

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI FROM COA
APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Hon. Donald Hocker, Circuit Court Judge

Appellate Case No. 2022-000571

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S.C. SUPREME COURT

State of South Carolina..... Respondent,

vs.

Adam Rowell Petitioner.

APPENDIX
VOLUME III

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1 alcohol. You don't do that. It's unethical.

2 Q Right. So no studies have been done to confirm this?

3 I mean, I guess that's another reason why you can't rely on
4 these numbers; is that correct?

5 A Well, that's correct. There's just no studies have
6 been done to show when you replace this much blood volume is
7 the alcohol level the same as it was when you first started.
8 If we had had a gas chromatographic analysis off the blood
9 right at the get-go and then one at the end maybe we would
10 have had better comparisons. But we don't have that in this
11 case.

12 MR. HENDERSON: One moment, Your Honor.

13 THE COURT: Sure.

14 Q Is the analysis that the State -- assuming that they
15 would try to use -- try to turn this 18 into a 9, basically
16 because all this blood was replaced it would cut his alcohol
17 level in half, is there any science to back that up?

18 A No, sir. None whatsoever.

19 Q Can you tell His Honor why?

20 A You would have to -- to do that you'd have to use a
21 process called retrograde extrapolation. And retrograde
22 extrapolation has been reported in the scientific literature
23 to be unreliable. The Court's have found it to be
24 unreliable in a lot of cases as well, too. And it's because
25 what you're trying to do is you're trying to back up to a

1 point in time and say what a level was at a point in time.

2 You simply can't do that.

3 Q It sounds like they're taking four hours and a lot of
4 blood cutting it in half and saying this 18 becomes a 9?

5 A It sounds like that's what the Solicitor was doing.

6 Yes, sir.

7 Q And you don't believe there's any validity to that?

8 A No, there's not. As I said, there's no studies that
9 have been done to show that in a person that is on life
10 support that they're going to eliminate alcohol like a
11 normal person would. There's absolutely no studies to
12 validate that.

13 Q So in your professional opinion, that would not be a
14 reliable argument to make or to rely on?

15 A Not from a scientific standpoint. You can't -- there's
16 no way you can back it up. You got to be able to back it up
17 with some kind of scientific literature and I don't know any
18 that would back that up.

19 Q Okay. And, Doctor, maybe I just want you to clarify,
20 make sure I understand it properly. That on this front page
21 of your analysis where it says 60 percent of the blood
22 volume was replaced. And that's higher than what Dr. Snow
23 testified to, right?

24 A He was -- he was testifying only to what he was given
25 during surgery. Okay? And I included that was given during

1 transport and the ER, as well as on the way to surgery.

2 Q So you've included it all?

3 A I've included it all.

4 Q And Dr. Snow didn't?

5 A He did not.

6 Q And again on the second page you're talking about
7 fluids, and in the front pages is blood, correct?

8 A Correct. I separated them out so we clearly wouldn't
9 try to mix the two together.

10 Q So in theory you would have to add these two numbers
11 together about the total volume that --

12 A Yes, it would be the total volume. That's correct.

13 Q And if my math is correct, it would be 221.7 percent of
14 his --

15 A That would be real close, yes.

16 Q And that's over two times what he would have at any
17 given time?

18 A Yeah, that's what this is all telling us is that he had
19 -- about two and a half times his normal volume was
20 replaced.

21 Q And again, you just don't believe it's reliable to rely
22 on that?

23 A Correct.

24 MR. HENDERSON: Nothing further, Your Honor.

25 THE COURT: Anything further from the State?

1 MR. BLACK: I don't think so, no.

2 THE COURT: Okay. Thank you very much, Dr. Valentine.

3 THE WITNESS: You're welcome.

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 THE COURT: In light of the fact that Dr. Valentine is
7 not attacking the reliability of the methodology and science
8 behind the SLED testing and the procedures that they use,
9 he's only attacking the reliability of the results itself, I
10 am not going to suppress the results at this time, assuming
11 that everything else comes into play properly to get the
12 results in. And certainly in the Defense case and chief
13 they can put up Dr. Valentine to offer that same line of
14 testimony. And this is in no way an indication that I don't
15 believe that Dr. Valentine's expert opinion and his
16 testimony was not a good sound basis. I'm sure it is. But
17 again, he's not attacking the methodology of the test, just
18 the results, and that would go to the weight.

19 Anything further before -- is your toxicologist here?

20 MR. BLACK: I think she's here. Can I step out just
21 real quick to check?

22 THE COURT: Sure.

23 MR. GARRETT: And, Your Honor, very brief, just to be
24 clear. I understand His Honor's ruling. And again, the
25 only way you get to the validity of their testing sample is

1 based upon the sample that went into the machine. I just
2 want to be clear that -- I guess His Honor is finding as a
3 threshold matter that that sample that went into the machine
4 is reliable.

5 THE COURT: Well, what I'm finding is is that you're
6 wanting me to suppress the results simply because your
7 expert disagrees with the validity of the results. But what
8 I have to look at is, assuming the SLED toxicologist has the
9 proper credentials to be declared an expert in that field of
10 toxicology, and the method that she used, that's what I have
11 to determine is reliable. And you want to attack the
12 results. So I am not making a finding that the results
13 itself is reliable, nor did I make a finding that the
14 results from the hospital test was reliable. The
15 methodology and the procedure I found to be reliable. Okay?
16 So let's make sure I'm clear, Mr. Henderson.

17 MR. HENDERSON: Thank you.

18 MR. BLACK: Thank you, Your Honor. He went to get Ms.
19 Brown.

20 THE COURT: Okay.

21 (Whereupon, there was a brief pause in the
22 proceedings.)

23 THE COURT: Does anybody need a little short break
24 before we start back?

25 MR. HENDERSON: And, Your Honor, with the Court's

1 permission, I would like to ask the SLED chemist a couple of
2 questions related to my in camera motion for Dr. Valentine.

3 THE COURT: For what purpose, Mr. Henderson?

4 MR. HENDERSON: Basically, Your Honor, assuming -- and
5 again assume that the methodology is fine. We're not
6 attacking the methodology. We're talking about a
7 potentially corrupted sample that comes into their
8 methodology. And again, it may be her opinion that, hey, if
9 we've got a corrupted sample coming into our methodology, we
10 can't rely on our methodology.

11 And again, that doesn't go to her methodology. Let's
12 assume her methodology is right for the sample that she got
13 for purposes of this argument.

14 THE COURT: So again, it's the receiver, not the sender
15 here. You're wanting to find out from her specifically
16 what, Mr. Henderson?

17 MR. HENDERSON: Right. Assuming for the sake of this
18 argument -- like Dr. Valentine said, assume that the
19 methodology that SLED uses is fine for this particular test.
20 The issue is if a corrupted sample was what got tested, is
21 that a reliable result if the sample that got tested is
22 corrupted. And again, it has nothing to do with it being a
23 proper analysis.

24 THE COURT: Again, you can cross-examine her and if she
25 -- I mean, let's be practical about this. If she

1 acknowledges, yeah, my sample was corrupted, therefore my
2 results aren't any good, then certainly, you know, the
3 jury's not going to use that. I mean, I'm not going to
4 allow any more in camera testimony.

5 MR. HENDERSON: And just to preserve our record, Your
6 Honor, we believe that -- and respecting the Court's ruling,
7 but believe it's burden-shifting that the Court's making us
8 prove that it's not reliable instead of the State proving
9 that it is reliable. I just want to make sure that's on the
10 record.

11 THE COURT: So noted. Let's bring the jury out.

12 (Whereupon, the jury entered the courtroom at 10:52
13 a.m.)

14 THE COURT: Let the record reflect the jury is back in
15 the courtroom. Good morning ladies and gentlemen. Again,
16 it's been pretty much standard in this case. We've had a
17 lot of issues to deal with and we've been working every
18 since you got here this morning about 9:30. So we had to
19 deal with those issues before we could continue.

20 Solicitor, you want to call your next witness?

21 MR. BLACK: Yes, sir, Your Honor. Thank you. The
22 State calls Jennifer Brown.

23 JENNIFER BROWN, having been first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BLACK:

2 Q Ms. Brown, would you please introduce yourself to the
3 jury, please.

4 A My name is Jennifer Brown.

5 Q And where do you work, Ms. Brown?

6 A I work at the South Carolina Law Enforcement Division
7 commonly known as SLED.

8 Q How long have you been at SLED?

9 A A little over 10 years.

10 Q And what kind of -- what kind of -- before we jump into
11 your duties at SLED tell us a little bit about your
12 education.

13 A Sure. I have a Bachelor of Science in chemistry at the
14 University of South Carolina, but most of our training is
15 done extensively in-house at SLED. So we have an extensive
16 in-house program to do most of the training to tell us --
17 show us what we do and interpretation, everything we need
18 for our job. So the first part is blood alcohol training.
19 So we have a series of lectures that we have to go through
20 with tests and have to pass those. And then we go ahead and
21 analyze samples for the presence or absence of ethanol and
22 other volatiles. And we have to do an x-amount of those
23 samples, which is generally over 500. And then after all
24 that we're given a competency test and a written test. We
25 have to pass that. If we don't pass that then I wouldn't be

1 here. And then from there we go on to our drug training.

2 And once again, we go through all the different classes of
3 drugs, learn all about those that we can. And then at the
4 end of that part of the training then we do another -- I
5 guess you would say test. More like a mock trial. And then
6 if we don't pass that then I wouldn't be here once again.

7 Q And so, at SLED you primarily test samples that contain
8 alcohol and drugs; is that correct?

9 A Sure.

10 Q Do you test other things?

11 A We test a lot of different stuff for toxicology; blood,
12 ocular tissues, urine, moonshine, some other random stuff
13 that they sometimes bring in, too.

14 Q So you're in the toxicology department?

15 A Correct.

16 Q And how many -- you said you've been there, what, 10
17 years?

18 A Uh-huh (affirmative.)

19 Q How many samples would you estimate having tested over
20 the course of 10 years?

21 A Ballpark, a good question. SLED in itself as
22 forensics-wide gets probably at least 16,000 cases in every
23 year. So then, I don't know, maybe a third of those go to
24 toxicology. And then depending on how many people we have,
25 what we call online, so working active cases, maybe another

1 six of that. So I think generally somewhere between maybe
2 three to 500 a year.

3 Q And have you ever appeared in Court before?

4 A Yes.

5 Q And what have you -- like criminal cases?

6 A Yes.

7 Q How many times have you appeared to testify as an
8 expert?

9 A Over 10.

10 MR. BLACK: Your Honor, at this point the State offers
11 Ms. Brown as an expert in forensic toxicology.

12 THE COURT: Okay. What says the Defense?

13 MR. GARRETT: Judge, we were wondering, did she just
14 say she had a degree in biology?

15 THE COURT: Quite honestly, I could not hear what she
16 said.

17 THE WITNESS: I'm sorry.

18 VOIR DIRE BY MR. GARRETT:

19 Q I was just trying to --

20 A I'm sorry. In chemistry.

21 Q You have a degree in what?

22 A Chemistry.

23 Q In chemistry?

24 A Uh-huh.

25 Q Do you have a Bachelor's in biology?

- 1 A No.
- 2 MR. GARRETT: Beg the Court's indulgence.
- 3 Q Is that marine science?
- 4 A I do have one in marine science. But I also have mine
- 5 in chemistry, which is what focuses on what I do.
- 6 Q You have a degree in both?
- 7 A I have a degree in both, yes.
- 8 Q Was that a minor?
- 9 A No, they're both Bachelor's.
- 10 Q Both Bachelor's degrees?
- 11 A Uh-huh.
- 12 Q You have transcripts for those?
- 13 A Not with me, but yes.
- 14 Q But you do?
- 15 A Yeah.
- 16 MR. GARRETT: All right, Your Honor. Subject to that,
- 17 fine.
- 18 THE COURT: Very good. I find that Ms. Brown is an
- 19 expert in the field of forensic toxicology. You may
- 20 proceed.
- 21 MR. BLACK: Yes, sir. Thank you.
- 22 Q Ms. Brown, can you walk us through kind of the process
- 23 that SLED received the items from different agencies around
- 24 the State.
- 25 A Sure. Depending on who it's from either they can bring

1 the evidence in-house to us or they can actually mail us
2 evidence. But generally that's all brought into our login
3 department. And our login department will receive the
4 evidence, give it a unique identifier, which is generally a
5 bar code. And if I may, it's something similar to this.
6 That's just my case jacket. But it'll be something similar
7 to that so everybody has their own bar code, so it goes
8 along with the evidence. They're given that. We get all
9 the information that we need. It's put into a heat sealed
10 pouch, sealed and initialed, and any information that needs
11 to be on that pouch is on that pouch. Then it's placed into
12 our toxicology refrigerator in the login department and then
13 someone from SLED toxicology department, one of our
14 technicians generally will come down to our login department
15 and then grab that evidence. Bring it back upstairs,
16 inventory it and take pictures of it. And then we'll put it
17 back in the pouch, seal it, initial it, date it, and then it
18 goes on to further testing depending on what it needs.

19 Q Are you specifically the person that usually receives
20 these items?

21 A Depending on what part of the chain, but yes.

22 Q When they first come into the law enforcement agency?

23 A No. That would be the login department.

24 Q So not one of the forensic scientists? Somebody -- a
25 technician or somebody that works at SLED?

1 A Uh-huh.

2 Q Eventually these items get placed -- you receive these
3 items that you have to test, correct?

4 A Correct.

5 Q The items that you receive, are they usually sealed up?

6 A Yeah, they're in a heat sealed pouch.

7 Q And can you describe kind of the packaging and sealing
8 which you receive items in?

9 A I mean, it's kind of hard to explain if I don't have --
10 sorry. But it's basically kind of like a plastic bag, but
11 it's temper evident and -- well, not quite that. But temper
12 evident. And so, if you were to cut into it I would clearly
13 know. But -- and then you heat seal it with a heat sealer
14 and then initial and date it, like I said.

15 Q And does it usually have like a label on it or some
16 kind of --

17 A Oh, yeah. I don't have our -- the bar code for each
18 case, and depending on if it's a container, if it's an
19 individual item, and then the information that goes along
20 with it. Usually like the case number for the department
21 that sent it in. Which department sent it in. And then
22 it'll tell you, too, like who brought it in. It'll have
23 their initials, their dates, all that type of stuff.

24 Q If it appears that an item had been tampered with does
25 SLED have different policies and procedures of how you all

1 handle that?

2 A Yes. So if we thought it had been tampered with then
3 we would stop doing anything, because they would usually
4 find that on inventory. And so, we would stop and generally
5 go to our supervisors and say, okay, well, how do you want
6 us to proceed. He'll let us know how he wants us to proceed
7 and it goes from there, just depending on what he makes the
8 decision.

9 Q And so, you would make a note of it somehow, correct?

10 A Oh, yes.

11 Q And in this particular case was it tampered with in any
12 way before it got to you?

13 A Not to my knowledge.

14 Q Do you specifically remember testing these items?

15 A Not specifically. Like I said, we test a lot of
16 samples. So not specifically this one.

17 Q I'm showing you what's been marked as State's No. 71.
18 Can you identify this for us, please, ma'am.

19 A Sure.

20 Q What is that document?

21 A This is -- I'm comparing it to the one I have. It's
22 the chain of custody that we -- that we prepare.

23 Q And is this done in the normal course of business at
24 SLED?

25 A Yes.

1 Q And I see that there's a number that starts with an L14
2 at the top. What is that number?

3 A That's the lab number that comes in. So each case will
4 be given it's own lab number and login, and that's the one
5 associated with this case.

6 Q And so, that number stays with the samples throughout
7 the entirety of while it's at SLED?

8 A Yeah. It's bar coded and everything.

9 Q How many pages do you have there?

10 A Six.

11 Q And that would be --

12 A I believe.

13 Q -- a normal chain, correct?

14 A Yes. Yes.

15 MR. BLACK: Your Honor, State moves No. 71, I believe,
16 into evidence.

17 THE COURT: Okay. Wait one second.

18 MR. HENDERSON: One second, Your Honor.

19 THE COURT: Sure, take your time.

20 MR. GARRETT: Your Honor, may we -- may we approach?

21 THE COURT: Sure.

22 (Whereupon, a sidebar was held.)

23 THE COURT: Solicitor, go back just a little bit in her
24 questioning concerning the chain, because evidently I missed
25 something.

1 Q All right. So this is an internal chain from SLED,
2 correct?

3 A Correct.

4 Q How many items eventually were -- how many items came
5 to SLED underneath this lab number?

6 A Four.

7 Q And it went through several hands at SLED before it
8 eventually got to you; is that correct?

9 A Yes.

10 Q All the items?

11 A Yeah.

12 Q And so, you testified previously that if there -- if
13 the seals had been broken or if anything of that nature
14 happened you would have made a note on it?

15 A Uh-huh, or anybody before me. Yes.

16 Q And did you make a note on it in this case?

17 A No.

18 MR. BLACK: Your Honor, the State is trying to move
19 this document into evidence.

20 MR. GARRETT: Subject to our sidebar objection --

21 THE COURT: And previous --

22 MR. GARRETT: -- Your Honor, and what was number?

23 THE COURT: Certainly. So noted. Is that, what, 71?

24 All right. 71 into evidence for the State.

25 (Whereupon, State's Exhibit No. 71 was admitted into

1 evidence.)

2 MR. BLACK: Thank you, Your Honor.

3 Q The first item that's on this chain of custody sheet,
4 it looks like it was -- what is that item?

5 A Item one is an ocular fluid sample, so eye fluid, from
6 Jeremy D. Cockrell.

7 Q And what about item two?

8 A Is a blood sample also from Jeremy D. Cockrell.

9 Q And you eventually -- you received these items; is that
10 correct?

11 A Yes.

12 Q To test?

13 A Yes.

14 Q And there were several techs that it had passed through
15 their hands; is that right?

16 A Or toxicologists, yeah.

17 Q And different toxicologists as well?

18 A Uh-huh.

19 Q And you eventually tested these items; is that correct?

20 A Correct.

21 Q I'm showing you what's been marked as State's No. 2.

22 Do you recognize -- or 72. I apologize. Do you know what
23 that document is?

24 A It's the SLED report for Jeremy D. Cockrell.

25 Q And in this report you've got two items; is that right?

- 1 A Correct.
- 2 Q And what items did you test on Mr. Cockrell?
- 3 A The ocular was tested along with the blood.
- 4 Q And tell the jury what the ocular is?
- 5 A Just the eye fluid. So fluid from your eye.
- 6 Q And you eventually -- you ran a report of that; is that
- 7 correct? Of those two items?
- 8 A Yes.
- 9 Q Of the ocular did you -- what did you test and what did
- 10 you find?
- 11 A The ocular was tested for volatiles including ethanol,
- 12 which is what you get when drinking alcohol. And so, that
- 13 reported negative. And then you said the blood, too?
- 14 Q Was there anything else that you tested from the
- 15 ocular?
- 16 A No, that was just it from the ocular.
- 17 Q So no ethanol in his system according to the ocular?
- 18 A Correct.
- 19 Q You also tested the blood; is that right?
- 20 A Correct.
- 21 Q Did you test ethanol as well?
- 22 A Yes, ethanol was also tested.
- 23 Q And this was all Mr. Cockrell still?
- 24 A Uh-huh.
- 25 Q And what was the result of that?

- 1 A Negative.
- 2 Q And did you test for other items in his system?
- 3 A Yes. We also tested -- we screened for different
- 4 drugs, from different drug classes. So amphetamine,
- 5 benzodiazepines, cocaine metabolite, methadone,
- 6 methamphetamine, opiates, Oxycodone, Tramadol and sulpadone.
- 7 And then another one that isn't necessarily on that list
- 8 which is cannabinoids, which is where you see the positive
- 9 result on there.
- 10 Q So on this chart, all the drugs that you previously
- 11 mentioned before the -- what was the last one? I'm sorry.
- 12 How did you pronounce it?
- 13 A Cannabinoids?
- 14 Q Yes.
- 15 THE COURT: Spell that for us, please.
- 16 THE WITNESS: C-a-n-n-a-b-i-n-o-i-d-s.
- 17 Q And that's basically marijuana, right?
- 18 A Correct.
- 19 Q So he tested negative for alcohol and then amphetamines
- 20 and cocaine metabolites, methamphetamine, Oxycodone,
- 21 Tramadol. All those drugs, correct?
- 22 A Yes.
- 23 Q But he tested positive for marijuana?
- 24 A Correct.
- 25 Q In layman's terms.

