14 courtroom. You know, I don't believe that that should be -
15 - you know, I'm looking at the jurors, and the jurors are
16 looking at me like they're terrified, they -- like they've
17 seen a ghost.

18 Q Now ---

19 A And ---

20 MS. HARRIGAN: Your Honor, the State would object, for
21 the record, that this application has not been amended to
22 include any allegation other than that Mr. Howle was
23 ineffective for failure to move for venue. So the State
24 would object to being able to amend at this late date.

25 THE COURT: Okay.

DIRECT EXAMINATION BY MR. BROOKS - ERIC RIDEL

8

1 MR. BROOKS: Judge, I ---

2 THE COURT: All right.

3 MR. BROOKS: --- I would ask for a little bit of
4 latitude. I do think that what Mr. Ridel was talking about
5 probably went part and parcel with the issue about changing
6 venue.

7 THE COURT: Okay. I'll -- I'll allow whatever
8 evidence you have that -- that goes to change of venue
9 issues.

10 MR. BROOKS: Okay.

11 DIRECT EXAMINATION BY MR. BROOKS (continues):

12 Q Mr. Ridel, you -- that issue about, you know, coming
13 into court and seeing all the police officers, you think
14 that was important as far as why Mr. Howle should've asked
15 for a change of venue; isn't --

16 A Absolutely.

17 Q --- that correct?

18 A Absolutely.

19 Q You think that that probably had a impact on the jury,
20 being from Sumter County; is that ---

21 A Absolutely.

22 Q --- correct?

23 A Absolutely.

24 Q Okay. And that's what ---

25 A Not -- not only that, but the county officers also

DIRECT EXAMINATION BY MR. BROOKS - ERIC RIDEL

9

1 told me that I shouldn't have been in county; that they --
2 they feared for my life, because they said that another man
3 that was a relative of him could throw a -- throw a -- or a
4 friend could throw a blast through a store window, come in
5 the county, and get me. So the officers were -- you know,
6 basically, "You're not supposed to be here."

7 Q Okay. All right. Now -- now, Mr. Howle -- that issue
8 of requesting the change of venue, that never came up in
9 your trial; is that correct?

10 A It never came up.

11 Q Okay.

12 A Not that know of.

13 Q Okay. That's the number one thing that you feel Mr.
14 Howle was negligent in your case; is that correct?

15 A Absolutely.

16 Q Is there anything else -- you talked -- you -- you
17 talked to the judge -- you told the judge about the impact
18 of all the officers being in court on the jury, which is
19 why you wanted a change of venue.

20 A Absolutely.

21 Q Is there any -- I want to make sure we get everything
22 out that we want to get out on your case to preserve it.
23 Is there anything we missed?

24 A No.

25 Q And -- and -- and take your time. I mean, this is

1 your day. I just want to make sure we cover

2 A I mean, there's -- I mean, there's a lot of things
3 that -- that I -- that I didn't agree with. But mainly,
4 that I -- mainly, I didn't want to be in -- I didn't want
5 to go to trial in Sumter. That was my main thing. That
6 was my first concern when I spoke to Jack Howle.

7 I said, "I don't care what other motion" -- he said,
8 "Well, I got to do these motions because of this and this
9 and that."

10 I said, "I don't care about that. I want a change of
11 venue. That's the only thing I care about."

12 Q Okay. Now, I know that in -- in reviewing the record,
13 there were other motions that Mr. Howle had raised in terms
14 of court, and the Judge ruled against him. And those
15 issues were addressed on appeal. You're ---

16 A Correct.

17 Q --- aware of that? Okay.

18 And there may have been things in that trial that
19 Judge James may have ruled one way that you didn't agree
20 with.

21 A Correct.

22 Q The -- the -- and that was for the appellate court to
23 deal with. And we're here today to deal with any questions
24 about Mr. Howle's representation, such as not raising the
25 issue about change of venue.

DIRECT EXAMINATION BY MR. BROOKS - ERIC RIDEL

11

1 Is there anything else about Mr. Howle's
2 representation -- and I just want to make sure we get all
3 that out. I know you ---

4 A No. I ---

5 Q --- harped on the change of venue. We -- we got that
6 out for Judge Cothran.

7 A Besides the fact that he just -- I was basically just
8 one week before trial, you know, called -- or somehow was
9 informed that I was going to trial. I -- I really -- I
10 thought I could've been prepared more, but I mean, he did
11 the best with what I believe was, you know, working --
12 working for the prosecution. I believe he did the best for
13 working for them.