- 1 A Sure.
- 2 Q And what was that result?
- 3 A We have a result of 2.6 of the 11
- 4 carboxy-tetrahydrocannabinol, which is a metabolite of
- 5 marijuana.
- 6 Q What does that mean?
- 7 A It means sometime prior he had smoked marijuana.
- 8 Q And how far in advance? Can you tell us that?
- 9 A Not really. We like to have the parent drug there to
- 10 give you kind of a timeframe of using it. Not having that I
- 11 can't really tell you, unless we knew if someone was an
- 12 acute user or a chronic user.
- 13 Q What is the parent?
- 14 A The parent is what we consider the active component of
- 15 marijuana which is tetrahydrocannabinol.
- 16 Q So was there active -- was there an active component in
- 17 his system?
- 18 A No.
- 19 Q There was not an active component?
- 20 A Not in this sample, no.
- 21 Q So all you can tell from this result is he had smoked
- 22 marijuana sometime prior?
- 23 A Correct.
- 24 Q What's the furthest out that he was -- you would have
- 25 been able to tell from this, or could you?

- 1 A Not really. Not knowing the use.
- 2 Q If it's chronic? If he used it every day or --
- 3 A Right.
- 4 Q -- once a week or --
- 5 A Right.
- 6 Q -- once a month?
- 7 A Right. Or used for a long time and then stopped and
- 8 used once, you know, after that.
- 9 Q So you really -- you really just don't know?
- 10 A Huh-uh.
- 11 Q And you would be able to know if you had the active
- 12 component, but you don't have the active component?
- 13 A Correct.
- 14 Q And you tested -- that was the blood that screened for
- 15 the marijuana?
- 16 A Correct.
- 17 Q But there was nothing else that was in Mr. Cockrell's
- 18 system?
- 19 A Not that we tested for, no.
- 20 Q You also ran a test on the Defendant in this case, Mr.
- 21 Rowell; is that correct?
- 22 A Correct.
- 23 Q I'm showing you --
- 24 MR. HENDERSON: Just subject to our prior objection
- 25 this morning, Your Honor.

1 THE COURT: Certainly.

2 Q I'm showing you what's been marked as State's No. 73.

3 THE COURT: Let me ask you, Solicitor. Exhibit 71, the
4 chain of custody, is that for both Cockrell and Mr. Rowell,
5 or not?

6 MR. BLACK: Yes, sir. It is. And, Your Honor --

7 THE COURT: Because it's all -- all at the same time,
8 right?

9 MR. BLACK: Yes, sir. They were all under this one --

10 THE COURT: I just wanted to make sure.

11 MR. BLACK: And, Your Honor, the State moves No. 72
12 into evidence.

13 THE COURT: Okay. Subject to previous objections that
14 will be put on the record --

15 MR. GARRETT: Subject to our prior objections.

16 THE COURT: Yes.

17 MR. GARRETT: Yes, without objection, Your Honor, as to
18 that.

19 THE COURT: Okay. Without objection on 72.

20 MR. GARRETT: Is that on that as well?

21 MR. BLACK: No.

22 MR. GARRETT: Then we have no objection to Mr.
23 Cockrell.

24 (Whereupon, State's Exhibit No. 72 was admitted into
25 evidence.)

1 MR. GARRETT: Judge, we need to have another sidebar.

2 THE COURT: Okay.

3 (Whereupon, a sidebar was held.)

4 THE COURT: Ladies and gentlemen, we're going to take a
5 short morning break. So if you'll go back to the jury room
6 and we'll get you back out shortly.

7 (Whereupon, the jury exited the courtroom at 11:15
8 a.m.)

9 (Whereupon, a recess was held from 11:15 a.m. to 11:36
10 a.m.)

11 THE COURT: We're going to send the jury home for lunch
12 now. We'll probably have them come back about 1:30 just to
13 give us enough time to do whatever needs to be done
14 concerning this witness and otherwise. So bring the jury
15 out, please.

16 (Whereupon, the jury entered the courtroom at 11:36
17 a.m.)

18 THE COURT: Let the record reflect the jury's back in
19 the courtroom. Ladies and gentlemen, kind of like
20 yesterday, to avoid you having to spend -- you've spent
21 enough time back in this jury room, and to avoid any
22 extended periods of time leaving you back there I'm going to
23 to go ahead like we did yesterday and send you on home for
24 an early lunch, and if you can be back at 1:30. That's
25 going to give you two hours. So -- but again, it's -- we've

1 got issues that we have to deal with, and I know you'd
2 rather be elsewhere out somewhere instead of just sitting
3 back -- back here. So if you'll be back at 1:30. Again,
4 remind you no discussion among yourselves or anyone else you
5 come into contact with. Thank you for your patience and
6 your understanding, and we'll see you back at 1:30.

7 (Whereupon, the jury exited the courtroom at 11:36
8 a.m.)

9 THE COURT: As soon as our witness gets back then we'll
10 take some in camera testimony from her so I can make a
11 definitive ruling on this issue about how much of the
12 overall test that she actually did. So let's just be at
13 ease until she gets back.

14 (Whereupon, a brief recess was held.)

15 (Whereupon, Court's Exhibit Nos. 14 and 15, headspace
16 logs, were marked for identification.)

17 THE COURT: We are back on the record and an issue
18 arose concerning what involvement that Agent Brown had with
19 the SLED analysis of the blood for purposes of blood alcohol
20 content. Had in chambers conference with the lawyers. I
21 think they had just an informal conversation with Agent
22 Brown. So we're going to take some in camera testimony of
23 her and see exactly what she says -- give the Court an
24 opportunity to see exactly what she says and then we can
25 make a decision on the SLED results. So I'm going to go

1 ahead and allow -- Solicitor Black, you want to go ahead and
2 examine her first and allow Defense to examine her and then
3 we'll go from there.

4 MR. BLACK: Yes, sir. Thank you, Your Honor.

5 IN CAMERA DIRECT EXAMINATION

6 BY MR. BLACK:

7 Q Ms. Brown, do you have the -- I think it's State's 73
8 which is the toxicology report on Mr. Adam Rowell.

9 A Yes.

10 Q Is that up there?

11 A Yes.

12 Q And your name is at the end of that report, correct?

13 A Correct.

14 Q How were you involved in this particular sample? Well,
15 first, what did you test?

16 A The --

17 Q Or what was tested?

18 A The blood was tested, and tested for ethanol and then
19 other volatiles. And then a drug screen was performed, a
20 general drug screen, and confirmation of anything found.

21 Q And the results -- this is in camera, but there was a
22 -- it was a positive test for ethanol; is that right?

23 A Correct.

24 Q It was a positive test underneath that for isoflurane?

25 A Correct.

- 1 Q Am I pronouncing that correct?
- 2 A Yeah.
- 3 Q There was a bunch of negative reports on the next page;
- 4 is that right?
- 5 A Several, yes.
- 6 Q Amphetamines and cocaine metabolites and different
- 7 prescription drugs, right?
- 8 A Yes.
- 9 Q And then there was another positive test for -- can you
- 10 pronounce that word for me?
- 11 A Diphenhydramine.
- 12 Q Which is essentially Benadryl, right?
- 13 A Correct.
- 14 Q And that was a result of 4.9?
- 15 A Correct.
- 16 Q There was a positive test for Lidocaine?
- 17 A Yes.
- 18 Q Positive test for -- you'll have to help me with this
- 19 one.
- 20 A Just MEGX. That's what we generally call it.
- 21 THE COURT: You're probably going to need to spell some
- 22 of these terms that we're not familiar with, please.
- 23 THE WITNESS: Sure. Which one would you like me to
- 24 spell?
- 25 A So Diphenhydramine, d-i-p-h-e-n-h-y-d-r-a-m-i-n-e. And

- 1 then Lidocaine, L-i-d-o-c-a-i-n-e. And then
2 monoethylogoyinexlidade. I have a problem trying to say it.
3 It's
4 m-o-n-o-e-t-h-y-l-g-o-y-c-i-n-e-x-y-l-i-d-i-d-e.
5 Q And the abbreviation is MEGX?
6 A Correct.
7 Q He tested positive for that one?
8 A Correct.
9 Q And then he tested positive for -- what was the last
10 one?
11 A Midazollam. M-i-d-a-z-o-l-l-a-m.
12 Q And that's Versed essentially?
13 A Correct.
14 Q And then the urine was not screened, right?
15 A No.
16 Q How many -- how many analysts worked on this particular
17 test for Mr. Rowell?
18 A Give me one moment.
19 Q And I think that Mr. --
20 MR. BLACK: Did you make this?
21 MR. HENDERSON: I think it's already been made a
22 Court's exhibit, Your Honor.
23 A This one?
24 Q Yes.
25 A And I don't have anything on it for a Court exhibit.

1 THE COURT: Let's mark is as a Court exhibit, which
2 would be 14.

3 MR. HENDERSON: Your Honor, I think they're already
4 marked.

5 THE WITNESS: Oh, I just don't have the marked one.

6 THE COURT: What number is that?

7 MR. BLACK: Court's 14 and Court's 15.

8 Q You can just refer to that, Ms. Brown, to answer the
9 other questions. How many analysts -- or how many forensic
10 scientists, toxicologists worked on Mr. Rowell's blood
11 report?

12 A Besides me just one other.

13 Q Who was that?

14 A Stacey Matthew.

15 Q Now, what particular involvement did you have?

16 A So the way that it's tested at work there's a level one
17 and a level two. It's not that one's better than the other.
18 It's just how we phrased it. Level one does blood alcohol
19 and drug screens, and then if it needs further work it goes
20 to level two. And I'm part of level two. So level one
21 would be the drug screens, which is what Stacy did, and then
22 level two. So anything that tested positive for a drug
23 screen or needed for work, like a general drug screen
24 looking for other drugs, then it comes to me.

25 Q So were you always classified as a level two?

1 A In this situation, yes.

2 Q What about Stacy? Is she always classified as a level
3 one?

4 A No, because she's now a level two.

5 Q When did she become a level two?

6 A Oh, that's a good question. I couldn't really tell
7 you, because she concluded her training, so now she's level
8 two.

9 Q So in this particular -- in this particular sample what
10 did she test?

11 A She would have tested -- sorry, let me pull it out. It
12 looks like the blood for the volatiles and then for the drug
13 screen. The general -- or the drug screen. Not the general
14 drug screen.

15 Q And what did you do?

16 A Then I would have received a sample and then pipetted
17 it up for what it needed. So confirm anything that
18 screened positive. So benzodiazepines would have screened
19 positive, so we would have gone after that to see what, you
20 know, benzodiazepine specific that was. And then a general
21 drug screen was done. So we kind of look for a wider range
22 of drugs. And so, that's where we get the diphenhydramine,
23 Lidocaine, and then to shorten it, MEGX.

24 Q And what about the ethanol? Did you rescreen that?

25 A No. Everything's done in that part in level one, and

1 then I get the reports, read through everything, go over the
2 QC that's already been gone over once before, or twice
3 before, and accept it.

4 Q So you have to kind of reaffirm that report?

5 A Correct.

6 Q And then you do -- basically you do an essential --
7 another drug screen on the other items that you just
8 mentioned previously?

9 A Right, because we call it a general drug screen,
10 because the one that's at the top of the page only looks for
11 certain drugs. This one can look for a wide range of drugs:
12 So not just what we're looking for which is, what, seven or
13 so of them.

14 MR. BLACK: Judge, that's all the questions I have on
15 this subject.

16 THE COURT: Mr. Garrett.

17 CROSS-EXAMINATION

18 BY MR. GARRETT:

19 Q I understand you don't remember this. It's been a
20 while back. In order for you to be able to look at your
21 records you would need the records themselves, wouldn't you,
22 to see who did what?

23 A The case jacket, yes.

24 Q Are you telling the court then that TAM -- who is TAM?

25 A Can you show me where you're looking at? Sorry.

1 Q Let me just do this first and then you can try to help
2 us. Okay?

3 A Okay.

4 Q My notes say that TAM did the Benadryl test, TAM did
5 the blood for drug test, TAM did the liquid and the --
6 liquid chromatography and the mass spectrography, I guess?

7 A Sure.

8 Q For the Fentanyl. TAM did the Versed. A CJT did the
9 Benadryl. Then you got KAB doing the -- a drug screen and
10 STM doing an Amyl and a CJT doing the opiates, on this
11 --

12 A Okay. That was a lot.

13 Q -- on this --

14 A I would have to see exactly what you're saying. But
15 those seem to be all the initials of the different people in
16 my department.

17 Q I understand.

18 A Yeah.

19 Q I'm just trying to figure out. These people, according
20 to your notes, or these records --

21 A Right.

22 Q -- just like we showed you on the alcohol --

23 A Right.

24 Q -- are the persons who are identified in your records
25 have done all these other tests.

1 A So I guess the best way to explain it to you is I will
2 pipette a sample and put it in a rack where it's all
3 labeled, identified, everything else. And then each person
4 has their own confirmation they do, because if I had to go
5 through and do everything in this case and then do that for
6 every single case we have it would take a while. So we
7 consider that batched. So like for right now I'm
8 responsible for confirming all the urine opiates and
9 cocaines. So I will take all the samples there for that and
10 run all those. So when you have something like this then
11 you'll see my initials on that for that. In this case it's
12 Stacy for this one.

13 Q I've got initials for -- I've got the same kind of
14 thing for each of those people that have just -- I've got
15 the documents right here. I've got all of them.

16 A Sure.

17 MR. GARRETT: Mark these as Defendant's -- or Court's
18 exhibits, Judge.

19 (Whereupon, Court's Exhibit Nos. 16, 17, 18, 19, 20 for
20 identification.)

21 THE COURT: Mr. Garrett, aren't we kind of focusing on
22 the alcohol testing and not as concerned with the others?

23 MR. GARRETT: Well, we are. And it's more complicated
24 because it gets into one part where there is something in
25 his blood that only a diabetic could have, and I need that

1 analyst -- whoever did that test if we're going to talk
2 about reliability of this blood. I promise I'm not wasting
3 time, Judge.

4 THE COURT: I'm not -- I'm not suggesting you're doing
5 that.

6 MR. GARRETT: I'm trying to get here as quick as I can.
7 Have we given them a copy? I need a copy. Let me let you
8 be looking at these while I'm getting copies to counsel.

9 THE WITNESS: Sure.

10 Q Have you had a chance to look at those?

11 A Give me one more moment. Sorry. The one that's --
12 this one, 17, you just had the one page? Not the whole
13 packet? Because there's 18 pages it says that go with that.
14 And the same for the rest of these. You just wanted the
15 front pages of all of these?

16 Q I just want the name of the operator for what I'm
17 trying to do. And if we have to get into the 18 pages, we
18 can. I'm just trying to do the operator right now.

19 A Sure.

20 Q Now that you've got that, can I ask you the following
21 questions.

22 A Sure.

23 Q Did Stacey Matthew do the ethanol testing?

24 A Hold on. Yes.

25 Q Who is TAM?

- 1 A That's Tracy McKennen.
- 2 Q Who?
- 3 A Tracy McKennen. And that's actually a guy.
- 4 Q McKennen. Did he do the Benadryl?
- 5 A I'm not sure what you're referring to that one, but I
- 6 don't see anything that says that for that one.
- 7 Q Who did the blood drugs?
- 8 A Can you be a little more specific?
- 9 Q So who did the test on Benadryl? Can you tell from
- 10 those records who did the test on Benadryl?
- 11 A You have to be more specific, because there's a screen
- 12 and a confirmation.
- 13 Q Who did the screen?
- 14 A So the screen, I would have pipetted the sample and we
- 15 have an analyst that would have run the batch of the --
- 16 Q Please tell me who the analyst was.
- 17 A I don't know if I can tell you just the -- or the
- 18 screen for this, because there's nothing on the front page
- 19 to tell me.
- 20 Q Who is CJT?
- 21 A That's Carmen Tucker.
- 22 Q Carmen Tucker?
- 23 A Yeah.
- 24 Q Who is R. Sears?
- 25 A Robert Sears.

- 1 Q Robert Sears. Who is KAB?
- 2 A K. Bogdon.
- 3 Q Kelly Ogdon?
- 4 A Bogdon. Don't ask me to spell that one. I always get
- 5 it wrong.
- 6 Q And who is STM? That's Stacey?
- 7 A That's Stacey, yeah.
- 8 Q And CJT? Same thing?
- 9 A Yeah.
- 10 Q And let me just tell you what my records indicate so we
- 11 can kind of get through this kind of quick.
- 12 A Okay.
- 13 Q Would you disagree with me that Stacey Matthews did the
- 14 alcohol testing?
- 15 A Correct, yeah.
- 16 Q That TAM did Benadryl, blood drugs, liquid
- 17 chromatography and mass spectrometry for the Fentanyl?
- 18 A Okay. I'd have to see. None of the stuff you handed
- 19 me has any of that.
- 20 Q The TAM -- well, let's just make sure we know you have
- 21 an issue with. The TAM did the Versed?
- 22 A I don't have anything up here for that.
- 23 Q And CJT did the Benadryl?
- 24 A Without having the other pages I can't really tell you,
- 25 because I only have the run list.

1 Q And R. Sears did the validation for the unit?

2 A The headspace for the blood -- yeah. The blood
3 alcohol, yes. He did the calibration for what you have for
4 me.

5 Q KAB did a drug screen?

6 A Is that the one you're talking about? If this is the
7 one you're talking about, the analyst that pipetted it out
8 was Stacey, and then the person that actually analyzed it
9 would have been KAB.

10 Q KAB which was Kelly --

11 A Yes, Bogdon.

12 Q And CJT again for opiates?

13 A I'm not sure on that one because I don't have that
14 either.

15 Q I've got the whole book here. You want me to look --

16 A I mean, if you want to look through my case jacket that
17 might be more helpful.

18 Q Do you have it your case jacket?

19 A Well, I don't have all of this, but I have everything
20 that it took me to report out.

21 Q Look and see what you've got. I've got -- I have the
22 complete book. I'll let you look at it.

23 A Okay.

24 Q Can you tell me who did what test?

25 A Sure, okay. So once the sample -- I pipe it out from

1 the blood. It looks like Tracy would have ran the general
2 drug screen.

3 Q Can I ask you to give me the full name of the person.

4 A Do you want the middle name, too, because I don't know
5 that? But it's Tracy McKennen. And then -- sorry. There's
6 the general, but it's on the GC and the LC, so it's a
7 two-parter on my data.

8 Q Who did that?

9 A That was Tracy McKennen.

10 Q So she did -- not only did she do blood drugs, what
11 else did she do?

12 A He.

13 Q He?

14 A Yeah. That was the general drug screen. And like I
15 said, that was on the gas chromatograph, and then the liquid
16 chromatograph.

17 Q And that was where the Fentanyl was found?

18 A I don't have any Fentanyl. But -- oh, if you're
19 talking about that. Yeah. There's not --

20 Q Did he do that testing?

21 A -- there's nothing positive for Fentanyl. And then,
22 once again, the sample would have been pipetted out, and
23 then in the batch run Tracy would have run the
24 benzodiazepine, which is where you get Midazolam.

25 Q I'm sorry. Which one? The --

1 A That would be the Versed.

2 Q Versed?

3 A Yeah, that's the Midazolam.

4 Q Benadryl --

5 A Yes. And then once again the sample would have been
6 pipetted out by me, and then in the batch Carmen, it looks
7 like, did the diphenhydramine, which is Benadryl.

8 Q And then we've got -- did Tracy McKennen also do
9 something on Benadryl?

10 A Not unless you're considering the general drug screen,
11 but I went through and found the Benadryl.

12 Q My notes here indicate that it was one that found the
13 Benadryl.

14 A Well, when a general drug screen is pipetted out he
15 just extracts it. I actually go through that whole sample
16 and find all the drugs in it. So I would have -- so they're
17 individually and some of this you're not going to be able to
18 see. But there's little peaks and I sit there and go click,
19 click, click, click, click. Do this whole thing on the
20 computer in the software and find all the drugs that --

21 Q I'm just asking who on your records are indicted to do
22 the tests.

23 A Who extracted it? Actually like physically took the
24 samples and -- sorry, there's no better way to explain it.
25 But extracted it as Tracy and then I went through it.

1 Q I understand you went through it later. But then Kelly
2 Bogdon did the general drug screen?

3 A No. That was Tracy. Tracy would have extracted the
4 general drug screen. I don't know where you're getting
5 Kelly.

6 Q What did Kelly Bogdon do then?

7 A I think the only thing we said was that she was the
8 technician that ran the drug screen. So -- which is the
9 general drug screen.

10 Q That's what I was asking. She did the drug screen, and
11 STM did the amyl. What is the amyl? Is there anything
12 called amyl? And then CJT, who is that again?

13 THE COURT: Mr. Garrett, the court reporter is having a
14 hard time understanding.

15 MR. GARRETT: I'm sorry.

16 THE COURT: And I realize what we're dealing with.
17 Okay?

18 MR. GARRETT: I'll try to cautious and try to help her.

19 Q And the opiate test was done by whom? My notes say
20 CJT. Can you confirm that?

21 A Opiate test. I'm not sure what you mean by opiate
22 test. I mean, there's the drug screen.

23 MR. GARRETT: Beg the Court's indulgence.

24 Q Looking through those papers that I handed you up just
25 a few moments ago, is there anything in there about an

1 opiate test? Anything at all about an opiate test? TAM on
2 the opiate test?

3 A Hold on.

4 Q I'm sorry. I think we -- I think we've got all of it.

5 THE WITNESS: May I also add something to this?

6 THE COURT: Sure.

7 THE WITNESS: Even -- even when I get all of this --
8 sorry. I know you don't have in all these. But when I get
9 back the data I review everything myself. It's already been
10 reviewed by a reviewer to say, yeah, this is acceptable
11 data. Then I will receive the data, and then I will go
12 through all those QC reports and say it's acceptable or not.
13 So even if someone else extracted it, because we have to
14 batch things just because of all the samples we get in, I
15 still have to go back and review it. Make sure the QC,
16 everything worked. The quality control, the controls
17 worked, everything. Then I okay it, and that's why it's in
18 my report. And not only that, then after that happens then
19 I also have someone that reviews my case jacket and then
20 goes, okay, this is acceptable. And that's why we have a
21 report.

22 THE COURT: But my understanding, ma'am, is that
23 concerning the alcohol, that is done level one, correct?

24 THE WITNESS: Correct.

25 THE COURT: And what you're just referring to as far as

1 the -- your review and that sort of thing, that's all
2 related to the drugs, correct?

3 THE WITNESS: Well, even with the alcohol. Because
4 when I get the case jacket from level one it'll have the
5 alcohol and the drug screens and all that in there. I go
6 back and review all that, too.

7 THE COURT: Right. But the actual workup is done, in
8 this case, by Stacey?

9 THE WITNESS: She would have pipetted out the samples,
10 run it on the instrumentation, got the report, signed it,
11 got the QC, and then on to me, so...

12 THE COURT: All right. Thank you very much.

13 THE WITNESS: Sure.

14 THE COURT: Anything else in camera with respect to
15 this witness?

16 MR. BLACK: Nothing, Your Honor.

17 THE COURT: You can step down but don't -- don't leave
18 quite yet. Okay?

19 THE WITNESS: Okay. Do you have, like, all the stuff.
20 There's a lot of --

21 THE COURT: Yeah, take your time, because I know that
22 some stuff is yours and some stuff is exhibits. So yeah,
23 take your time.

24 (Whereupon, the witness steps down from the witness
25 stand.)

1 THE COURT: Solicitor, you were wanting to say what?

2 MR. BLACK: Yes, sir. Before you made a ruling on
3 anything I just wanted to let the Court know that Stacey
4 Walker, she is on her way. She will be here at 1:40, just
5 to let the Court know that, before ruling.

6 THE COURT: Well, I mean, I was going to require that
7 -- I mean, I was not going to allow Jennifer Brown to
8 testify as to the alcohol results without having the other
9 technician come here, too. But if you're telling me that
10 Stacey -- you say Stacey Walker is her name?

11 MR. BLACK: I believe that she has been identified as
12 the individual that ran the alcohol screen. Yes, sir.

13 THE COURT: I wrote down Stacey Matthew.

14 MR. BLACK: Matthews. I apologize. Matthew.

15 THE COURT: So, I mean, if the -- so we got two SLED
16 toxicologist who did the alcohol then -- then we can proceed
17 forward. Now, quite honestly, as it relates to any
18 testimony related to the drugs, I'm very confused as far as
19 -- and again, it's the hearer, it's not the sender, confused
20 as far as Ms. Brown's involvement with the drug testing and
21 how much she did and how much other folks did.

22 MR. BLACK: Well, to me, Judge, it sounds -- and from
23 being in this area, from what I understand there's an
24 initial drug screen that happens, and then it goes to the
25 analyst to further identify specific drugs, and Ms. Brown

1 was the -- is the individual in this case that identified
2 the specific drugs. After -- everything that comes in goes
3 through an initial drug screen. So somebody sticks that on
4 kind of just the lab machine and it runs the initial drug
5 screen, and then the sample goes to further be tested for
6 each particular one that they -- they're trying to test.
7 Ms. Brown's the one that did that in this case and she needs
8 to be able to testify about it.

9 And Judge I think -- I'm sorry. I'm saying Stacey
10 Walker. I think he plays for the Texas Rangers. I've got
11 baseball on my mind for some reason.

12 THE COURT: All right. Mr. Garrett?

13 MR. GARRETT: That's not the only problem that they've
14 got, Your Honor, with this in order to get -- in order to
15 have to validate the test that they ran, and that does
16 require a technician and it does require a technician after
17 that to run the -- so, I mean, without that person to
18 validate the test then --

19 THE COURT: Right.

20 MR. GARRETT: -- the people that took the test --

21 THE COURT: And you're alluding to the drug portion of
22 --

23 MR. GARRETT: No, sir. I'm alluding to the alcohol
24 test included.

25 THE COURT: Well, the only two people that touched the

1 alcohol testing completely was Stacey and Jennifer, right?
2 Is there anybody else? I didn't hear anybody.

3 MR. BLACK: Stacey did it, apparently, and then the
4 result went to Jennifer. She verified it. And she verified
5 all the drugs --

6 THE COURT: I'm not talking about drugs right now. I'm
7 --

8 MR. GARRETT: R. Sears is someone who set up the
9 machine and validated it.

10 MR. BLACK: That sounds like -- to me it sounded like a
11 calibration, Judge.

12 MS. BROWN: Right.

13 THE COURT: Wait a minute. You need to come back up
14 here. You don't need to bring your stuff. Hopefully you
15 don't need it.

16 (Whereupon, Jennifer Brown returns to the witness
17 stand.)

18 THE COURT: Agent Brown, who else other than you and
19 Stacey had any involvement whatsoever with respect to
20 alcohol testing?

21 THE WITNESS: So the calibration is done with every
22 batch of t-Butanol, so that's -- I shouldn't say once it's
23 done. But it's done once, calibrated, and then it's -- and
24 then there's a person that individually does this. That's
25 Stacey. So -

1 THE COURT: Well, when you say does this --

2 THE WITNESS: Sorry.

3 THE COURT: -- that doesn't help, Ms. Brown.

4 THE WITNESS: Sorry. I apologize. That ran the blood
5 alcohol. So Sears -- Robert Sears would have done the
6 calibration for the instrument, but beyond the calibration
7 he has no involvement in --

8 THE COURT: Right.

9 THE WITNESS: -- the running of the samples.

10 THE COURT: But now, every time alcohol testing is done
11 at the level one stage is the machine calibrated?

12 THE WITNESS: No.

13 THE COURT: Is it calibrated -- how frequent is it
14 calibrated?

15 THE WITNESS: Basically whenever -- we have our
16 internal standard. Whenever our internal standard runs out
17 then it gets recalibrated.

18 THE COURT: And on an average -- let me just ask it
19 that way. On an average how often is it calibrated?

20 THE WITNESS: I would be badly guessing, but maybe a
21 month or two. And then -- may I additional --

22 THE COURT: Okay.

23 THE WITNESS: But there's controls run with every
24 batch, so that's how we can verify that our calibration is
25 still good.

1 THE COURT: So as far as alcohol testing in general,
2 Robert Sears would not touch every single alcohol testing
3 case?

4 THE WITNESS: Oh, no. He's basically just doing the
5 calibration for the instrumentation.

6 THE COURT: Other than Robert Sears, as far as this
7 alcohol testing, it was just you and Stacey, correct?

8 THE WITNESS: Correct.

9 THE COURT: All right. Based upon -- based upon her
10 testimony, assuming Stacey gets here to testify, I'm going
11 to allow the alcohol portion to come in. Again, as far as
12 the drugs, we'll just have to explore this further. I'm
13 just -- it's no reflection on you, ma'am. Okay? But I'm
14 just really confused as far as to what extent this lady can
15 testify as to drugs and not be allowed to testify as to
16 drugs.

17 MR. BLACK: Yes, sir. And I don't know if you want me
18 to further inquire or if you actually want to inquire about
19 how the screening works and then how the process works with
20 Ms. Brown. I mean, I can ask. We can go through this
21 again. But if you have direct questions that you would
22 rather ask to clarify that, Judge, maybe it would be better
23 if you asked her. And I can ask her questions, Judge, if
24 you would like me to go there.

25 THE COURT: Go ahead.

1 REDIRECT EXAMINATION (IN CAMERA)

2 BY MR. BLACK:

3 Q Now, Ms. Brown, there's a general drug screen that gets
4 done, correct?

5 A Sure.

6 Q What is that?

7 A So the general drug screen, as I said before, is
8 looking for a wide range of drugs. So we're not looking
9 just for opiates or amphetamines or that. So in this case
10 we can find the diphenhydramine, the Lidocaine. Is it
11 possible also to see some of the other drugs that were
12 screened for in the sense of opiates, amphetamines, yes.

13 Q Now, who did -- who did the general drug screen on this
14 one?

15 A That's over there. I'm sorry. To remember, I believe
16 it was Tracy McKennen.

17 Q I think I heard Tracy McKennen's name about 40 times.
18 Does that ring a bell?

19 A Yes.

20 THE COURT: But is -- let me ask you this. Is the
21 general drug testing a prerequisite for any work that you do
22 with respect to drug testing?

23 THE WITNESS: Okay. I guess the best way to explain it
24 is, so once I find what needs to be done, I take the
25 evidence and I say, okay, these are the tests that need to

1 be done. So I go and pipette out other samples. So I go
2 into the evidence bag and I grab the test tube that the
3 blood's in, and I get my pipette and just pipette it out
4 into what needs to be done. So then that goes into a rack
5 in our refrigerator for whatever needs to be done. So those
6 are general's rack, a benzodiazepines rack and whatever. So
7 then whoever's responsible for that class of drugs or that
8 quant will take that rack and run them. Now, everything is
9 labeled and -- like you'll see it on top of all the
10 paperwork. So everything's labeled. And so, then when all
11 that's done the results come back to me. I review the QC,
12 review everything and okay it or not okay it. And then once
13 everything's finished that's reported out.

14 THE COURT: The actual -- I'm going to use the term,
15 legwork, is actually done by others and not you, correct?

16 THE WITNESS: It just depends on what it is, because I
17 have my own or confirmation that I do. So in this case I
18 wouldn't have done any of the extractions.

19 THE COURT: And is extraction, is that important to
20 doing drug testing?

21 THE WITNESS: I mean, sure. That's how we get the drug
22 out of the sample and be able to analyze it.

23 THE COURT: I mean, just looks like to me you have to
24 have others here.

25 MR. BLACK: Well, Judge, I mean, I hear what you're

1 saying. But if that were the case you would essentially
2 have to shut down SLED to get every toxicologist to come
3 testify in a court, which it sounds like they all kind of
4 work together as a team. She does the initial -- or initial
5 screening gets done. The results come back to her. If
6 something doesn't, you know, stand out right then she has to
7 send it back. She has to specifically do a test. And then
8 -- but if it doesn't, then it continues on down the line. I
9 mean, your ruling -- you know, I'm afraid your ruling will
10 essentially, you know, shut down SLED for the foreseeable
11 future for any -- for any case where they were analyzing a
12 substance, because according to your ruling you have to have
13 everybody there that -- that did anything. Even the initial
14 drug screening, Judge.

15 THE COURT: But now, isn't this case somewhat unusual
16 or not common because you've got a whole slew of drugs
17 involved?

18 MR. BLACK: I don't think so.

19 THE WITNESS: No.

20 MR. BLACK: This is standard SLED -- this is how they
21 do it at SLED every single day, Judge.

22 THE COURT: But if -- I'm just going to pick out a name
23 that I wrote down.

24 MR. BLACK: Okay.

25 THE COURT: If whatever Kelly did, if that is a vital

1 part, an important part of the overall process to determine
2 the existence of a particular drug alleged to have been in
3 the Defendant's system, is that not important to have that
4 person here?

5 MR. BLACK: Judge, I think it's the same exact scenario
6 with the medical blood draw, because ultimately the
7 machine's doing the work and it's got to be verified by a
8 SLED agent. And so -- I mean, I guess they could wheel in
9 the machine, but the machine can't testify, Judge. The
10 machine is actually doing the hard work in these case.

11 THE COURT: I think we're mixing apples and oranges
12 here, equating this situation with the dilemma that we had
13 yesterday as it relates to the Abbott machine at Greenville
14 Hospital System. I think it's an entirely different
15 situation.

16 Mr. Garrett, do you want to be heard on this?

17 MR. GARRETT: I've practiced 33 years and I've never
18 seen even an attempt to take blood from 14 other people, put
19 it into your client, or the Defendant, and then try to test
20 it, and then try to have one person come in and testify,
21 well, this is what all what we found, without explaining the
22 science of it to help the jury understand. If he's got
23 Versed in him, for God's sakes he didn't take any Versed.
24 He's got Propofol. Unless he's Michael Jackson he's not
25 going to have Propofol in his system.

1 So yeah, I'm sorry. We're getting into the -- you
2 know, to the grass here, maybe even all the way down to the
3 grains of granules. But, you know, there's a lot of --
4 they've indicted him for drugs and alcohol.

5 MR. BLACK: We've indicted him for felony DUI which is
6 alcohol, drugs, or a combination of the two. So that's
7 inaccurate.

8 THE WITNESS: May I talk to something that he said?

9 THE COURT: Sure.

10 THE WITNESS: It is our standard policy and procedure
11 to do kind of what he said. With every single case if we
12 find, okay, well, these five cases need benzodiazepines run,
13 it's all going to be pipetted out -- I mean, we're going to
14 take each -- sorry, I don't have the document anymore. But
15 each bag individually, open it up, pipette out what we need.
16 Everything's labeled, everything's with the case number and
17 everything that was done. It's sealed. My initials are on
18 it with the date, but to the side, next case. And then
19 that's going to be put in the rack and then those run.
20 Because otherwise we'd be having one case and about -- I
21 don't know, 10 controls for one case and we would not
22 function as a laboratory. So that's why we consider
23 batching. So one person's going to be in charge of this.
24 One person is going to be in charge of that. And so, we --
25 everybody's got their own stuff for their own case. And so

1 -- and it's common procedure, because we'd be shutting down
2 labs just to do one case. And there isn't enough time in
3 the day for me or anybody to go through every single case
4 and do every single extraction to find everything that we
5 find. It's just -- it's not plausible.

6 MR. GARRETT: Your Honor, my constitutional -- my
7 client's constitutional rights are a lot more important than
8 that, period.

9 MR. BLACK: And, Judge, he has every right in
10 cross-examination to talk about the lab process and how the
11 general screen works and how all that works, and his --

12 MR. GARRETT: She didn't do it.

13 MR. BLACK: His constitutional rights are protected
14 through cross-examination. Judge, I don't think that -- I
15 don't think that your ruling affects that.

16 THE COURT: Well, I don't think my ruling would
17 necessarily control other judges in so far as shutting down
18 SLED in future cases.

19 So, Agent Brown, is it fair to say that -- all right.
20 Let's say Kelly. We're using Kelly again. If Kelly does
21 not find the presence of a particular drug that she's
22 looking for, then that never gets to you, right?

23 THE WITNESS: Depending on the type of case.

24 THE COURT: Okay. Well, in some situations yes and
25 some situations no. Okay?

1 THE WITNESS: Correct.

2 THE COURT: So -- so she would be an important part of
3 this process, would she not, because she's the one that
4 initially finds the drug.

5 THE WITNESS: If you're talking about Kelly in the
6 sense that she operated the instrument, then maybe. But
7 Stacey's the actual one who pipetted out the sample. So
8 took the blood and pipetted it out, put it into a vial, and
9 then going on to the instrument from there.

10 THE COURT: Well, then, Stacey then. I mean, I'm just
11 using Kelly as an example. I don't know what involvement
12 Kelly had. But you're saying then Stacey would then take --
13 go the next step. And wouldn't Stacey's involvement be
14 important?

15 THE WITNESS: Sure.

16 THE COURT: All right. Well, you know, we can -- we
17 can beat this all day long. I'm going to allow her to
18 testify conditioned upon Stacey being here as it relates to
19 alcohol testing. But without the other technicians involved
20 in the drug testing process I'm going to suppress any
21 evidence from this witness for the State.

22 Okay. We got -- we got about a half hour for lunch.
23 We'll be in recess until 1:30.

24 (Whereupon, the witness stepped down from the witness
25 stand.)

1 (Whereupon, a lunch recess was held from 1:02 p.m. to
2 1:45 p.m.)

3 MR. GARRETT: Judge, can we sidebar before we start?

4 THE COURT: Yeah.

5 (Whereupon, a sidebar was held.)

6 THE COURT: Let's get the jury out.

7 (Whereupon, the jury entered the courtroom at 1:51
8 p.m.)

9 MR. BLACK: Jennifer Brown.

10 THE COURT: She's already been sworn in before the
11 jury. Ms. Brown, you've already been sworn in, so if you'd
12 take a seat on the witness stand, please, ma'am.

13 (Whereupon, the witness returned to the witness stand.)

14 THE COURT: I believe we are still in the middle of
15 direct examination. Solicitor, you may proceed.

16 MR. BLACK: Thank you, Your Honor.

17 DIRECT EXAMINATION RESUMED

18 BY MR. BLACK:

19 Q Ms. Brown, just briefly. You work at SLED, right?

20 A Yes.

21 Q You're a toxicologist?

22 A Yes.

23 Q And in this particular case there were items that were
24 sent to SLED, right?

25 A Correct.

1 Q What were those items again?

2 A There was ocular from Jeremy Cockrell. There was blood
3 from Jeremy Cockrell. Blood from Adam, and I'm sorry if I
4 pronounce it wrong, Rowell. And then urine also from Adam.