14 Q Okay.

15 MS. HARRIGAN: And Your Honor, the State would just
16 like to object for the record that you're ruling was his
17 allegations were just to go towards change of venue.

18 THE COURT: Okay.

19 MR. BROOKS: Okay. All right.

20 DIRECT EXAMINATION BY MR. BROOKS (continues):

21 Q Anything else you want to say before I let the
22 Attorney General ask you questions?

23 A No. I think that's good.

24 Q Okay.

25 MR. BROOKS: (To the witness) Answer any questions

1 then.

2 MS. HARRIGAN: May it please the Court.

3 THE COURT: Yes, ma'am.

4 CROSS-EXAMINATION BY MS. HARRIGAN:

5 Q How many times did you meet with your attorney, Mr.
6 Howle, before trial?

7 A I'd have to say five times maybe.

8 Q And your testimony was that at your first meeting with
9 him, you asked him to move for a change of venue?

10 A Yeah.

11 Q Okay. And his response was that he would ---

12 A -- take ---

13 Q --- do that?

14 A --- care of it.

15 Q Okay.- Did you ever ask him again to move for a change
16 of venue?

17 A Every time.

18 Q Okay. So five separate times you asked him to move --

19 -

20 A Well, I ---

21 Q --- for change of venue?

22 A I don't believe that the fourth or fifth time, but the
23 first three times I made it quite clear this is what I
24 wanted.

25 Q And each time your testimony is that Mr. Howle told

1 you he would move for a change of venue?

2 A That -- I was under the impression that it was done.

3 It was good. It was all set. "Don't worry. Everything's
4 taken care of."

5 Q Okay. And the victim in this case was a state --
6 state trooper, correct?

7 A Correct.

8 Q And that's a state-wide organization, correct?

9 A Sure.

10 Q So there still would be state troopers involved if the
11 venue was moved to another county or circuit in the state -
12 --

13 A Absolutely.

14 Q --- correct?

15 A Yeah.

16 Q Okay. And in regards to your allegation going to
17 venue that there were numerous law enforcement officers and
18 state troopers that were in the courtroom, did they remain
19 in the courtroom for the entire trial?

20 A No. They actually had to go from the big courtroom to
21 the small courtroom. The judge actually -- I don't know
22 what. He was like, "What's going on here? We're going to
23 -- we're going to move from the big courtroom to the small
24 courtroom." And then they filled that up too, so ...

25 Q Okay. So the law enforcement officers all weren't

1 there throughout the entire trial, were they?

2 A Yeah.

3 Q They weren't?

4 A Oh, they were.

5 MS. HARRIGAN: No further questions, Your Honor.

6 THE COURT: Okay. Anything further?

7 MR. BROOKS: No other questions of Mr. Ridel, Judge.

8 THE COURT: All right. (To the witness) You can step
9 down.

10 (The witness complies.)

11 MR. BROOKS: We'd call Jack Howle to the stand.

12 JACK HOWLE, having been first duly
13 sworn, testifies as follows:

14 THE BAILIFF: State your name. Spell your last name
15 and your first name for the record, please.

16 THE WITNESS: Jack Howle, H-o-w-l-e.

17 MR. BROOKS: Ready, Judge?

18 THE COURT: Okay.

19 DIRECT EXAMINATION BY MR. BROOKS:

20 Q Mr. Howle --

21 A Yes, sir.

22 Q -- how are you today?

23 A I'm fine, thank you.

24 Q You were representing Mr. Ridel in this case?

25 A I did.

DIRECT EXAMINATION BY MR. BROOKS - JACK HOWLE

15

1 Q Okay. Did you raise the issue about change of venue?

2 A Did I raise it?

3 Q Yes.

4 A In the discussions we had, quite honestly, I don't
5 recall any in depth discussion of change of venue, because
6 the offense that he had been charged with initially was
7 down in Colleton County. And this was a continuing run, if
8 you will, from the law from there, and the wreck happened
9 in Sumter County. I certainly do not ever recall telling
10 Eric that I had filed a change of venue.