5 Q And what ultimately go tested? I know that we've
6 already talked about Mr. Cockrell, but in terms of Mr.
7 Rowell.

8 A Yeah.

9 Q And don't -- don't tell us what -- well, there were
10 items that were tested from the blood, right?

11 A Yes.

12 Q A few more specific?

13 A Yes.

14 Q And you said you're a toxicologist; is that right?

15 A Correct.

16 Q Ultimately what -- what as your involvement in the
17 items that were tested?

18 A My involvement is once samples get to us from what we
19 considered level one, so level one just has blood alcohol
20 and drug screens, it needs further work, it will come to
21 another toxicologist that's in what we consider level two.
22 And that's just distinguishing one versus the other. So
23 level two will see, okay, did anything screen positive on
24 the drug screen. Let me pipette out that and have it run
25 for whatever needs to be run for. So if it's positive for

1 benzodiazepines, then we're going to send that to a
2 benzodiazepine, for confirmation depending on what the
3 sample is.

4 THE COURT: Can you slow down just a little bit,
5 please.

6 THE WITNESS: Yes. I apologize.

7 THE COURT: That's okay. Not a problem.

8 A So, like I was saying, if something screens positive,
9 we're going to go and confirm it or quantitate it depending
10 on what type of sample it is. So, and then also depending
11 on what needs to be done, a general drug screen which will
12 look for a little bit of everything will also be done. And
13 that's case depending.

14 Q But the general drug screen -- this is always done on a
15 sample?

16 A It just depends on the type of case, because we get
17 DUIs, death, rape cases. A little bit of everything.

18 Q Now, in this particular case who ran the alcohol
19 screen?

20 A The alcohol was run by Stacey Matthew.

21 Q Okay. And then did you end up looking at her results?

22 A Yes. I would look at the results in my case jacket and
23 I'll review all the data that I received, along with the
24 quality control packets for that.

25 Q And the machine that got this result, do you know what

- 1 machine she used?
- 2 A What specific machine, or just the type of machine?
- 3 Q The machine that was used to test it.
- 4 A The instrument that we used for the headspace gas
- 5 chromatograph, which has also a mass spec on it, too.
- 6 Q And this type of machine, is this a -- is this like a
- 7 standard machine you guys use at SLED?
- 8 A Yes, it's a standard instrumentation that we use.
- 9 Q And how -- how -- can you -- without going into too
- 10 much of the details, how does this machine test the alcohol?
- 11 A Simply, if you pipette out your sample you place it on
- 12 the instrument, and -- well, there's a whole bunch of QC
- 13 that goes into everything. But just in general it goes onto
- 14 an instrument. It runs through the instrument, and we'll
- 15 get a screen printout of what it's found and what it didn't
- 16 find. There's a whole bunch of different science stuff that
- 17 goes into it, but general basics.
- 18 Q And that was the machine you used to test the alcohol
- 19 in this case?
- 20 A Correct.
- 21 Q And so, Ms. Matthew, she was a level one, you said?
- 22 A At the time, yeah.
- 23 Q And is she a level one now still or is she --
- 24 A No, she's level two.
- 25 Q Okay. And in this case you were a level two?

- 1 A Yes.
- 2 Q So what was your task regarding this case?
- 3 A So in this case, if -- in whatever screened positive
4 for the drug screen, then I would have gone ahead and
5 confirmed or quantitated, and then because the case called
6 for it, a general drug screen was done, too. And I would
7 have pipetted that out for the general drug screen.
- 8 Q So you just continued to kind of reaffirm her results?
- 9 A Right. And if there was anything else that we needed
10 to find.
- 11 Q And I'm showing -- I'm going to show you what's been
12 marked as State's -- I'm showing you what's been marked as
13 State's 73. Do you recognize that document?
- 14 A Yes.
- 15 Q And just generally what is that document?
- 16 A This is the report that I issue once we get all of our
17 findings, all of the data back. So it shows what's screened
18 positive, what our confirmation results are. Everything's
19 on there.
- 20 Q And just before we get into that. Do you sign off on
21 it on the end? On the --
- 22 A Yeah. My signature on the last page.
- 23 Q And you confirm everything that's been run?
- 24 A I look for all the QC. Make sure all the QC was good.
25 Make sure everything worked properly, and then issue my

1 report. And then that's also -- before that, someone else
2 also reviews all the data that comes to me additionally.
3 And then when I'm done with everything and they say, okay,
4 here's my report, then someone else reviews that, too, to
5 make sure everything's in line.

6 Q So you've been qualified as an expert in toxicology; is
7 that right?

8 A Correct.

9 Q Now, generally what is -- what is the study of
10 toxicology? What is that?

11 A So basically all we're doing is looking for the
12 presence or absence of drugs. So that can be alcohol. That
13 can be your common drugs. But like I said, the presence or
14 absence. And then because we're analysts, we interpret
15 those and find our result. Give our results to courts, or
16 to a coroner, or an officer, or anybody that's involved in
17 the case that calls us.

18 Q And you understand how the metabolism process works
19 for alcohol in a person? Are you familiar with that?

20 A Yes.

21 Q Can you explain to the jury how alcohol metabolizes in
22 a normal human being.

23 A I mean, in general metabolism is just your body's
24 way of getting rid of the drug. So an ethanol, when it
25 metabolizes, it just goes out of your system and there's a

1 constant rate that it generally does, depending on the value
2 you have. And that can change depending on your metabolism,
3 but there's a general rate in which that happens.

4 Q And what is that rate?

5 A It's a 0.015 percent per hour.

6 Q Say that again. I'm sorry.

7 A Sorry. 0.015 percent per hour.

8 Q Per hour. Okay. And so, if a person were at a certain
9 level and then you were to, let's say, four hours or five or
10 six hours, whatever it would be, would you be able to give
11 another percentage of what they should be?

12 A Yes. Using assumptions that they -- depending on if
13 they're on an empty stomach, depending on if they ate, if at
14 the time they were fully in elimination. So fully coming
15 down off of using the drug, not adding more to their system.

16 Q Okay. And before we get into that. Are you familiar
17 with, you know, plasma alcohol test and what that is? Like
18 an enzyme test of plasma alcohol?

19 A Like what we do or --

20 Q No, not what you guys do, but another instrument that
21 runs a test.

22 A In general? I guess. It just depends on what you're
23 talking about.

24 Q Do you know the difference between whole blood and
25 plasma?

- 1 A Yes.
- 2 Q Okay. In this particular case -- you weren't here
- 3 yesterday or anything, but in this particular case there was
- 4 a reading of 219 plasma.
- 5 A Uh-huh.
- 6 Q What does that -- what is that in whole blood?
- 7 A In whole blood, if I remember the number correctly,
- 8 it's less. So you take that number and you divide it by
- 9 1.18. So if I remember the number correctly, it was a .186.
- 10 Q And that would be the whole blood?
- 11 A That would be the whole blood number, yes.
- 12 Q So 186?
- 13 A Yes.
- 14 Q Now, you talked about how alcohol metabolizes, correct
- 15 --
- 16 A Uh-huh.
- 17 Q -- and you gave us that percentage. I don't remember
- 18 that number off the top of my head, but you gave it to us
- 19 previously.
- 20 A Uh-huh.
- 21 Q If a person were at 18 percent and then four hours
- 22 later -- if it was a normal person and everything just kind
- 23 of, you know, metabolized like a normal person, what would
- 24 it be four hours later?
- 25 A Well, you're saying before or after? After?

1 Q After, yes.

2 A After. So using that average. And so, you take the
3 .015, multiple it times four for the hours, and so that's a
4 .06. So you would expect it to be that much less.

5 Q .06. So 18 -- the 18 minus the .06 --

6 A Correct.

7 Q -- so that would a 12?

8 A Yes.

9 Q And that's how everything normal is working in a normal
10 human being --

11 A Yeah.

12 Q -- and how it normally metabolizes?

13 A Correct.

14 Q Okay. And the person that actually ran the initial
15 screen on the alcohol in this particular test on Mr.
16 Rowell's sample, who was that again?

17 A Stacey Matthew.

18 Q And then she got -- did she end up giving those results
19 to you?

20 A We -- there's a case jacket that's put into a filing
21 cabinet and once a day or so I go grab all those and find
22 out my cases for the day.

23 Q So you're kind of working out -- working with her on
24 this?

25 A Some would say, yes.

1 Q But you reviewed her work?

2 A Yes.

3 Q Was there anything that stood out with her work? Was
4 it correct or was it incorrect, or do you remember?

5 A It's correct, to all my knowledge.

6 Q Generally speaking as a toxicologist, can you describe
7 the effects of alcohol, that it has on a person, and how
8 that would, you know --

9 MR. GARRETT: Your Honor --

10 Q -- relate to their ability to drive?

11 MR. GARRETT: -- I'm going to object to that.

12 THE COURT: You might need to lay some foundation as
13 far as training and that sort of thing in order for her to
14 render opinions.

15 MR. BLACK: Thank you, Your Honor.

16 Q Ms. Brown, are you familiar with how -- have you
17 studied and in your schooling and experience, education, are
18 you familiar with how alcohol affects a person?

19 A Yes. That's part of our extensive in-house training at
20 SLED. So the first part of my training was to learn about
21 blood alcohols. And once again, we had a series of lectures
22 and tests associated with those lectures that you had to
23 pass. And then we learn how to analyze the samples and we
24 have to learn at least 500 of those. And those have no
25 value. So we compare the number that I get with a known

1 value, and have to pass that. And then once we pass that we
2 are given a written and an oral exam. And once again, we
3 have to pass that, otherwise I wouldn't be here.

4 Q So based on your education, training and experience do
5 you know how certain percentages affect normal people?

6 A Correct.

7 Q Okay. Let's say, for example, 05. Five percent.

8 A Okay.

9 Q How would that affect a normal person?

10 A And you're saying .05 percent?

11 Q Yes, ma'am.

12 A Well, in that case a person would mostly likely have
13 increased self-confidence and decreased inhibition. So
14 they're more likely to do something they otherwise wouldn't.
15 They're also going to have a little bit of a problem with
16 their vision. But the big problem here is you have a
17 diminution in attention. So you have problems multitasking
18 which is a lot of what's needed in driving. So driving and
19 steering, driving and braking. It's a lot harder to do both
20 of those at once, as opposed to someone that would be
21 driving normally.

22 Q And what about .09? How would that affect a normal
23 person?

24 A You're going to start having more problems with
25 increased reaction times. So where you would normally see

1 like an accident happened, you would stop. Well, now it's
2 going to take you longer to do that action of braking. Once
3 again, slow motor and coordination and just a little bit of
4 the other stuff with your vision, and problems with your
5 peripherals.

6 Q And at .09, how would that affect the ability to drive?

7 A It would make it impaired to drive.

8 Q What if we doubled that and made it -- if it was an 18,
9 how would that affect a normal person?

10 A It would still increase. So you're going to have more
11 motor incoordination. The person is more likely to be
12 drowsy when driving. Once again, other vision problems,
13 incoordination, reaction time. Basically everything prior,
14 but more heightened.

15 Q What if we were to take it a step further? What if it
16 was a 30? A 30 whole blood?

17 A You start approaching the point of respiratory
18 depression. So at that point you could possibly die, be in
19 a comma from it. And once you get higher than that you're
20 mostly likely going to be dead from alcohol.

21 Q Do you know what the inference level of impairment is
22 in this state?

23 A The percent --

24 MR. GARRETT: Objection, Your Honor.

25 THE COURT: Sustained. That's a legal opinion.

1 MR. BLACK: I think that's all the questions I have.

2 Please answer any questions that Mr. Garrett might have for
3 you.

4 THE COURT: Cross-examination.

5 MR. GARRETT: Thank you.

6 CROSS-EXAMINATION

7 BY MR. GARRETT:

8 Q You said all this needs to be a normal person?

9 A Yes.

10 Q Have you studied the medical records of this gentleman?

11 A No.

12 Q Are you a medicinal chemist?

13 A No.

14 Q You've got a couple weeks training?

15 A No. I have 10 years of being a toxicologist training.

16 Q I'm talking about in the extrapolation process.

17 A Oh, no. I mean, that's something's that a general
18 thing that we can do. And our training is over a year, so
19 it's not just a couple of weeks of learning stuff. It's
20 mixed into the program.

21 Q So you haven't looked at his medical records at all?

22 A No.

23 Q Can you tell me -- can you look at your paperwork,
24 ma'am, and tell me what time that they told you this sample
25 was collected?

1 A Sure.

2 THE COURT: You want to show the Solicitor what you're
3 showing her, if that's going to aid her in her testimony.

4 MR. GARRETT: Let me -- I think you've got it marked as
5 a Court's Exhibit, Your Honor. Let's see if we can identify
6 -- this is SLED Laboratory Forensic Services Request
7 document.

8 Q Could you tell us what time that specimen was
9 collected?

10 A On this part it doesn't have it on here.

11 Q Is it at the bottom?

12 A But on that other page --

13 Q I understand.

14 A Yeah. It says the date collected is 11/15/2014 at
15 19:29 for the blood.

16 Q So this blood was allegedly -- that you all looked at
17 was allegedly taken at what time again? 19 what?

18 A 29.

19 Q 19:29, and that -- if we converted that, that would be
20 7:29?

21 A Correct.

22 Q In regular time?

23 A Correct.

24 Q So you all analyzed blood that was drawn on the date of
25 this accident at 7:29. Allegedly draw at 7:29. Is that

1 what you're telling this jury?

2 A I'm telling you what you have on your paper, but --

3 Q That's not my paper. That's SLED paper.

4 A Well, this is -- yeah, the paper that you have printed
5 out. But I will say that according to the pictures I have
6 from the -- what we inventoried has a different time on it.

7 Q Okay. But these are your documents, right? It says
8 date collected?

9 A Yes. That's the pre-login form that was logged in and
10 sent to us.

11 Q Time collected?

12 A Yes. On that paper, yes.

13 Q And as I understand it, you signed off --

14 THE COURT: Mr. Garrett, hold on just a second. We've
15 got to change batteries.

16 MR. GARRETT: I apologize. I didn't see it.

17 (Whereupon, there was a pause in the proceedings.)

18 THE COURT: We're good.

19 MR. GARRETT: Thank you, Your Honor.

20 Q So as I understand it, you didn't do the alcohol test
21 on this, someone else did it?

22 A Correct.

23 Q Okay. Can you tell me whether the specimen that you
24 received, whether or not it was a venous or an arterial
25 artery?

1 A No. That wasn't labeled for us.

2 Q But do you know the difference between the blood
3 arterial versus venous?

4 A To some extent, yes.

5 Q Well, do you understand or know which one will cause a
6 higher alcohol reading than the other?

7 A Not really, no.

8 Q You just don't know whether it would affect higher or
9 not?

10 A No. Not in this case, no.

11 Q Have you done any studies on whether or not -- whether
12 you take it from the artery or whether you take it from the
13 vein would cause the reading to be higher?

14 A Me personally, no.

15 Q In your years of study have you done any research on
16 that point?

17 A No, I've not personally done any research.

18 Q And if a person is almost dead from all the injuries
19 they've received, you'd agree with me that's not a normal
20 person, wouldn't you? A while ago you were saying in a
21 normal person these rules would apply generally.

22 A Sure.

23 Q The person has been through a horrific accident, almost
24 dead. Had to get 14 units of blood. Would that be a normal
25 person?

1 A That would not be a normal person.

2 Q And you would agree with me, too, then that if the vial
3 of blood that you analyzed had 14 units of other peoples'
4 blood in it, it wouldn't be a valid sample, would it?

5 A Not exactly sure what you mean. It's valid for what
6 I've received.

7 Q But if you're trying to test the alcohol in somebody's
8 blood and it's already been all pumped out and other stuff
9 has been put in there, the blood's been put in there, it's
10 not a valid result, is it?

11 A I mean, my results are filed for what I've received.

12 MR. GARRETT: I got you. No further questions.

13 MR. BLACK: Just briefly, Your Honor.

14 THE COURT: Did you say you're finished with the cross?

15 MR. GARRETT: I'm through.

16 THE COURT: All right. Redirect.

17 MR. BLACK: Briefly, Your Honor. I apologize.

18 REDIRECT EXAMINATION

19 BY MR. BLACK:

20 Q Do you recognize this, Ms. Brown?

21 A Yes. It's -- this blood evidence bag is kind of seen
22 backwards there. And then it looks like it was repackaged
23 into the evidence packet.

24 Q And Mr. Garrett showed you a report a while ago. Was
25 that your report or was that another packing slip?

1 A Essentially it's kind of like a packing slip, because
2 people can pre-log evidence into us.

3 Q And that was the Highway Patrol's packing slip, or the
4 agency?

5 A It's generated with our stuff. But they can pre-log
6 all their information first and send it to us.

7 Q You said you had another time. What was that time?

8 A It's the time that's -- I'm sorry. It's really hard to
9 move in this. Timed upon the actual physical blood evidence
10 here, and that would have generally been put on there by
11 whoever sampled the blood -- or taken the blood.

12 Q Did you -- did you have that result, or did you have
13 that time?

14 A Yes. And if you don't mind, let me refer to pictures
15 that were actually taken of it.

16 Q Yes.

17 A It's a little easier to read than on here. But the
18 pictures that were taken -- if I'm reading this correct --

19 MR. GARRETT: Can I ask about these pictures.

20 THE WITNESS: Sure. When we inventory all of our
21 evidence we take photographs of everything.

22 MR. GARRETT: Has that been provided in discovery? I
23 haven't seen it.

24 MR. BLACK: I haven't seen it either.

25 THE WITNESS: I don't know.

1 THE COURT: Did you have it?

2 MR. BLACK: No, sir.

3 THE WITNESS: I don't know what was part of the
4 discovery to know if that's part of --

5 MR. GARRETT: Can I see the picture? Can I look at it?

6 THE WITNESS: Yeah, sure.

7 THE COURT: Yeah, if you can just get it --

8 MR. GARRETT: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MR. BLACK: And I've never looked at any -- I have no
11 idea what's in here.

12 Q What was the time on it?

13 A It looks like 11/16/14, and then at 00:56 a.m.

14 Q You said 00:56. I'm guessing that's 12:56? Right
15 after midnight?

16 THE COURT: Did you respond to that question?

17 THE WITNESS: Oh, sorry. Yes. I'm sorry.

18 Q Ms. Brown, in your -- in your expert opinion, how would
19 -- how would a .09 affect a person's ability to drive?

20 A They'd be impaired to drive.

21 Q What about 18?

22 A Definitely impaired to drive.

23 MR. BLACK: No further questions.

24 THE COURT: Anything in recross, Mr. Garrett?

25 RECROSS EXAMINATION

1 BY MR. GARRETT:

2 Q Would you expect --

3 MR. GARRETT: Yes, sir.

4 Q Would you expect a person to be able to drive well 20
5 minute before the accident if they were an 18?

6 A No.

7 Q They couldn't drive a car at all, could they?

8 A I mean, they can drive. I wouldn't say effectively or
9 not impaired.

10 Q Okay. Let me ask you this. Would they be able to pull
11 into a parking lot, wait for people to pass, drive on, give
12 a turn signal, let somebody back out, and then pull their
13 car in straight between two cars?

14 A I mean, I don't know to what extent they could. But I
15 guess it's plausible they could.

16 Q Probably be bumping into things, wouldn't they, if
17 they're as bad you say they are 18?

18 A I could imagine they might, yeah.

19 Q So if somebody is able to drive well 20 minutes before
20 this accident then it wouldn't sound like an 18, would it?

21 A I mean, I don't know what you consider well.

22 Q Well, I'm talking about what you said well. A while
23 ago you said if somebody blew a .05 and had a .05, that
24 person's ability to drive would be limited.

25 A Sure.

1 Q And if you said it went to a 9 you said it would be
2 limited. More limited.

3 A Correct.

4 Q And if it went to a 15, I guess it would be more
5 limited.

6 A Correct.

7 Q And then if it went to an 18 it would be more limited.

8 A Sure.

9 Q By the time you're 18 you ought to be falling down
10 drunk.

11 A That's -- sometimes when people think of drunk that
12 would be the general, that level that you would think of it
13 with staggered walking and slurred speech and stuff like
14 that, yes.

15 Q That's right, staggered walking, wouldn't it?

16 A Generally, yeah. That would --

17 Q Now, suppose a person's photographed right before the
18 wreck and they seem to be walking straight. It wouldn't
19 sound like that 18 you're talking about, would it?