11 Now, he was definitely concerned when the court --
12 when the trial started, when so many of the highway patrol
13 were present.

14 We had a hearing in Judge James' office in regard to
15 that, and the judge did limit the number of officers that
16 could be present; not only because we'd gone in the small
17 courtroom, because he also felt that if 25 or 30 highway
18 patrolmen were sitting there, it could influence the jury
19 in some fashion. So the judge did address that.

20 Q Okay. But for the record, you never asked for a
21 change of venue?

22 A I do not recall ever filing a motion for change of
23 venue, or telling Eric that I had filed one. I know I did
24 not do that. I would never have told him I had filed one
25 if I had not in fact filed it.

1 Q Okay. Now, he was in prison from the Colleton County
2 case. Do you recall how many times you met with him prior
3 to the call of this case?

4 A Those five or six times that he -- he mentioned is
5 probably about correct as far as the number of times we
6 would talk.

7 Q Okay.

8 MR. BROOKS: Beg the Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 (Mr. Brooks confers with the applicant.)

11 Q Mr. Howle, did you -- do you recall ever discussing
12 with Mr. Ridel about requesting the change of venue?

13 A I don't recall any specific discussions about that.
14 I'd like to say one thing: that -- that when the trial
15 started was the first time that he'd really shown this
16 concern about being in Sumter County, as far as I was
17 concerned, when he saw all the officers that were present.

18 And I -- I do remember telling him then that it
19 doesn't matter where we tried it, the -- I'm sure the
20 officers were going to come to show support for the family
21 of -- of the deceased trooper.

22 But we did have the judge limit those officers -- the
23 number of officers who could come into court, when we were
24 actually trying the case.

25 But as far as just having these discussions that Eric

DIRECT EXAMINATION BY MR. BROOKS - JACK HOWLE

17

1 has indicated we had over and over about change of venue,
2 that did not happen.

3 THE APPLICANT: Come on, man.

4 A That did not happen.

5 Q Is it ---

6 THE APPLICANT: That was the first thing I said to you
7 ---

8 Q Is it possible that he may have mentioned in passing,
9 and maybe it may have just gotten lost in translation?

10 A It may have been discussed, but the -- the change in
11 venue was -- had no bearing on this case whatsoever. The
12 conviction did not come about because the highway patrolman
13 may have lived in Sumter or whatever.

14 Now, we made a lot of motions during the trial, and
15 one of them was I thought the charge itself was wrong. It
16 shouldn't have been murder. We asked that -- jury
17 instructions to involuntary manslaughter, and the judge
18 refused to give them.

19 I considered asking for reckless homicide, but the
20 Judge made it very clear in chambers that he was not going
21 to give that as a recommendation.

22 And unfortunately, when he was already found guilty of
23 the armed robbery in Colleton, the conviction of the murder
24 is what triggered the life without parole.

25 Q Yeah. Okay. And so those things are obviously

1 preserved for the appellate court.

2 A Right.

3 MR. BROOKS: Beg the Court's indulgence, Your Honor.

4 THE COURT: Yes, sir.

5 (Mr. Brooks confers with the applicant.)

6 MR. BROOKS: No other questions, Judge.

7 THE COURT: Okay. Anything?

8 MS. HARRIGAN: May it please the Court.

9 THE COURT: Yes, ma'am.

10 CROSS-EXAMINATION BY MS. HARRIGAN:

11 Q Mr. Howle, how long have you been practicing law?

12 A I have been practicing law for -- since 1974, 38
13 years.

14 Q What percentage is criminal defense?

15 A Right now, hundred percent.

16 Q Okay. Do you recall when you were appointed to
17 represent Mr. Ridel?

18 A I don't know what the exact date was.

19 Q Do you recall approximately how long before he went to
20 trial?

21 A I'm sure it was probably at least a year before this
22 case came up for trial.

23 Q And have you had the opportunity to review your file
24 from your representation prior to coming to court ---

25 A I did.

1 Q --- today?

2 A I did.

3 Q Do you recall the number of times you met with Mr.
4 Ridel?

5 A Five times or so is probably about -- about right, as
6 far as the number of times we met.

7 Q Do you have any notations in your file that he ever
8 asked you to move for a change of venue?

9 A I can't recall specific notes, per se. But like I
10 say, if Eric had -- had asked me for that, we would've
11 discussed it. And -- and if I was not going to do it, I
12 would've told him why I didn't think it was his best
13 interest.