20 A I mean, it's possible if they're holding on to
21 something, but I don't have any --

22 Q Okay. So they'd have to be holding on --

23 THE COURT: Wait a minute. Let her finish her answer.

24 A But I don't have anything to reference to know what
25 you're talking about.

1 Q Okay. So they gave you false information in that
2 pre-login about when they drove -- when they picked up that
3 -- it's different from what you were told. Highway Patrol
4 or whoever did the pre-login gave you the wrong date and
5 time, didn't they?

6 A They just gave me whatever date, yeah, that was on
7 there.

8 Q That's wrong, isn't it?

9 A It's not the date that I have on the test tube, no.

10 Q Did you look back at that date that they gave you,
11 pre-login, and is it correct or not?

12 A I mean, it's not the dates that I have on the test
13 tubes, no.

14 Q So it's not correct?

15 A Yes, those don't coincide with each other.

16 MR. GARRETT: Thank you.

17 THE COURT: Thank you, ma'am. You can step down.

18 MR. GARRETT: Just a moment, Your Honor.

19 THE COURT: Oh, wait a minute.

20 MR. GARRETT: Nothing further.

21 THE COURT: Okay. Now you can step down.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 THE COURT: All right, Solicitor.

25 MR. BLACK: The State calls Stacey Matthew.

1 STACEY MATTHEW, having first been
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BLACK:

5 Q Could you introduce yourself to the jury, please,
6 ma'am.

7 A Stacey Matthew.

8 Q And, Ms. Matthew, what do you do?

9 A I am a forensic toxicologist.

10 Q And where do you work at?

11 A I work for the South Carolina Law Enforcement Division,
12 more commonly known as SLED.

13 Q And how long have you been at SLED?

14 A Four years.

15 Q And where did you go school at Ms. Matthew?

16 A I went to the University of New Haven in Connecticut.

17 Q And what did you graduate with?

18 A I graduated with a Bachelor's of Science in forensic
19 science and a Bachelor of Science in chemistry.

20 Q And did you have any further schooling after that?

21 A No.

22 Q Are you from South Carolina?

23 A No, I'm not.

24 Q How did you end up down here?

25 A The job.

1 MR. BLACK: Beg the Court's indulgence.

2 THE COURT: Sure.

3 MR. BLACK: I'm trying to take care of some
4 housekeeping matters, Judge.

5 MR. GARRETT: Counsel, may I look at the one you intend
6 to submit? Your Honor, may we approach?

7 THE COURT: Sure.

8 (Whereupon, a sidebar was held.)

9 Q Ms. Matthew, I apologize. I'm trying to do three
10 things at one time.

11 A That's okay.

12 Q How long have you been working at SLED?

13 A Four years.

14 Q And what department are you in?

15 A I am in the toxicology department.

16 Q And did you have training that you did once you started
17 working at SLED?

18 A Yes, sir.

19 Q What is that?

20 A Well, I've been certified by SLED on the analysis and
21 the interpretation of blood volatiles, which included a
22 series of practical and written tests. The practical
23 portion involved a series of testing a number of samples,
24 and the oral portion -- the practical written portion was
25 involved with test lectures and oral examination.

1 Q Did you pass all that?

2 A Yes, sir. I did.

3 Q And once you pass what do you -- what happens next?

4 A After that you are signed off to perform blood volatile
5 testing on samples that come into the lab.

6 Q And currently what is your level at SLED? What are you
7 considered?

8 A A forensic toxicologist.

9 Q Is there a difference between like a level one and a
10 level two?

11 A Level one is primarily just alcohol related, and a
12 level two analyst would be considered doing drug work also.

13 Q And you do drug work as well?

14 A Yeah, I do.

15 Q So you're considered a level two?

16 A Yes.

17 Q And have you ever testified in court before?

18 A I have.

19 Q How many times -- have you testified as an expert?

20 A Yes.

21 Q And how many times have you testified?

22 A Twice.

23 Q And that was in forensic toxicology?

24 A Yes, sir.

25 MR. BLACK: Your Honor, at this point the State moves

1 to have Ms. Matthew qualified as an expert in forensic
2 toxicology.

3 MR. GARRETT: Without objection.

4 THE COURT: All right. Without objection this witness
5 is found to be an expert in the area of forensic toxicology.

6 Q Now, Ms. Matthew, I'm going to bring up a couple items.
7 State's 73 and what's been marked for identification
8 purposes as State's No. 5. We'll start with 73. What is
9 that document?

10 A It is -- appears to be a copy of the toxicology report
11 issued.

12 Q And who issued that report?

13 A It was issued by Jennifer Brown.

14 Q And that report is for an individual by the name of Mr.
15 Rowell?

16 A That's correct.

17 Q And what was -- what was tested in this particular
18 case?

19 A The blood sample was tested.

20 Q Now, at the lab at SLED, typically when a sample comes
21 in does the analyst test everything dealing with that
22 sample?

23 A No, they do not.

24 Q Now, you were involved testing a particular item of the
25 sample; is that correct?

1 A Yes, sir.

2 Q What was that?

3 A I tested the blood sample that was submitted.

4 Q For what?

5 A Let me check. I tested it for the blood alcohol, as
6 well as the preliminary drug screening. Well, for this one
7 I just tested the -- according to this what you gave me, the
8 blood alcohol.

9 Q And how did you -- how did you end up testing the blood
10 alcohol? What machine did you use?

11 A We used a GC-MS, or gas chromatography and mass spec.

12 Q And tell the jury a little bit -- can you tell us how
13 this machine works? Basically.

14 A Okay. Essentially a sample is injected. The sample is
15 injected and it goes through a column. And every one starts
16 at -- is starting like together. And as the rate
17 progresses, whoever's faster goes ahead of the line, and
18 whoever is slower tails behind. So based on that,
19 substances are going through the column based on their mass.
20 So the lighter things go through the column into the
21 detector sooner than the heavier particles.

22 Q And State's No. 5, that's a package off to the side.
23 Do you recognize what that is?

24 A Yes, sir.

25 Q And what is that?

- 1 A It is a sample submitted to our laboratory for testing.
- 2 Q And are these the samples that you tested on Mr.
- 3 Rowell?
- 4 A Yes, sir.
- 5 Q And so, you did the ethanol test; is that right?
- 6 A That's correct.
- 7 Q Did you get a result on that?
- 8 A I did.
- 9 Q And what was the result of that test?
- 10 A The result was 0.098 blood alcohol.
- 11 Q Can you maybe want to look at that just --
- 12 A Oh, sorry. 0.096.
- 13 Q Okay. And that's according to the report, correct?
- 14 A Yes, sir.
- 15 MR. BLACK: Your Honor, at this point the State moves
- 16 No. 73 into evidence.
- 17 THE COURT: Okay.
- 18 MR. GARRETT: Subject to our prior.
- 19 THE COURT: Right. And what about 5?
- 20 MR. BLACK: Your Honor, the State also moves No. 5 into
- 21 evidence.
- 22 THE COURT: And subject to prior objections?
- 23 MR. GARRETT: Yes, Your Honor. Subject to prior
- 24 objections.
- 25 THE COURT: All right. 5 and 73 will be into evidence

1 for the -- for the State.

2 MR. BLACK: Thank you, Your Honor.

3 (Whereupon, State's Exhibit Nos. 73 and 5 were admitted
4 into evidence.)

5 Q Ms. Matthew, you've been qualified as an expert. Do
6 you generally know how alcohol affects a human being
7 typically, normally?

8 A Yes, sir.

9 Q And you've had training and education and experience
10 dealing with that?

11 A Yes, sir.

12 Q In your profession?

13 A Yes.

14 Q In this particular case I think the result was a .096;
15 is that right?

16 A That's correct.

17 Q How would that -- how would that effect a person
18 typically?

19 A Typically -- well, ethanol, which is the common -- it's
20 the alcohol that you find in drinking alcohol, is a central
21 nervous system depressant. So once you start drinking it,
22 in the beginning you'll feel euphoric. You'll be social.
23 You know, you know, you feel good. But as you continue
24 drinking your motor coordination starts to decline. Your
25 judgment, your perception of events. They all become

1 diminished. So essentially as you can consume more alcohol
2 your body essentially starts to shut down. You'll become --
3 sorry. Your speech will become slurred. Your -- you'll
4 become dizzy. You may become drowsy. Eventually it may
5 lead to respiratory depression if you have way too much.
6 But that's essentially what's --

7 Q Okay. And at a .09 who would it affect somebody's
8 ability to operate a motor vehicle?

9 A They would be impaired. Their motor coordination would
10 be diminished. Their sense of judgment and events. So they
11 wouldn't be able to react properly compared to if they were
12 sobber.

13 Q What if it was doubled? What if it was an 18? How
14 would that affect somebody? A normal person.

15 A It would still. It would be worse than an 09, so it's
16 still either -- your perception of events would become even
17 worse. Your judgment would become even worse. Your ability
18 to assess a situation and act appropriately become very
19 diminished.

20 MR. BLACK: Thank you for being here. Sorry to pull
21 you off the line.

22 THE WITNESS: It's okay.

23 THE COURT: Cross-examination?

24 MR. GARRETT: Very briefly.

25 CROSS-EXAMINATION

1 BY MR. GARRETT:

2 Q If a person is an 18, how impaired are they? The
3 normal person that you've just testified to, how impaired
4 are they?

5 A I would say they're still significantly impaired.

6 Q Significantly impaired. At what point does a person
7 become pretty drunk?

8 A There's no real number or -- alcohol affects a person
9 differently, but we say it's still a depressant in everyone.
10 So regardless of if a person is at an 08 or .18 they
11 shouldn't be driving because their ability to actually
12 assess a situation is impaired.

13 Q Would you agree with me it takes fine hand/eye
14 coordination to drive a vehicle?

15 A It does, sir.

16 Q All right. And if a person is an 18, for instance.
17 I've seen tests where they actually put people in cars and
18 they let them drive at various levels. Have you seen those?

19 A Yes, sir.

20 Q And when people are doing that they can't go around
21 little objects, or they run into objects, or they have
22 difficulty parking or parking a car and that kind of thing.
23 Is that correct?

24 A That's correct.

25 Q Did you do any of those studies? Did you get to

1 participate in any of that stuff?

2 A I did actually participate in a drinking study.

3 Q Okay. It's pretty fun. I got to see it. I didn't get
4 to do it, but I got to watch it. And so, actually when a
5 person gets to like an 8, during an 8, 10, they start
6 messing up. They start hitting cones and that kind of
7 thing, right?

8 A That's correct.

9 Q Okay. Now, if -- suppose we have a person that was an
10 alleged 18 but yet they were able to drive around in a
11 parking lot very, very well? I mean, they were able to
12 stop, give a turn signal, allow somebody to walk by. Pull
13 up, allow somebody to back out. Wait until they pull out.
14 Pull in perfectly, not hitting anything. That would be hard
15 to do, wouldn't it?

16 A Yeah, essentially.

17 Q Okay. Again, your studies and your tests show that for
18 a person to be able to do that kind of thing, an 18 just
19 doesn't sound like that person?

20 A Well, there's no yes or no to that. It could depend on
21 the person's history with alcohol intake.

22 Q All right. And so, everybody's different; is that
23 correct?

24 A That's correct, sir.

25 Q So when you're given those numbers it's just the norm;

1 is that correct?

2 A It's the norm. But over time there's been plenty of
3 studies that still state that an 08 or above is still
4 impaired.

5 Q That's my point. That's my point. So if somebody is
6 really an 18 they're not driving. Actually, they're having
7 trouble walking. Keeping the coordination of balance,
8 slurred speech, etcetera?

9 A It could. It's also something where if someone is a .8
10 and say they're a chronic drinker, they could learn to mask
11 these signs. So they may think they have -- you know,
12 they've mastered the whole "I'm not drunk" situation, but in
13 reality they just learn how to lean against the wall so they
14 don't end up staggering or things like that.

15 Q All right. So let's suppose we've got somebody that's
16 -- we've got a photograph of this gentleman 20 minutes
17 before the accident and he's walking in a straight line and
18 he's not holding on to anything. It doesn't match up, does
19 it?

20 A Everyone is different, sir.

21 MR. GARRETT: Thank you.

22 THE COURT: Anything on redirect?

23 MR. BLACK: No, sir, Your Honor.

24 THE COURT: Thank you, ma'am. You can step down.

25 (Whereupon, the witness stepped down from the witness

1 stand.)

2 MR. BLACK: State rests, Your Honor.

3 THE COURT: Okay. Mr. Foreman, ladies and gentlemen of
4 the jury, we're going to take a little afternoon break at
5 this point in time. And I'll remind you no discussion among
6 yourselves about this case and we'll get you back out
7 shortly and proceed forward. Thank you.

8 (Whereupon, the jury exited the courtroom at 2:37 p.m.)

9 THE COURT: Let's go back on the record. And Defense
10 have any motions they want to put on record?

11 MR. HENDERSON: Your Honor, we would like to review all
12 the prior motions that we have made, and these are probably
13 not in any particular order.

14 THE COURT: That's fine.

15 MR. HENDERSON: But our motion for mistrial for the --
16 talking with the witnesses yesterday by the State's
17 employee, you know, the pictures of the open containers, or
18 alleged open containers after you directed a verdict or
19 dismissed the open container indictment but still let in the
20 photographs and, you know, our objections to that. We think
21 that's highly prejudicial. Chain of custody at the
22 hospital. You know, again, we believe the Court erred in
23 saying that there was a proper chain there. And also the
24 validity of the samples of -- you know, that got sent to
25 SLED. Basically our motion this morning with Dr. Valentine.

1 We believe the Court erred. And basically the validity and
2 reliability of those results. And again, our motion was
3 focused on whether or not the machine was working. For
4 purposes of that motion we're assuming that the machine was
5 working. It's basically that it was an unreliable sample
6 that was placed into the machine. And again, we think all
7 of those, and cumulatively, Your Honor, we believe that the
8 Court should direct a verdict and a mistrial. Obviously the
9 Court can't direct a verdict on mistrial issues. But on
10 the remaining evidentiary issues we believe that the Court
11 erred in allowing all this stuff to go forward and go in
12 front of the jury, and we would ask cumulative, Your Honor,
13 that all that -- the Court grant our verdict -- grant out
14 motion for directed verdict on both indictments.

15 THE COURT: Thank you very much, Mr. Henderson.
16 Viewing the evidence in the light most favorable to the
17 State the Court is concerned with the existence of any
18 evidence and not its weight, and I will respectfully deny
19 your motion as to both indictments.

20 Let's take about 10 minutes break and then we can do
21 some of --

22 MR. GARRETT: I'm going to try to do about -- Judge,
23 just for scheduling purposes, I've got the fellow from
24 Walmart is going to be here first, around 3:00ish, 3:05. So
25 that's -- I've got him coming first.

1 THE COURT: You want him first?

2 MR. GARRETT: Yes.

3 MR. HENDERSON: Yes.

4 MR. GARRETT: Then I'm going to put up a Tara -- I
5 mean, Samantha Byrd, and then I'm going to put up Tiera
6 Boyter. My next two witnesses are going to be rather long,
7 so -- Mr. Sims, my expert -- traffic expert, and then, of
8 course, Dr. Valentine.

9 THE COURT: Right. And after the break, of course, I
10 need to advise Mr. Rowell of his rights. I know you've
11 already indicated that he's going to testify. So you can
12 just kind of explain to him what I will be doing with him --

13 MR. GARRETT: I will.

14 THE COURT: -- after the -- at the end of the break.
15 Okay?

16 MR. GARRETT: Yes, sir.

17 THE COURT: Thank you very much.

18 (Whereupon, Defendant's Exhibit Nos. 13, 14, 15, 16 and
19 17 were marked for identification.)

20 (Whereupon, a recess was held from 2:40-3:00 p.m.)

21 (Whereupon, a sidebar was held.)

22 THE COURT: We're back on the record. Two things.
23 Let me go ahead and address an issue raised at sidebar just
24 a moment ago by Solicitor Downtin. By ruling as to not
25 allowing the SLED toxicologist to relay any drug results,

1 and I indicated it was not because of chain of custody, but
2 because the other toxicologist who did work in the drug
3 analysis were not here to testify. And, Solicitor, you
4 raised the issue, well, if the -- Dr. Valentine in the
5 Defense case in chief is permitted to bring out some of the
6 test results, then why are they allowed to do it and the
7 State's not. Is that kind of a fairly accurate statement of
8 your issue?

9 MR. DOWTIN: Yes, Your Honor.

10 THE COURT: All right. If you'll look at 703 it allows
11 expert to bring out in their testimony information gleaned
12 that they normally rely on as a basis to offer their
13 opinions and inferences. Okay? But that differs
14 information that's not in evidence but normally relied upon
15 by experts in their field. There is a difference in that
16 and the State being precluded from having an expert relay
17 information, drug results, because they were stating a fact.
18 They were not giving an opinion or giving an inference.
19 They were stating a fact. And because of that, and because
20 of those other SLED people were not here to be examined and
21 cross-examined. That's why State was not allowed to do it.
22 But through the expert, Dr. Valentine, the Defense will be
23 able to talk about that if that's what they choose. So
24 there is a difference.

25 Oh, now, Mr. Rowell, I need you to stand and be sworn

1 in, please. Madam Clerk.

2 ADAM ROWELL, having first been duly
3 sworn, testified as follows:

4 THE COURT: Mr. Rowell, at this time I'm going to
5 explain to you certain of your rights, and if you do not
6 understand anything I say, please let me know that. And if
7 you want me to explain anything in more detail, please let
8 me know that as well. Do you understand sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, we have reached the stage in the trial
11 where you may present your defense, and I understand that
12 you are going to present a defense through witnesses or
13 otherwise. You have the right to claim the protections
14 given to you by the Fifth Amendment to the constitution of
15 the United States, and this amendment states in part, "No
16 person shall be compelled in any criminal case to be a
17 witness against himself." This means that you cannot be
18 required to testify in this case. You have the right to
19 testify on your own behalf; however, no one can make you
20 testify. This is a personal right. No one can waive this
21 right except you. Do you understand, sir?

22 THE DEFENDANT: Yes, sir. I do.

23 THE COURT: Okay. If you decide to testify you'll be
24 subject to the same rules that govern other witnesses and
25 you may be examined and cross-examined on any relative issue

1 in this case. In addition, if you have any convictions --
2 and I'm not suggesting that you do. I don't know. But if
3 you have any convictions involving dishonesty or false
4 statement, or for crimes punishable by imprisonment for more
5 than one year and this Court determines that the probative
6 value of admitting this evidence outweighs its prejudicial
7 effect to you, the Solicitor would be able to introduce your
8 record to attack your credibility. If you decide to
9 testify, this decision on your part must be freely,
10 voluntarily and intelligently made with knowledge of the
11 protections given to you by the Fifth Amendment and the
12 consequences of your decision to testify. However, if you
13 decide not to testify I will instruct the jurors that they
14 cannot give the fact that you did not testify any
15 consideration whatsoever and that there is to be absolutely
16 no prejudice to you because you did not testify. It is left
17 entirely up to you whether or not you testify. In this
18 decision, if you decide not to testify must also be freely,
19 voluntarily and intelligently made. You have the right to
20 talk with your attorney, your family and friends, anyone
21 else, but the final decision would be left entirely up to
22 you.

23 Have you understood what I've explained to you, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you have any questions what I've

1 explained to you?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you had enough opportunity to make the
4 decision whether or not you will testify?

5 THE DEFENDANT: Yes, sir. I have.

6 THE COURT: And what is that decision?

7 THE DEFENDANT: I'm going to testify.

8 THE COURT: And is that decision that you will testify,
9 has that been made freely, voluntarily and intelligently
10 made with the assistance of your attorneys?

11 THE DEFENDANT: Yes, sir. It has.

12 THE COURT: Thank you very much. You can have a seat.
13 Okay, let's bring the jury out, please, Mr. Willingham.
14 (Whereupon, the jury entered the courtroom at 3:21
15 p.m.)

16 THE COURT: Let the record reflect the jury is back in
17 the courtroom.

18 Mr. Garrett, you ready to proceed, sir?

19 MR. GARRETT: Yes, we are, Your Honor. Mr. Henderson
20 and Ms. Merrill will be starting.

21 MR. HENDERSON: Your Honor, the Defense calls Ron
22 McGahee.

23 RON MCGAHEE, having first been duly
24 sworn, testified as follows:

25 THE COURT: Who's doing the examination?

1 MR. HENDERSON: I'm doing the examination, Your Honor,
2 and Ms. Merrill is going to be helping with the video side
3 of this -- with this examination.

4 THE COURT: Okay. And that's why Mr. Garrett is still
5 at his seat; is that right?

6 MR. HENDERSON: Absolutely.

7 THE COURT: All right. You may proceed.

8 MR. HENDERSON: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. HENDERSON:

11 Q Ron, please state your full name for the record.

12 A Ronald Pittman McGahee.

13 Q And, Ron, where do you work at?

14 A Walmart.

15 Q And what is your position at Walmart?

16 A I'm an asset protection manager.

17 Q Is that kind of like a loss prevention manager?

18 A Yes, sir. I'm over theft and safety.

19 Q Okay. And how long have you worked at Walmart?

20 A Going on 19 years.

21 Q And there are two stores here in Greenwood, correct?

22 A Yes, sir.

23 Q Which one do you work at?

24 A Store 1382 in 508 Bypass, 72 Northwest.

25 Q Is that the one going out toward Abbeville?

- 1 A Yes, sir.
- 2 Q And have you been there your whole time, or --
- 3 A No, sir.
- 4 Q -- since it opened?
- 5 A No, sir. I've been there a while, but I've not been
- 6 there the whole time.
- 7 Q And describe some of what your duties are.
- 8 A Anything that causes the company to lose money is what
- 9 I'm involved in, whether it be accidents, theft, internal or
- 10 external.
- 11 Q And let me ask you. In this matter you were served
- 12 some document subpoenas, weren't you?
- 13 A Yes, sir.
- 14 Q Is part of your job duties to respond to document
- 15 subpoenas?
- 16 A Yes, sir.
- 17 Q Okay. And in this matter did you, in fact, respond to
- 18 some document subpoenas?
- 19 A Yes, sir.
- 20 Q And did you, in fact, produce documents?
- 21 A I did.
- 22 Q After producing those documents have you had a chance
- 23 to review them?
- 24 A No, sir.
- 25 Q Have you looked at them at our office?

1 A I have.

2 Q Okay. So to confirm that that's actually what you
3 produced?

4 A Yes, sir.

5 Q Okay. I want to show you what has been marked as
6 Defendant's 13. And if you'd look at the back of it first
7 and tell the jury what that is.

8 A The back has been labeled what the actual shot was that
9 we burned onto this DVD. It stands for Action, apparel
10 backroom facing GM.

11 Q And in layman's terms, what is that? Is that a picture
12 in the store, or video from the store?

13 A Yes, sir.

14 Q Where at in the store?

15 A In this particular one is going to be the very back of
16 the store facing towards toys and electronics, if you've
17 ever been there.

18 Q Okay. Now, I want to show you this. What's been
19 marked as Defendant's No. 14. Can you read what's on the
20 back of that?

21 A Yes, sir. The store's rooftop associate parking.

22 Q And I hear the word parking. I'm assuming a parking
23 lot?

24 A Yes, sir. That's correct.

25 Q What parking lot would that be? Give the jury some

1 idea. If they're at this Walmart going toward Abbeville
2 where would this video be?

3 A If you're coming up the exit of Walmart, if you look to
4 your immediate right towards Cato's, it would be that
5 vicinity there in the parking lot.

6 Q And, Ron, are these videos that I've shown you right
7 there, are they kept in your normal course of employment?
8 Are they kept as normal business records?

9 A These videos?

10 Q Right. I mean, you've got surveillance there?

11 A Right. We have surveillance. It's kept for a certain
12 amount of time that I can't control and then it dumps.

13 Q And in response to these subpoenas did you actually go
14 into that surveillance?

15 A Yes.

16 Q And are these videos copied from that surveillance?

17 A Yes.

18 Q Any doubt about that?

19 A No, sir.

20 Q You do it yourself or have someone do it at your
21 direction?

22 A Either me or my team members will. Yes, sir.

23 Q Okay. I want to show you what's been marked as
24 Defendant's No. 15. Do you recognize that?

25 A Yes, sir. This is a sales receipt printed out from our

- 1 electronic journal.
- 2 Q And did you have that printed off?
- 3 A Yes, sir.
- 4 Q And what's the store number on that receipt?
- 5 A Store number 1382.
- 6 Q And is that the store that you work at?
- 7 A Yes, sir. It is.
- 8 Q And what is that a receipt for? Can you tell?
- 9 A Yes, sir. It states here that they bought some Foo
- 10 Fighters for 11.88, Zac Brown for 11.88, and a couple other
- 11 CDs it looks like to be.
- 12 Q Sounds like a music purchase.
- 13 A Yes.
- 14 Q Would that be fair to say that would be in the music
- 15 kind of DVD entertainment part of the store?
- 16 A Yes, sir.
- 17 Q And what date was that subpoena -- of that receipt?
- 18 A 11/15 of 2014.
- 19 Q And what time was that transaction?
- 20 A 14:26.
- 21 Q Is that a document that is kept in your normal course
- 22 of employment at Walmart?
- 23 A If subpoenaed.
- 24 Q If subpoenaed. But you produced that document?
- 25 A Yes, I produced this document.

1 Q Any doubt that that's a valid document?

2 A This is our document.

3 MR. HENDERSON: Your Honor, I'd move this particular
4 exhibit into evidence.

5 THE COURT: That's No. 15?

6 MR. HENDERSON: No. 15.

7 THE COURT: What says the State?

8 MR. BLACK: No objection.

9 THE COURT: Without objection, 15 into evidence for the
10 Defense.

11 (Whereupon, Defendant's Exhibit No. 15 was admitted
12 into evidence.)

13 Q Ron, I'm going to have Ms. Merrill here pull up these
14 videos and I want you to watch certain portions of these
15 videos to confirm that these are actually part of what you
16 produced.

17 A Okay.

18 Q Now, it's my recollection that both of these videos are
19 over four hours long, correct? From about 3:00 p.m. to 7:00
20 p.m.?

21 A Yes, sir.

22 Q We're not going to watch eight hours of stuff, trust
23 me.

24 A All right.

25 Q I just want you to look -

1 MR. BLACK: Judge, I'm not really sure -- I'm not
2 trying to slow this down, but has he already watched these
3 videos?

4 (Whereupon, Counsels confer at table.)

5 MR. HENDERSON: And we'll go ahead and move 13 and 14
6 into evidence. I was going to lay the foundation, but I
7 believe the State stipulations.

8 MR. BLACK: No objection.

9 THE COURT: 13 and 14, Walmart's videos into evidence.

10 (Whereupon, Defendant's Exhibit Nos. 13 and 14 were
11 admitted into evidence.)

12 Q Ron, before we start watching this video. This receipt
13 I believe you testified was at 2:26 in the afternoon.

14 A Yes, sir.

15 Q And if you need to refresh your memory, I'll show you
16 what's been marked again as Defendant's 15. That's around
17 2:24 in the afternoon?

18 A 2:26. Yes, sir.

19 Q Okay. I'll take that back from you. And these videos,
20 what's the -- we're going to show what's been marked as
21 State's 14 -- Defendant's 14. What's the start time on that
22 video? Again, we haven't started it yet. But can you look
23 up there? If you need to get down and walk up there to take
24 a look.

25 A Yes, sir. Sorry.

1 THE COURT: Just be sure if you say anything while
2 you're away from the microphone, sir, that you speak up a
3 little louder. Okay?

4 THE WITNESS: Yes, sir.

5 (Whereupon, the witness steps down from the witness
6 stand.)

7 A That time states it's 6:38 p.m.

8 Q And do you recognize what you're looking at there?

9 A Yes, sir. I do.

10 Q And tell the jury what that is.

11 A That's going to be your parking lot shot that I told
12 you. If you step outside in front of Walmart, if you look
13 to your right, it's going to be that side of the parking
14 lot. As you can see, Murphy's is in the background.

15 Q And that's a gasoline station?

16 A Yes, sir. It is.

17 Q Okay. And I'm going to let Ms. Merrill publish a
18 little bit of the video, and I just want you to confirm that
19 this is actually the video.

20 A Yes, sir.

21 (Whereupon, the witness returns to the witness stand.)

22 (Whereupon, State's Exhibit No. 14, video, was
23 published for the jury.)

24 Q And you would agree that portion of the video that the
25 jury's just watched is a portion of the video you produced

1 to us?

2 A Yes, sir.

3 Q Okay. I want to show you what's been marked as
4 Defendant's Exhibit No. 16. Do you recognize that?

5 A That's the same shot.

6 Q Same shot that we just watched on the video?

7 A Yes, sir.

8 Q Any doubt about that?

9 A No, sir.

10 MR. HENDERSON: Your Honor, I'd move this into evidence
11 as Defendant's No. 16.

12 MR. BLACK: No objection.

13 THE COURT: Without objection, 16 into evidence for the
14 Defense.

15 (Whereupon, Defendant's Exhibit No. 16 was admitted
16 into evidence.)

17 Q And, Ron, we're going to cue up another video. Ms.
18 Merrill's going to get it for us. Ron, if I may please have
19 you step off the stand.

20 (Whereupon, the witness stepped off the witness stand.)

21 Q And what's in the machine is a copy of Defendant's
22 Exhibit 13. Can you recognize what that is?

23 A Yes, sir.

24 Q Can you tell the jury what it is?

25 A This is a shot from November 15th at 6:56 p.m. This is

1 on the very back, in the back of the store. To your left
2 you see the shoe department. To your right is going to be
3 little girls, and on down -- further down on your
4 left-hand side will be the electronics department.

5 (Whereupon, the witness returned to the witness stand.)

6 Q I'm going to have Ms. Merrill play a portion of the
7 video I'd like you to watch, Ron.

8 A Yes, sir.

9 (Whereupon, Defendant's Exhibit No. 13, video, was
10 published for the jury.)

11 Q And Ms. Merrill has stopped it. Ron, let me ask you.
12 Do any of these videos -- do any of your surveillance videos
13 have audio?

14 A No, sir.

15 Q So you can't hear any of this?

16 A I cannot.

17 Q Okay. Let me show you what's been -- I'm sorry. I
18 picked up the wrong one. Let me show you what's been marked
19 as Defendant's Exhibit No. 17. And can you recognize this?

20 A Yes, sir. That's the same exact shot that's on the
21 video.

22 Q Any doubt about that?

23 A No, sir. No doubt.

24 MR. HENDERSON: Your Honor, we'd move this into
25 evidence as Defendant's No. 17.

1 MR. BLACK: No objection.

2 THE COURT: Without objection, 17 for the Defense.

3 (Whereupon, Defendant's Exhibit No. 17 was admitted
4 into evidence.)

5 MR. HENDERSON: One moment, Your Honor.

6 THE COURT: Sure, take your time.

7 Q Ron?

8 A Yes, sir.

9 Q In looking at that receipt, I believe it was, that it
10 was taken at 2:26 in the afternoon.

11 A Uh-huh.

12 Q Is that correct?

13 A Yes, sir.

14 Q And these videos look to be taken anywhere from about
15 6:36 to 6:56 in the afternoon, correct?

16 A Uh-huh.

17 Q Is that a yes?

18 A Yes, sir.

19 Q So clearly two different timeframes?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes, sir.

23 Q No doubt about that? So I mean, just using
24 mathematics, the purchase wasn't made at the time that these
25 videos were made?

1 A Correct.

2 Q Okay. I wanted that to be clear.

3 A Yes, sir.

4 MR. HENDERSON: Nothing further, Your Honor.

5 THE COURT: Okay. Cross-examination, Solicitor?

6 MR. BLACK: Just briefly.

7 CROSS-EXAMINATION

8 BY MR. BLACK:

9 Q So 2:26 was the time of the receipt? The receipt that
10 you produced?

11 A Yes, sir. 14:26.

12 Q They were music -- music CDs and whatnot that were
13 purchased?

14 A Yes, sir.

15 Q Did you bring a copy of the video of allegedly this
16 vehicle driving at 2:26?

17 A The actual copy?

18 Q Is there a video of him -- of a black truck driving at
19 2:26?

20 A That I do not know, sir.

21 Q Did you bring -- you didn't bring one?

22 A No, sir.

23 Q But you would agree with me that at 2:26 it would still
24 be daylight, right?

25 A Yes, sir.

- 1 Q Even in November?
- 2 A Yes, sir.
- 3 Q Okay. What about -- did you bring the receipt for
- 4 6:38?
- 5 A No, sir.
- 6 Q No Walmart receipt for 6:38?
- 7 A (Nonverbal response.)
- 8 Q Were you working that Saturday night, do you know?
- 9 A I can't honestly tell you that.
- 10 Q Do you remember seeing Mr. Rowell at Walmart that
- 11 night?
- 12 A No, sir.
- 13 MR. BLACK: That's all I have. Thank you.
- 14 THE COURT: Redirect, Mr. Henderson?
- 15 REDIRECT EXAMINATION
- 16 BY MR. HENDERSON:
- 17 Q Ron, in response to the subpoenas, you -- you provided
- 18 all that you had?
- 19 A Yes, sir.
- 20 Q No doubt about that?
- 21 A No, sir.
- 22 Q How often -- tell the jury why you wouldn't have more
- 23 pictures for that timeframe, or more videos of that
- 24 timeframe?
- 25 A We use hard drives, so every -- I don't have a

1 timeframe. Once those hard drives get full, the hard drives
2 automatically dump. So if they dump, I will not have any
3 information or video on those certain times. Usually it
4 goes anywhere from 30 days to 60 day timeframe before the
5 dump.

6 Q But in response to our subpoenas you provided
7 everything you had?

8 A Yes, sir.

9 Q No doubt about that?

10 A That's correct.

11 MR. HENDERSON: Nothing further, Your Honor. Can Mr.
12 McGahee be released?

13 THE COURT: Any --

14 MR. BLACK: No objection.

15 THE COURT: Yes. You're welcome to remain with us, but
16 you are free to leave the courthouse.

17 THE WITNESS: Yes, sir. Thank you.

18 THE COURT: Thank you.

19 (Whereupon, the witness stepped down from the witness
20 stand.)

21 SAMANTHA BYRD, having been first
22 duly sworn, testified as follows:

23 MR. GARRETT: May I proceed?

24 THE COURT: Yes, sir.

25 MR. GARRETT: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. GARRETT:

3 Q Tell us your name for our court record, please, ma'am.

4 A Samantha Byrd.

5 Q Ms. Byrd, tell us a little bit about yourself. Are you
6 a Greenwood native or --

7 A I am. Yes, sir.

8 Q Tell us a little bit about yourself.

9 A I'm a mother, Christian faith.

10 Q How many children do you have?

11 A One.

12 Q Where do you all live?

13 A In Greenwood, South Carolina.

14 Q Whereabout?

15 A In Hodges.

16 Q Hodges, okay. And do you know Gene Rowell? I mean,
17 Adam Rowell?

18 A I do.

19 Q Tell us how long you've known Adam Rowell.

20 A All his life.

21 Q Are you a friend of the family?

22 A I am.

23 Q And during this time of investigation was it found out
24 that you had actually seen him at Walmart?

25 A Yes, sir.

1 Q Tell the jury about that. Tell us about what time it
2 was that you saw him and what you all talked about.

3 A I seen him, it was probably around 2:30 that day. It
4 was just a brief conversation. I had my little boy, who was
5 at the time eight-years-old. So that's probably why it was
6 brief. I told Adam hey. He said hey. I said how's the
7 family. Doing good. And we went on about our business that
8 day.

9 Q And where -- what part of the Walmart store were you in
10 at the time?

11 A In the movie section. We were at the beginning part of
12 the movies and Adam was headed toward the CDs.

13 Q The CDs, okay. Did you actually see him make a
14 purchase of some CDs that day at around 2:30 or so?

15 A I didn't see his actual purchase. No, sir.

16 Q 2:26.

17 A As I said, I had my eight-year-old, so we were -- I was
18 trying to --

19 Q Right. I know it's been a while back. You didn't see
20 any -- any CDs in his hand at that time?

21 A No. He was coming in at that time.

22 Q Were you pushing a buggy?

23 A I was. Yes, sir.

24 Q Was he pushing a buggy?

25 A No, sir.

- 1 Q All right. And when you all got close to each other,
2 about how close would you say you got to each other?
- 3 A Probably a buggy or two.
- 4 Q A buggy or so?
- 5 A Uh-huh.
- 6 Q And just -- you all were just being nice and social --
- 7 A Uh-huh.
- 8 Q -- hello, how you doing?
- 9 A Yes, sir.
- 10 Q You weren't trying to examine him for any intoxication
11 or anything like that, were you?
- 12 A No, sir.
- 13 Q Now, did he -- did you watch him walk?
- 14 A I did.
- 15 Q Did he appear to walk all right? I mean, nothing --
16 did you see anything in his walk that would cause you any
17 concern?
- 18 A No, sir.
- 19 Q Did you hear his voice?
- 20 A I did.
- 21 Q Did you hear anything in his voice that would have
22 caused you any concern?
- 23 A No, sir.
- 24 Q And as far as his demeanor, the way he carried himself,
25 was there anything that you saw that caused you any concern?

- 1 A No, sir. He was normal.
- 2 Q So it was just a chance meeting. You were there at
- 3 Walmart.
- 4 A Uh-huh.
- 5 Q Based on these -- about that time and you saw him?
- 6 A Yes, sir.
- 7 Q And when you -- who did you report to the family that
- 8 you happened to see him that day of the accident?
- 9 A Well, actually once I heard of the accident -- my
- 10 sister and Adam's sister are really close. And I told my
- 11 sister, I said --
- 12 Q Don't say what your sister said. You can say what you
- 13 said --
- 14 A Okay.
- 15 Q -- to somebody, but don't say what your sister said.
- 16 A Okay.
- 17 Q Go ahead.
- 18 A And I said, well, I just saw Adam. I said, he appeared
- 19 perfectly fine.
- 20 Q And so, you didn't see him later on that evening?
- 21 A No, sir.
- 22 Q You didn't see him after 2:30, so you don't know what
- 23 happened?
- 24 A No, sir.
- 25 Q And you didn't see him that morning before that

1 happened?

2 A No, sir.

3 Q And you had no knowledge of what he did before you saw
4 him or what he did after you saw him?

5 A No, sir.

6 Q Again, you weren't trying to figure anything out. It
7 just was a chance meeting?

8 A Right.

9 MR. GARRETT: Thank you. Please answer any questions.

10 THE COURT: Solicitor?

11 MR. BLACK: Yes, sir. Just briefly.

12 CROSS-EXAMINATION

13 BY MR. BLACK:

14 Q Ms. Byrd? Is that your name? I'm sorry.

15 A Yes, sir.

16 Q Okay. And I think the receipt says 2:26. So you would
17 have seen him prior -- prior to that purchase, correct?

18 A Right.

19 Q Like 2:15 or so?

20 A Right.

21 Q And you said he was a family friend?

22 A Yes, sir.

23 Q You've known him all your life?

24 A I have.

25 MR. BLACK: That's all. Thank you.

1 THE COURT: You can step down, ma'am. You're free to
2 stay with us or you're welcome to leave, either way.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 TIERA BOYTER, having first been
6 duly sworn, testified as follows:

7 MR. GARRETT: May it please the Court.

8 THE COURT: You may proceed.

9 MR. GARRETT: Thank you.

10 DIRECT EXAMINATION

11 BY MR. GARRETT:

12 Q Tell us your name for our court record, please.

13 A My name is Tiera Madden Boyter.

14 Q Tell us a little bit about yourself, Ms. Boyter.

15 A I've been in the medical field now since 2001. I
16 worked at EMS starting in the year 2008 with Greenwood
17 County EMS. During that time I worked in the ER, and as
18 well obtained my nursing degree from Piedmont Tech.