14 But I certainly would never have told him I had filed
15 a motion for that if I had not in fact filed it.

16 Q And ---

17 A No question about that.

18 Q --- based on your recollection, he never specifically
19 asked you to move for a change of venue?

20 A What I'm saying is: I don't recall if we had some
21 conversations about that, and he may have raised them. But
22 we would have even discussed it and -- it was not an
23 insistence that I do it.

24 I -- I certainly would not ignore his request if he
25 had one, even if I didn't think it was going to be

1 successful. And I don't think a change of venue would've
2 been granted anyway.

3 Q Would you mind telling the Court why you don't think a
4 change of venue would have been granted in this case?

5 A Well, the offense for which he was initially charged
6 with was down in Colleton. And this happened just to be on
7 the chase that -- that went through Clarendon County and on
8 into here.

9 Now, we did complain that -- we didn't think that the
10 city police in Clarendon should've picked up the chase and
11 probably caused some of the confusion that -- that -- that
12 got him here.

13 But as he was going through Sumter County, he passed a
14 place where the highway patrolman was on the side of the
15 road and the car veered over there and hit him; they
16 charged him with murder.

17 Now, I will -- will say this: During the trial, their
18 -- their expert actually admitted on cross-examination that
19 the brakes were applied before the actual contact with the
20 car happened. And that was another reason why we had moved
21 that it should not be a murder charge, it should be some
22 lesser offense.

23 Q And you did make that ---

24 A We -- we did.

25 Q --- request to Judge ---

CROSS-EXAMINATION BY MS. HARRIGAN - JACK HOWLE

21

1 A Absolutely. We did.

2 Q --- James. Okay. And he denied that request?

3 A He denied it.

4 Q Okay. Do you feel that your client was prejudiced by
5 the venue of Sumter County?

6 A No, ma'am.

7 Q Okay.

8 MS. HARRIGAN: No further questions, Your Honor.

9 THE COURT: Okay. Anything, Mr. Brooks?

10 MR. BROOKS: No other questions, Judge.

11 THE COURT: Okay. You can step down. Oh, I'm sorry,
12 you have no other questions?

13 MR. BROOKS: No. I said "no other questions."

14 THE COURT: Okay. I didn't think so. Okay.

15 MR. BROOKS: Judge, that is the Applicant's case. I'm
16 not sure if the State has anything to present.

17 MS. HARRIGAN: The State does not.

18 THE COURT: Okay.

19 MR. BROOKS: Just -- just briefly, Judge, we feel that
20 lack of request of a change of venue prejudiced Mr. Ridel
21 in this case. We feel that this prejudice warrants him to
22 be granted a new trial with this particular case, and his
23 PCR should be granted.

24 We just feel that obviously a case of this size and
25 this magnitude, that that motion should've been file and

1 should've been addressed, and the lack thereof simply
2 prejudiced my client.

3 THE COURT: Okay.

4 MS. HARRIGAN: And the State feels that the testimony
5 presented shows that Mr. Ridel did not ask Mr. Howle to
6 move for a change of venue. It may or may not have been
7 discussed, but certainly he never told his client that he
8 would move for a change of venue.

9 And Mr. Howle testified that in his numerous years of
10 exclusively criminal defense work, he doesn't believe that
11 moving for a change of venue would've had any bearing on
12 this case whatsoever.

13 So the prejudice prong has certainly fallen short of
14 that standard of the Strickland test. And the State would
15 submit that there's no ineffectiveness of counsel here;
16 that Mr. Ridel did not ask for -- his attorney for a change
17 of venue.

18 THE COURT: Okay. read the transcript in -- in the
19 trial, and let y'all know something in the next day or so.

20 MS. HARRIGAN: Thank you, Your Honor.

21 -- END OF TRANSCRIPT OF RECORD --

22

23

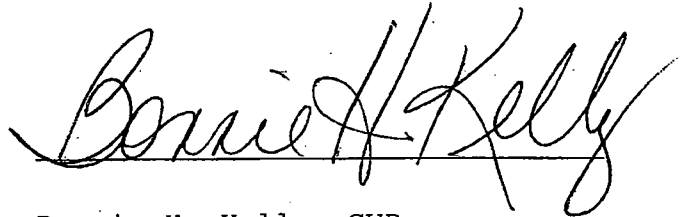
24

25

1 CERTIFICATE

2 I, the undersigned Bonnie H. Kelly, Official
3 Court Reporter for the Fifth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the hearing of the captioned cause,
8 relative to appeal, in the Third Judicial Circuit for
9 Sumter County, South Carolina, on the 10th day of
10 December, 2012.