19 Q Congratulations. RN?

20 A Right.

21 Q Go ahead.

22 A When I obtained my nursing degree I became a nurse on 7
23 Tower at Self Regional, which is cardiac unit. After I did
24 some time there I decided I needed to change some career --
25 a career change for my family. So now I'm the RN case

1 manager for hospice.

2 Q Very good. Which company do you work for? Just
3 hospice at Greenwood Hospice?

4 A It's Caris Healthcare.

5 Q All right. Back in November of 2014 on the 15th day,
6 did you happen to participate in a call as a result of a
7 wreck out there?

8 A Yes, I did.

9 Q Would you tell the jury a little bit about who you were
10 working for then and how long you had worked for them and
11 what kind of things you did?

12 A At the time of the wreck I had been with Greenwood
13 County EMS six years. I'm an intermediate EMT, which is a
14 trauma EMT is what it really is. Is that it?

15 Q And so, you were working -- what kind of shifts were
16 you working back then?

17 A At the time I was working 24 shifts. I was also in
18 nursing school at the time as well. So I worked when I
19 could. I was working at Medic 40, which is the station in
20 Ninety Six, and --

21 Q Where is that Ninety Six station located?

22 A It's -- if you go into town and take a left at the main
23 red light and go down 246, we're a couple miles on the left.

24 Q And so, that was your home base?

25 A For that night, yes.

1 Q And so, you would work 24 hour shifts?

2 A Uh-huh.

3 Q Would that be -- you have to say yes or no --

4 A Oh, yes.

5 Q -- so our court reporter can take it down. That's
6 fine. All of us do it. We're all uh-huhs and huh-uhs.

7 A Yeah.

8 Q So that's where you were working that night. Could you
9 -- do you recall about what time it was that you got a call
10 to be there?

11 A It was around 7:00ish. The city at night we're down to
12 three trucks in the city.

13 Q Yes, ma'am.

14 A Medic 20 had run a call, which left Medic 10 and Medic
15 30 open. When the call came in Medic 30 got the call. And
16 on the call they said it was an MVA, possible multiple
17 patients. Medic 30 got on scene and they --

18 Q Now, who was -- who was in Medic 30?

19 A Medic 30 was Larry Kidd and Derrick Oliver. He got on
20 scene and he assessed the situation and requested another
21 ambulance for multiple patients. At that point that took
22 all trucks out of the city busy. So Medic 40, our job was
23 to come to standby. If another call comes into the city, we
24 would have to take it.

25 In route to the city Medic 10 had got on scene and they

1 took over a patient in the red truck. They transported him
2 to the hospital. We were called out to come assist Medic 30
3 with the patient in the blue truck, because when they
4 triaged he had already blacked tagged the passenger -- I
5 mean, the driver in the red truck.

6 Rodney and I went on into the city and assisted on the
7 scene. When we got --

8 Q I'm sorry. Who is Rodney?

9 A Rodney Free is a paramedic that was on the truck with
10 me that night.

11 Q Okay. Go ahead.

12 A When we got on scene it was a mess. Access to the blue
13 truck was on the passenger side door. Fire department was
14 there. They -- them and Larry Kidd and Derrick Oliver had
15 already did a rapid assessment of the patient. The front
16 end of the truck was completely crushed in the driver's
17 side. The patient was entrapped up to his chest. The
18 steering wheel was entrapped up to his chest. The whole
19 dash was in his lap. The Defendant's legs were -- am I okay
20 to say this?

21 Q Yes, ma'am.

22 A Okay. The dash had brought the Defendant's legs open
23 to where they were this way but, you know, bent down. He
24 obviously had a open fracture to the pelvis area. At this
25 time his C-spine was immobilized. Someone was holding

1 C-spine. They kept taking turns because they was having to
2 get in the backseat to hold him and you could access him to
3 the side. So they kept taking turns doing that. During
4 that time, with his injuries, he needed to be fully
5 resuscitated. Because of the injuries he had he could lose
6 blood. So during that time Derrick Oliver, which was on
7 Medic 30, and myself were on the passenger side trying to
8 access the patient and start an IV. During that time we
9 were unsuccessful in getting the IV on him. He was also
10 breathing eight times a minute, which was shallow. We
11 placed a rebreather on him to help with the breathing.

12 Q At some point did you all have to get him all covered
13 up and blanketed, and yourself --

14 A Right.

15 Q -- in order to cut the top off and --

16 A The fire department was cutting all the posts, four
17 corners of the post, to get ready to take the top of the
18 truck off. Meanwhile we were treating the patient for his
19 symptoms. When they were ready to extricate the truck we
20 covered him with a sheet. And then the only person that
21 stayed with him was the one holding the C-spine. The rest
22 of us got into a safe distance so the fire department could
23 take the truck apart.

24 Q Okay. So that happened. The truck was apart. Then
25 what happened?

1 A He was still entrapped. The dash is still up against
2 him. They had to get the Jaws of Life to push the dash off
3 of him. We had thought that we could get him up and out,
4 but he was a bigger size. So there wasn't no way we could
5 bring him up and then out for the safety of us, because of
6 the metal that was showing. So we got the dash off of him.
7 We put him on a spine board. After we put him on a spine
8 board we put him onto the stretcher and finished
9 immobilizing him there. After we got him on the stretcher
10 we moved him to our unit, which is the ambulance. Medic
11 30's ambulance. In the back of the ambulance is where we
12 had to get him more stable because his breathing was not
13 sufficient.

14 Q So hold on a minute. So after you took him out of the
15 car you did actually stage him in the back of the ambulance?

16 A Yes.

17 Q And that staging took place before -- was the
18 helicopter already there?

19 A They were down the road apiece. I'm not sure how long
20 -- how far they were, because a fireman drove us to him.

21 Q So -- and so, when you say drove you to them, where
22 were you and Adam? Who all was in -- taking care of Adam?

23 A It as me, my partner, Rodney Free, Derrick Oliver, and
24 Larry Kidd.

25 Q And who was -- tell the jury then what kinds of things

1 you were doing in the back of the ambulance.

2 A While I was in the back of the ambulance, of course, we
3 always try to reassure our patient. We're here for them.
4 Try to stay with us. We didn't want him to go to sleep
5 because we didn't want him going unconscious. His breathing
6 was not great at all. So I grabbed a BVM, which is a bag
7 valve mask, and I did rescue breathing for him. So after we
8 -- I started doing rescue breathing for him he started to
9 get a little bit better. Meanwhile, Derrick --

10 Q I'm going to ask you to hold up just one minute.

11 A Uh-huh.

12 Q How close do you have to get to a person's face and
13 mouth in order to do that -- what you call bag breathing?

14 A Can I demonstrate.

15 Q Not on me, no.

16 A No?

17 Q How close? I mean, if that's the head right there, how
18 close would you get to the head?

19 A This would have been Adam on the stretcher, and I would
20 have been in the captain seat. I would have had to have
21 been at least this close to get a good seal around my mask
22 to perform breathing for him.

23 Q Okay. And how long did you say you had to breath for
24 him?

25 A A couple of minutes. While I was doing that they were,

1 of course, taking his clothes off because we had to do a
2 detailed physical exam on him, and they started IVs. At
3 this point a fire department guy -- the truck was actually
4 sitting real close to the scene and there was other fire
5 departments there. People in their POVs there, which is
6 personal vehicles that were there. And so, it was -- it was
7 cold out. So we didn't want to take Adam on a stretcher and
8 just wheel him through vehicles, or get him to where that
9 helicopter was. So we had a fireman to drive us a short
10 distance to the helicopter. Get close enough as we could
11 because of the cold. And the helicopter crew then came down
12 in the ambulance to where they RSied. RSI is rapid sequence
13 intubation. That's where we paralyze a patient and intubate
14 them so they can -- so we can help them breath.

15 Q All right. And was that done inside of the ambulance
16 before he was loaded into the helicopter?

17 A Yes, he was.

18 Q And did you perform that or did the other nurses do
19 that or --

20 A No. That's one of the reasons why Rodney Free and
21 myself was on the call is for RSI to take place you have to
22 have two paramedics on scene. I was the intermediate at the
23 time. Derrick Oliver was an intermediate at the time. So
24 Larry Kidd needed the assistance from Rodney Free, because
25 he was a paramedic, to do the RSI. Since -- they thought

1 the RSI was going to take place before he was given over to
2 LifeFlight. But LifeFlight took patient care over in the
3 back of the ambulance and they performed the RSI.

4 Q Now, were you all able -- once you got him into the
5 back of the ambulance, were you able to give him anything --
6 any kind of IVs or anything?

7 A Yeah, he was given an IV. I'm not sure which arm. I
8 didn't place the IV. And he started a fluid bolus.

9 Q I'm sorry. You're going to have to --

10 A Fluid bolus is -- it's like a fluid resuscitation.
11 When patients have injuries that sustain blood loss we have
12 to replace that blood with something to keep their blood
13 pressure sustainable.

14 Q Did you give him any -- did you actually -- you didn't
15 actually give him those drugs -- I mean, not drugs. You
16 didn't actually give him that saline or whatever it is?

17 A No.

18 Q Okay. Somebody else did it?

19 A Uh-huh.

20 Q Now, did they give him any blood in the back of the
21 ambulance or did they wait until they got him into the
22 medevac, do you recall?

23 A Blood was given in the ambulance. When he was -- when
24 he was intubated -

25 Q Right.

- 1 A -- and more stable, that's when we took him out of our
2 truck and took him to LifeFlight.
- 3 Q Now, during that period of time that you were there
4 with him, two minutes bagging him --
- 5 A Yes.
- 6 Q -- did you smell any alcoholic beverage about his
7 breath?
- 8 A I did not.
- 9 Q You sure about that?
- 10 A I'm sure.
- 11 Q How do you know, or how do you remember back two years
12 ago as to whether or not you smelled any alcoholic beverage
13 about his breath?
- 14 A The questioning at hand came about in a conversation
15 during the scene. Derrick Oliver and I --
- 16 Q Don't say what somebody else said.
- 17 A Okay.
- 18 Q You can say what you said in response to what somebody
19 said, but you can't say what they said.
- 20 A Okay. When the fire department was taking the top of
21 the truck off we had to get to a safe distance away from the
22 truck so that could be -- that could take place. During
23 that time I look around, and I'm like this is awful. What
24 has happened here. And a comment was made. My comment back
25 to them was I didn't smell any alcohol.

- 1 Q And did that change during any of the time that you
2 were close to him, working with him?
- 3 A No, it did not.
- 4 Q So somebody made a comment.
- 5 A Uh-huh. Yes.
- 6 Q But you have your own opinion?
- 7 A Right.
- 8 Q Now, did you -- did you examine the interior of his car
9 or truck or anything?
- 10 A I did. When I was trying to access IVs I kept hearing
11 something then. I looked over and I seen a light flashing
12 and there was a cell phone sitting there.
- 13 Q Where was it at?
- 14 A It was -- there was a compartment under the radio and
15 it was sitting in this little slot.
- 16 Q So it's in a slot --
- 17 A Yes, sir.
- 18 Q -- but it was ringing?
- 19 A Yes, sir.
- 20 Q It was ringing?
- 21 A Yes, several times.
- 22 Q So while you all were trying to work you were hearing
23 this phone go off?
- 24 A Yes.
- 25 Q Tell us what you did.

1 A I picked it up and looked at it. I told my partners, I
2 said, somebody's trying to get in touch with him. It's the
3 same people that keep calling. I could not answer the
4 phone. With Greenwood EMS we don't have the insurance to
5 cover us if I was to talk to a family member and they try to
6 come to where the patient is and they get into an accident
7 we're reliable for it. We don't have insurance to cover us
8 for that.

9 Q Yes, ma'am.

10 A So after we got him into the back of the ambulance I
11 got his cell phone and gave it to LifeFlight. I'm not sure
12 if they're covered under insurance for that, but I gave the
13 cell phone to them and I said family's trying to call.
14 Either you can answer the phone or please give the phone to
15 the hospital so somebody can make contact with his family.
16 I wasn't sure if he had a wife or kids, what.

17 The reasoning why I did that is because of 2011. I ran
18 a call where a man was -- he got thrown out of his boat and
19 his boat amputated his arm and his leg. We did the same
20 thing with him as we did the Defendant. We had to RSI him.
21 But before we did that, that man begged me to call his wife
22 and his kids to tell them he loved them, and I didn't do
23 that. But the next day I was able to talk to them on the
24 phone to see how that patient was. I was -- I felt guilty
25 for that. But I wanted to make sure that his family knew

1 where he was at the time.

2 Q All right. And subsequent did you go check on him at
3 the hospital?

4 A Yes. Later on that night -- I didn't know the name of
5 the victim -- of the patient at the time, but I had seen
6 stuff on Facebook where someone had had a wreck. We found
7 out what his name was. Me being me, I wanted to check on
8 him to see what his -- how he was. His condition was. I
9 personally did not think that he would make it to Greenville
10 Hospital with a heartbeat. So I found out that he was still
11 alive, but not stable at all. So I asked my mother-in-law
12 to go with me to the hospital, because I had a one-year-old
13 at the time, and I didn't know if I could go in there with
14 him or not. So she came to be with him. When I went there
15 to check on him the family stopped me and spoke with me.
16 They had questions, of course, and I answered them the best
17 way I could. And that's when I found out they were the one
18 that were calling his phone the whole time. And I
19 apologized to them then for not answering the phone, but I
20 explained myself to them why I couldn't answer the phone.

21 Q And did you get to see him that night?

22 A Yes. His father took me back there to his room to see
23 him. At that time he was in ICU. He was unresponsive on a
24 ventilator. And that was the last time I'd seen him.

25 Q Now, did you have any kind of a personal relationship

1 with him, Adam Rowell, prior to this?

2 A No. I didn't even know who he was when I looked at him
3 in the truck.

4 Q So even to this day, tell me, do you have any kind of
5 personal relationship with him today?

6 A No, I don't.

7 Q All right. Yesterday I think you saw him at my office;
8 is that correct? Was it yesterday --

9 A No.

10 Q -- day before yesterday?

11 A No. I seen him this morning when I come to give a
12 statement. He passed through to the office.

13 Q Okay. That's good. And you all embraced. Is that the
14 first time you've seen him?

15 A First time I've seen him since the day I seen him in
16 the ICU.

17 Q Is that the first time you've talked with him?

18 A Well, he didn't talk back.

19 Q I understand. But --

20 A Yeah.

21 Q -- there was just a little hug.

22 A Right.

23 Q Or something like that between you all. And so, that's
24 simply a patient/nurse kind of thing?

25 A Right.

- 1 Q A sign of affection by both of you. Now, you said
2 something about your mother-in-law and your child. Do you
3 know whether your mother-in-law or your child has any kind
4 of relationship with Adam?
- 5 A She told me that she knew the name --
- 6 Q Don't tell me what somebody said. If you know that
7 there's a relationship between your mother and that family
8 or your child and that family tell us about it.
- 9 A My child has no relationship at all with that family.
10 My mother-in-law, years ago when my husband --
- 11 Q What's your mother-in-law's name?
- 12 A Sharon Boyter.
- 13 Q So Sharon Boyter has got a relationship with who?
- 14 A The family went to the same church together when my
15 husband was small.
- 16 Q And your husband's name was what?
- 17 A Rodney Boyter.
- 18 Q Rodney Boyter. And what church did they go to?
- 19 A I don't know. It could have been Reedy Grove.
- 20 Q So it was some church and she knew the family?
- 21 A Right.
- 22 Q So on your way up there did you talk about, well, this
23 is Adam Rowell and that's the Rowell family, or did you all
24 have any discussion about that going up there?
- 25 A We didn't discuss it because I'm not supposed to

1 discuss patient information.

2 Q So you didn't even talk to her about it?

3 A No. She -- what she heard was what was interacted with
4 his parents at the hospital is what she heard.

5 MR. GARRETT: Beg the Court's indulgence.

6 THE COURT: Sure.

7 Q A while ago you and I were trying to demonstrate how
8 close you were, but I failed to, for the record, to
9 demonstrate how close that was. Can we do that again and
10 then you tell me roughly how close you were to his head?

11 A Yeah.

12 Q Can you do it in feet or inches or --

13 A I would say within inches. I would say this is no more
14 than a foot. Less than a foot.

15 Q Twelve inches?

16 A Well, his back is going to be up here, so I'm going to
17 say six inches.

18 Q So how many inches would you say?

19 A Six.

20 Q So that would be six inches from your ability to smell
21 and his head?

22 A Yes, sir.

23 Q While he's breathing?

24 A Yes, sir.

25 Q And you're helping him breath?

1 A Yes, sir.

2 MR. GARRETT: That's all at this time, please.

3 THE COURT: Okay. Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. DOWTIN:

6 Q Thank you, Ms. Boyter. You're not friends with anybody
7 from Mr. Rowell's family, including Facebook friends?

8 A I became Facebook friends with his sister Brittany at
9 the time of the incident. She kept -- she sent us messages
10 updating -- keeping us updated on his care.

11 Q And now, just going back to that night. You're with
12 Medic 40, correct?

13 A Right.

14 Q And Medic 40 was you and Rodney Free, correct?

15 A Yes.

16 Q And your team was one of the last groups on scene that
17 night, correct?

18 A Yes.

19 Q It was Medic 30 which was Derrick Oliver and Larry
20 Kidd?

21 A Yes.

22 Q And then Medic 10 was Ms. Prestel and Mr. Hill, I
23 believe?

24 A Yes.

25 Q And Derrick Oliver was already with the Defendant when

1 you arrived on the scene?

2 A Yes.

3 Q And Derrick and Larry Kidd, their primary
4 responsibility that night was the Defendant?

5 A Right.

6 Q You and your team's primary responsibility that night
7 was Mr. Cockrell?

8 A Yes.

9 Q And when you talk about this -- how close you were, you
10 mentioned you put a seal around his mouth. I mean, so you
11 actually -- the bag, it seals his mouth. Is that what we're
12 --

13 A Yes.

14 Q Going back to Mr. Jeremy Cockrell. What all did you as
15 far as in regards to assessing Mr. Cockrell?

16 A The assessment for him for determining whether he had a
17 pulse or not was already determined. He did not have a
18 pulse. Next our primary job was to help assist with another
19 patient that was viable that could be sent to the hospital.
20 We helped with patient care and extrication for that
21 patient. After we had him loaded up into the air flight
22 Rodney Free and myself went to the red truck to extricate
23 Mr. Cockrell. Mr. Cockrell was -- he couldn't have been
24 taken out of the truck and sent to the morgue because he was
25 -- the damage on his truck was as severe as the damage on

1 the other truck. He was entrapped.

2 Q Was there any particular damage you observed to Mr.
3 Cockrell?

4 A The main injury for Mr. Cockrell was, when we took the
5 dash off of him --

6 Q It's okay, ma'am. Take your time.

7 A The emergency brake was impaled into his left thigh,
8 and we had to take him the pedal to get him out of the
9 truck.

10 Q And from -- at that point -- or at some point
11 thereafter, you and Mr. Free then took Mr. Cockrell to the
12 morgue?

13 A Yes.

14 Q And was that the extent of your involvement, other than
15 going to check on Mr. Rowell later that night?

16 A Yes.

17 MR. DOWTIN: Beg the Court's indulgence.

18 THE COURT: Sure.

19 MR. DOWTIN: Thank you, ma'am.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MR. GARRETT:

23 Q Could you explain the seal? Is air still going between
24 the two of you?

25 A It's called a BVM. It's a bag valve mask. There's a

1 valve at the top of the seal. The mask is here, then
2 there's an L-shaped valve here, and then there's a bag. The
3 valve is where the air has to be released, because for him
4 to take in air we've got to release air.