11 I do further certify that I am neither of kin,
12 counsel, nor interest in any party hereto.

13
14 
15

16 Bonnie H. Kelly, CVR

17 Official Court Reporter

18
19 Columbia, South Carolina

20 May 12, 2013

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2013 JAN 31 PM 4:18

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Eric J. Ridel, #315658,

JAMES C. CAIDY-BELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2011-CP-43-1855

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sandra C. Dickerson

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed October 4, 2011. The Respondent made its Return on January 11, 2012. An evidentiary hearing into the matter was convened on December 10, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted by the Sumter County Grand Jury for Murder and Failure to Stop for a Blue Light Resulting in Death (2006-GS-43-0330). Jack D. Howle, Jr., Esquire, represented him. Applicant proceeded to a jury trial before the Honorable George C. James, Jr., where he was found guilty as indicted on both counts. June 6, 2007, Judge James sentenced Applicant to life imprisonment without parole for murder and to a consecutive twenty-five years imprisonment for failure to stop for a blue light resulting in death.

A notice of appeal was filed and an appeal perfected on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Ridel, Op. No. 2009-UP-434 (filed September 9, 2009). Applicant's Petition for Rehearing was denied on October 26, 2009. Applicant's Petition for Writ of Certiorari was denied by the South Carolina Supreme Court on January 6, 2011. The Remittitur was sent on January 12, 2011.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the sole allegation that Counsel was ineffective for failing to move for a change of venue.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from trial counsel Jack D. Howle, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's trial transcript, Applicant's appellate records, the records of the Sumter County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that he met with Counsel five times before proceeding to trial. Applicant testified that his primary concern was avoiding being tried in Sumter County, as the victim was a lifelong resident of Sumter County and a Senior Trooper with the South Carolina Highway Patrol. Applicant testified that he discussed moving for a change of venue with Counsel three times and during each discussion he requested Counsel move for change of venue. Applicant testified that each time he made this request, Counsel replied, "Don't worry about it, I'll do it." Applicant testified that Counsel informed him he had moved for a change of venue, and Applicant stated he was not aware that Counsel had not moved for a change of venue until he was notified of his trial's stating date a week prior.

Applicant testified he was prejudiced by Counsel's failure to move for a change of venue, as the victim was born and raised in Sumter and the jury could not be impartial. Additionally, Applicant testified that the courtroom was filled with troopers from the South Carolina Highway Patrol during the trial, which also influenced the jury. Applicant did acknowledge that the South Carolina Highway Patrol is a statewide entity and that all of the troopers were not present in the courtroom for the entire trial.

Following Applicant's testimony, Counsel testified that he has been a member of the South Carolina Bar since 1974 and his practice is comprised exclusively of criminal defense work. Counsel further testified that he is the Third Circuit Public Defender and held this position during his representation of Applicant. Counsel testified that he was appointed to represent Applicant approximately one year prior to trial. Counsel stated that he met with Applicant numerous times and Applicant never expressed any concern regarding being tried in Sumter County. Counsel testified that Applicant never asked him to move for a change of venue and that he never told Applicant he would move, or had moved, for a change of venue. Counsel testified that at a pre-trial hearing, Judge James limited the number of Troopers with the South Carolina Highway Patrol that could be present in the courtroom. Counsel further testified that "change of venue had no bearing on this case whatsoever" and that he did not think it was appropriate to move for a change of venue in this case. Counsel elaborated that he does not think Applicant was prejudiced at all by being tried in Sumter County.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Exposure to pretrial publicity does not automatically disqualify a prospective juror. Instead, an Applicant must show that the jury was unable to lay aside any impressions or opinions and could not render a verdict based on the evidence presented at trial. "The relevant question is not whether the community remembered the case, but whether the jurors...had such fixed opinions that they could not judge impartially the guilt of the defendant." Patton v. Yount, 467 U.S. 1025, 1035, 104 S. Ct. 2885, 2891, 81 L.Ed.2d 847, 856 (1984). The defendant bears the burden of showing actual prejudice. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990).

After careful review based on the standard discussed above, this Court finds that the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Applicant testified that moving for a change of venue was his primary concern before trial and that he asked Counsel numerous times to move for a change of venue. However, Counsel's credible testimony sharply refutes this claim, as Counsel testified that Applicant did not ever request a change in venue. Further, Counsel testified that change of venue had no impact on Applicant's trial and he did not think it was appropriate to move for a change of venue in this case. There has been no showing that a motion for change of venue was necessary in the Applicant's trial. Therefore, the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, the Applicant has shown no actual prejudice from any alleged failure. The Applicant has not presented any evidence of a reasonable possibility of a different result had a change of venue been requested. Additionally, Applicant presented no testimony or evidence to show that he was not afforded a fair trial or impartial jury in Sumter County. This Court holds that the Applicant has failed to meet his burden of proof on ineffective assistance of counsel.

CONCLUSION

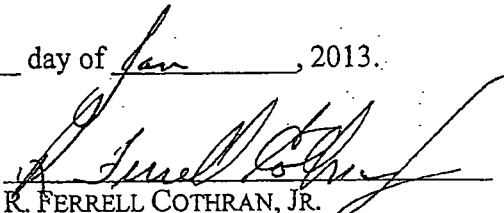
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

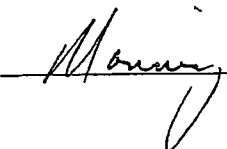
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of Jan, 2013.


 R. FERRELL COTHAN, JR.
 Presiding Judge
 Third Judicial Circuit

, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY

Court of Common Pleas
Honorable R. Ferrell Cothran, Jr. Circuit Court Judge

Case No: 2011-CP-43-1855

Eric J. Ridel.....Appellant

S.C.D.C.6315658

v.

The State.....Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 4th day of February, 2013, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Certificate of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 4, 2013, addressed to the following as indicated below:

South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29211-1589

Office of Attorney's General
Attn: Megan E. Harrigan, Esquire
Post Office Box 11549
Columbia, South Carolina 29211-1549

Eric J. Ridel, 315658
Broad River Correctional Institution
4460 Broad River Road
Columbia, S. C. 29210

Dated: February 4, 2013


Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Sumter, South Carolina 29150
(803) 418-5708

WITNESSES

SHERIFF'S OFFICE

Turner

ARREST WARRANT NUMBER

H907163 (1 & 2)

D/A: 5/20/05

ACTION OF GRAND JURY

*True Bill**Shepherd H. Smith*
Foreperson of Grand Jury

Date: 02/23/2006

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-43- 330

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2006

THE STATE

vs.

ERIC JOHN RIDEL

Indictment for

MURDER AND FAILURE TO STOP
FOR BLUE LIGHT RESULTING
IN DEATH

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR
 MURDER AND FAILURE TO STOP
 FOR BLUE LIGHT RESULTING
 IN DEATH

At a Court of General Sessions, convened on February 23, 2006, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE - MURDER

That ERIC JOHN RIDEL did in Sumter County on or about May 16, 2005, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one Trooper Jonathan Parker by means of driving a vehicle at an excessively high speed and ramming into the rear of the highway patrol car being operated by Trooper Jonathan Parker, and that the said Trooper Jonathan Parker did die as a proximate result thereof.

COUNT TWO - FAILURE TO STOP FOR BLUE LIGHT
 RESULTING IN DEATH

That ERIC JOHN RIDEL did in Sumter County on or about May 16, 2005, violate Sections 56-5-750(A) and 56-5-750(C)(2) of the Code of Laws of South Carolina (1976), as amended, in that while operating a motor vehicle upon the public streets or highways in the State of South Carolina, the said ERIC JOHN RIDEL failed to stop for a blue light or siren when signaled by law enforcement vehicles driven by deputies of the Clarendon County Sheriff's Office and when driving, the defendant performed an act or acts forbidden by law or neglected a duty imposed by law in the driving of the vehicle; all resulting in the death of Trooper Jonathan Parker of the South Carolina Highway Patrol.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED

Anna M. Prescott
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

P. Kelly Jackson
 SOLICITOR