5 Q Where does that air to release go?

6 A Into the air.

7 Q Okay. By your nose?

8 A Yes.

9 Q So even though you're sealing his mouth you're trying
10 to make sure you push air in, but he still has to exhale?

11 A That's correct.

12 Q And when he exhales you can smell his exhale?

13 A That's correct.

14 Q And for two minutes you did that did not smell any
15 alcohol?

16 A I did not.

17 MR. DOWTIN: Just briefly, Your Honor.

18 THE COURT: Sure.

19 RECROSS-EXAMINATION

20 BY MR. DOWTIN:

21 Q And that was done in the back of --

22 A Medic --

23 Q -- Derrick Oliver's and Larry Kidd's ambulance?

24 A Yes.

25 MR. DOWTIN: Thank you, ma'am.

1 THE COURT: Thank you, ma'am. You can step down.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 THE COURT: Ladies and gentlemen, we're going to take a
5 short little break. I think the next witness that Defense
6 has may be a little lengthy. I'm not sure if we'll even
7 finish his testimony today, but nonetheless we're going to
8 get started with it. So let's go ahead and take a break
9 before we do that. So if you'll go back to the jury room
10 for a few minute break. Okay?

11 (Whereupon, the jury exited the courtroom at 4:08 p.m.)

12 MR. GARRETT: Jane Merrill went to speak with Judge
13 Addy real quick for second. She'll be right back.

14 THE COURT: Okay.

15 MR. BLACK: Judge, I think we might have just an issue.
16 I don't know -- I don't know the extent of it, but I guess
17 we might want to put it on the record.

18 THE COURT: Have an issue with --

19 MR. BLACK: Well, to my understanding they have --
20 their expert has prepared a PowerPoint, and from what I
21 understand there's pictures and stuff that are -- you know,
22 that was provided by MAIT, given to their expert to use. I
23 think, from what I understand, the PowerPoint has some, you
24 know, typings and, you know, he's kind of opined what he's
25 talking about in the PowerPoint. I think the best way to do

1 it, you know, under the rules, I think that he has every
2 right to put up pictures and stuff and kind of explain
3 what's going on. But in terms of writing out what's going
4 on and then putting that in front of the jury, I tend to
5 have an issue with that, because we -- I don't -- we can't
6 -- we just have to put pictures up and let, you know, our
7 expert explain what's going on within the pictures. I think
8 they got to be held by the same kind of standard.

9 THE COURT: Okay. So I want to make sure I understand.
10 So this PowerPoint presentation has got some pictures, and
11 then Mr. Sims has made comments in typed form what he opines
12 concerning the pictures?

13 MR. BLACK: There -- it looks like there are some
14 slides where he's opined and kind of pointed stuff out, and
15 it's our -- and I think there's a couple other -- there's
16 some other slides in there as well. I'm not sure if they're
17 planning on going through the whole PowerPoint or what their
18 plan is. I just wanted to let you know what our concern is
19 kind of on the outset.

20 THE COURT: Okay. And I appreciate that. What -- what
21 is the plan with Mr. Sims?

22 MR. GARRETT: Your Honor, they finally got us their
23 automation on Monday and, you know, we were lucky enough to
24 get ours even together by today having gotten it Monday. If
25 you recall, they had a problem with their first one, so we

1 didn't get our calculations until Monday. So we
2 haphazardly, or as fast as we could, working this gentleman
3 real hard overtime, and I think he also was trying to get
4 this thing together. So we got it together. He's made some
5 personal comments about his findings and he's written those
6 -- some of those out as he goes to explain what it is he's
7 explaining. He's actually sat down with Mr. Duncan -- sat
8 down with Mr. Duncan and went through it with him to let him
9 see what it was that he was going so we wouldn't catch them
10 by surprise. So we've done that. So I don't see the -- I
11 don't see the reasoning behind not allowing us to put our
12 presentation in under the circumstances.

13 THE COURT: Well, I guess what -- I'm not speaking for
14 the Solicitor, and you can correct me if I'm wrong. I guess
15 it is testimony that will be going back to -- assuming his
16 PowerPoint comes into evidence then, I guess, what he's
17 objecting to is that there will be some of his, quote,
18 testimony that will be going to the jury room as evidence.
19 Is that -- is that what you're coming from?

20 MR. BLACK: That's part of it. Yes, sir, Your Honor.

21 MR. GARRETT: We can redact -- you know, before we
22 submit it to the jury I can redact his commentary after he's
23 testified to it. It's going to take us a little time to
24 redact it again while -- you know, he's trying to get it
25 done.

1 MR. HENDERSON: I just asked Mr. Sims and he said
2 tonight he can go into his PowerPoint and remove all of his
3 commentary.

4 MR. GARRETT: Is there any other objections to anything
5 else so we'll try to have it cleaned up to -- so there's no
6 objection?

7 MR. BLACK: And I'm not sure. I guess they're trying
8 to offer the PowerPoint as a Court's exhibit or as evidence?

9 THE COURT: Well, I don't know. All I said was just
10 assuming that it comes into evidence. I don't know if it is
11 or not. But assuming that it does, I just kind of
12 speculated what your issue would be insofar as testimony
13 going -- in written form going to the jury.

14 MR. BLACK: Yeah, that's part of my objection, Your
15 Honor.

16 THE COURT: Right. And that can -- assuming it does
17 come into evidence that can be resolved. Now, you have no
18 other issue with that?

19 MR. BLACK: Even if it's going to be shown to the jury
20 in that form I still think that's not the appropriate way to
21 do it, Judge.

22 THE COURT: Well, you know, if he -- if he
23 simultaneously says what is next to a picture or a slide or
24 whatever, if he simultaneously says that I don't really have
25 a problem with that.

1 MR. DOWTIN: I guess we just want to make sure they're
2 going to be asking him questions and it's not just him
3 standing up saying here's my PowerPoint, go, and here's my
4 testimony, you know, laid out on a computer.

5 THE COURT: Right. Right. I mean, is it going to be
6 kind of a question, answer type format?

7 MR. GARRETT: I'm going to say, Your Honor, what
8 happened next. What happened next. I mean, I can do that.
9 If that's going to -- try to break it up a little bit.

10 THE COURT: All right. Very good. Let's bring the
11 jury out, please.

12 (Whereupon, the jury entered the courtroom at 4:20
13 p.m.)

14 THE COURT: Let the record reflect the jury is back in
15 the courtroom. Mr. Garrett, you ready to proceed?

16 MR. GARRETT: We are, Your Honor. I'd like to call
17 Matt Sims to the stand, please.

18 THE COURT: Come around and be sworn in, Mr. Sims.

19 PELHAM MATTHEW SIMS, having first
20 been duly sworn, testified as follows:

21 MR. GARRETT: Please the Court?

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. GARRETT:

25 Q Please state your name for our court reporter, please,

1 sir.

2 A My name is Pelham Matthew Sims.

3 Q And tell us a little about yourself, Mr. Sims.

4 A I'm the owner, president of Reedy Consultant and
5 Investigation, an accident reconstruction firm.

6 Q And how long have you been so employed?

7 A Almost five years. End of June it will be five years.

8 Q What qualifies you to have a company that does what you
9 do?

10 A I'm a retired lieutenant from South Carolina Highway
11 Patrol. One of the original members of MAIT. The
12 Multidisciplinary Accident Investigation Team. During that
13 time I was fortunate enough to be able to obtain over 3,000
14 hours of accident reconstruction specific training.

15 MR. DOWTIN: And, Your Honor, we'll stipulate to Mr.
16 Sims' qualifications.

17 THE COURT: Okay. I'll go ahead -- I know you may want
18 to get some of his qualifications out, but maybe not the
19 whole load. But I will go ahead and find Mr. Sims to be an
20 expert in the area of accident reconstruction.

21 Q Mr. Sims, again, your Curriculum Vitae is rather thick.
22 Instead of us having to go through all of what we heard with
23 these other officers, tell me, after hearing all those other
24 officers, how your -- in your opinion, if you are better
25 qualified to make an opinion than they are.

1 A Well, we're all, I think, qualified experts. I retired
2 in 2012 as lieutenant of the MAIT. As I stated earlier I
3 was one of the original MAIT members in the beginning. In
4 1995 we tested and were selected to be on MAIT, and since
5 that time -- since that time up until present I have accrued
6 over 3,000 hours of training. During my time with MAIT I
7 rose through ranks of corporal, sergeant, lieutenant. And
8 before I retired I was supervising investigations statewide
9 for MAIT as -- at the rank of lieutenant.

10 Q And you have one -- sort of like an accreditation. A
11 doctor accreditation. Do you have some type of special
12 accreditation?

13 A Yes, sir. I don't know if you can call me doctor or
14 not, but I'm a -- I have ACTAR accreditation. A-C-T-A-R.
15 It stands for the Accreditation Commission for Traffic
16 Accident Reconstruction. And in order to get that
17 accreditation you have to qualify to be tested. In other
18 words, you have to have a certain amount of training -- a
19 good bit of training to just sit for the tests. And then
20 when you sit for the test it's an all day test where there's
21 a practical side of the test where you actually take a wreck
22 scene and do drawings and reconstruct the wreck and there's
23 -- there's basically a math portion, too, where you just
24 have to work problems. And that's pretty much an all day
25 examination. That's an examination that engineers, as well

1 as highly trained police officers pursue in this field. And
2 back in the day -- it's been a few years now, when I -- when
3 I took it the pass/fail rate was about the same for
4 engineers and police officers. So it's a pretty extensive
5 examination program.

6 Q Could I ask you this? How many -- how many roughly
7 would you say Highway Patrolmen, or people who do your kind
8 of work, have that high level of accreditation in the state
9 of South Carolina?

10 A Well, in the beginning, I guess -- I think I got it in
11 about '98 or whatever. We were the first Highway Patrolmen,
12 the group of us, and half of us passed and half of us didn't
13 on the first round. But it's always been -- it was a big
14 thing for our commander at the time that we get certified.
15 At that time I think there were maybe two other police
16 officers in the state that were certified and they weren't
17 on -- they were not Highway Patrolmen. And since then it's
18 been a -- it's been a priority. And it's something that the
19 MAIT, you know, works toward to try to reach that goal. And
20 to my knowledge now, some of the guys are and some aren't.

21 Q You had the opportunity to be here and appear in Court
22 and listen to their testimony; is that correct?

23 A I did.

24 Q And the ones of the gentlemen that got up to testify,
25 are any of them at that level?

1 A Some of those gentlemen have ACTAR, to my knowledge. I
2 think maybe a couple of them did and a couple of them didn't
3 maybe. But, you know, to my knowledge.

4 Q All right. Now, have you -- have you been retained by--
5 the Rowell family to help them do a reconstruction of this
6 scene?

7 A Yes, sir.

8 Q Do you know the Rowell family?

9 A I do not. I was actually retained through you for
10 them. Yes.

11 Q So you don't have any personal relationship or anything
12 like that with them?

13 A No, sir.

14 Q Now, did you have an opportunity to fully examine all
15 of the evidence in this case?

16 A Everything that was -- that was presented to me. Yes,
17 sir.

18 Q And to your knowledge, everything that -- everything
19 there is to know about this case, as far as from the science
20 of the wreck and whatnot, you've observed it or reviewed it
21 or --

22 A To the best of my knowledge and ability. Yes, sir.

23 Q To the best of your ability. Okay. Having done that,
24 do you think that you could kind of go through that with the
25 jury and go through your -- well, your findings to help them

1 come to a conclusion, or help explain what actually happened
2 out there, in your opinion?

3 A Yes, sir.

4 Q Based on your experience?

5 A Yes, sir.

6 Q Would you like to start that now?

7 A I would.

8 (Whereupon, the witness stepped down from the witness
9 stand.)

10 THE WITNESS: Ladies and gentlemen, I've prepared a
11 PowerPoint presentation, and I do these on all my cases,
12 whether I -- whether I testify in Court or not, and most of
13 the cases I don't testify in Court. I -- it didn't come out
14 up there, but I work a lot of civil cases and some criminal
15 cases such as this. But the PowerPoint just helps me to
16 organize my thoughts and keep my thoughts together in my
17 head. So that's -- that's kind of how I keep my points and
18 everything organized. Shall I start?

19 Q What's the first thing you think is important in your
20 presentation?

21 A Well, the main thing here is that that you folks get to
22 hear everything, and you're going to hear everything that I
23 know and have seen and reviewed and you need to hear -- need
24 to hear the whole story as to whatever happened based on any
25 knowledge that any witness may have. I'll start the -- get

1 started here.

2 From the very beginning there were some contradictions
3 that -- that I pointed out from the initial reporting of the
4 accident. We had the TR310 accident report filled out,
5 reported by Trooper Smith, and then there were MAIT
6 notifications and issues, and there were some contradictions
7 that I would just like to point out to you on those.

8 First of all, nowhere in the narrative of the accident
9 report does it mention a head-on. Now ---

10 MR. BLACK: Judge, I think we're going to object that
11 the police reports, they don't ever come in ever. I think
12 the rule is explicitly -- I mean, testimony, this is not how
13 you do this. That's my objection.

14 THE COURT: Let's -- I guess I'll call for a sidebar.

15 (Whereupon, a sidebar was held.)

16 THE COURT: Okay. We got that resolved at sidebar.

17 Mr. Garrett, you may proceed, sir.

18 MR. GARRETT: Thank you, Your Honor.

19 Q Take -- I don't want you to show right now the jury the
20 accident report. But did you have an opportunity to look at
21 the accident report as part of your investigation in
22 determining where the contradictions were?

23 A I did. Yes, sir.

24 Q Tell us then what you found after reviewing the
25 accident report, if you found any contradictions and explain

1 them, please.

2 A Well, the accident report, as I was stating, it was
3 actually going to be a very complimentary statement. But it
4 didn't -- it didn't describe a head-on in the narrative,
5 which it doesn't have to describe a head-on in the
6 narrative. Some folks put that in the narrative to describe
7 head-on, rear-end or whatever, some don't. This one did not
8 have that in the narrative. However, on the next page it
9 actually describes a rear-end.

10 Q All right. Don't -- don't show it right now. Just --

11 A I'm passed it.

12 Q Just don't show it. So are you -- would you tell us
13 then the difference between the front page and the back
14 page? What does it describe in the back page?

15 A Well, the front page is okay. It just -- I was just
16 telling the jury that some folks, some troopers would --
17 would describe the collision or a head-on or a rear-end or
18 whatever. I think as you've heard the testimony now enough
19 to know that this was clearly a head-on collision. But on
20 the second page of the accident report it is actually coded
21 as a rear-end collision.

22 The MAIT intake sheet, which is on the screen now --

23 Q Okay. Don't -- don't show it. Don't show it right
24 now. Tell us, did you have an opportunity to review the
25 Multidisciplinary Accident Investigation Team, MAIT case

1 notes, dated 11/15/2014 by Investigator Brock?

2 A I did.

3 Q And is there something relevant in there that you want
4 to tell the jury?

5 A Well, the contradiction is just between the accident
6 report and what MAIT was going to do from the beginning.
7 The issues pointed out by Lieutenant Brock here from the
8 phone call he received from Lieutenant Dangerfield shows
9 issues seen, documentation, audio, video, pictures, laying
10 location, ACM and mechanical. And in the next paragraph it
11 clearly shows the highlighted portion based on a head-on
12 collision. So simply just saying contradictions between
13 road trooper paperwork, MAIT paperwork, from the very
14 beginning.

15 Q And does that sometimes often happen?

16 A It does, unfortunately.

17 Q Go ahead on.

18 A This is just a picture that was provided to me by
19 Defense counsel which -- which is a picture that was taken
20 by the Highway Patrol of each vehicle put together for
21 comparison to show that this is clearly a head-on collision,
22 so there's no mistaking that it is a head-on collision. One
23 of the things I looked at is, well, were injuries that
24 sustained by the victims. Seatbelt usage is always
25 important in sustaining injuries or not sustaining injuries.

1 Just some contradictions there in my findings based on the
2 material I was given. Cockrell -- Mr. Cockrell was not
3 restrained according to Mr. Sanders' statement. Mr.
4 Sanders' statement said that he was restrained. As I've
5 said, according to his own statement. Then the question
6 becomes what does the evidence show.

7 This is a summary of a statement taken by Kelly
8 Anderson of MAIT of Mr. Sanders, and he had told her on -- I
9 don't see the date on there. But whenever this statement
10 was taken, that he actually had his seatbelt on and he
11 doesn't think Jeremy had on his seatbelt. Mr. Cockrell.

12 Q So you found that --

13 MS. MERRILL: Matt, turn off the TV unless you're
14 showing a picture.

15 A Okay. Another part of Matthew Sanders' statement
16 highlighted just saying the other vehicle was going 50 to 60
17 miles per hour, approximately 35 yards away. From my memory
18 that's what he testified to. Curled up and grabbed handle.
19 And he had a broken femur and shattered knee.

20 I'm about to show you a photograph that actually shows
21 the inside of the vehicle. The red truck. Mr. Cockrell's
22 truck. And it shows damage to the dash of the vehicle and
23 damage consistent with a person's body impacting the dash
24 during a very horrendous crash like this one, and most
25 likely resulted in the broken leg from -- from being in the

1 fetal position.

2 Q Based on your years of experience in examining these
3 types of accidents, if a person is unrestrained is it
4 unusual for them to do an indentation of the dash similar to
5 this one?

6 A No, sir. It's not unusual. This is -- this is a very
7 serious indentation, or damage. But this is a very serious
8 collision. And something large such as a body, leg matched
9 with the injury received by Mr. Sanders, this is what it
10 takes to do this. And then not only was it my opinion but
11 it was also the doctor's opinion at some point that Mr.
12 Sanders was not restrained. Actually was not wearing his
13 seatbelt.

14 I'll talk to you next about the mechanical examination.
15 There was a mechanical examination done on one of the
16 vehicles. On Mr. Rowell's vehicle. The blue Chevrolet.
17 There was not a mechanical done on the red truck.

18 Q Why is that? Why wouldn't there be one on both?

19 A Well, I don't know, to be honest with you. I think
20 there should have been one done on both, especially since we
21 had -- we have witness statements that we'll see in just a
22 minute that -- a witness statement that it appeared that the
23 red truck was across the center line as well. Any time you
24 have a left of center issue, you know, the easy thing to do
25 is examine the vehicle that clearly went left of center and,

1 you know, sometimes you may think' caused the accident,
2 whether that's the case -- whether that's the case or not.
3 But in these type situations it's always best to do a
4 mechanical on both vehicles, because you never know what
5 witnesses are going to say or what Defendant's are going to
6 say or anything to that extent.

7 As I said, only the blue truck was examined and it
8 wasn't fully examined. It was only partially examined.
9 Three wheels were examined for tires, brakes and such. The
10 fourth wheel was not examined. You all probably remember, I
11 caught a little -- caught a little heat on this one from the
12 -- from the stand up there. Mr. Brooks, he's a friend of
13 mine, but, you know, said something about we used to burn
14 cars up or whatever. But we -- we used to tear cars apart
15 if they needed tearing apart to make sure we found out
16 everything we needed to find out. When you use torches you
17 can catch a car on fire. We also had good fire
18 extinguishers so we could put them out. And I'm going to
19 give you a little more information. MAIT actually still
20 does that. It's not done all the time. It's not done in
21 every case. It's determined -- prioritized or whatever.
22 But it's determined which vehicles will be done a full exam
23 on or not. And as he said, the local guys have hand tools.
24 Okay? That's some policy changes or something that's come
25 about in recent years. They only have hand tools. But

1 there is a gentleman, a sergeant I think he is now, named
2 Jimmy Booker who his name appeared. He's the lead MAIT
3 mechanic and he does have all the heavy tools. He still has
4 the trailer with all the tools he can roll out and tear a
5 car apart if -- if they see fit to do so.

6 Q So was there a decision made by somebody in this case
7 -- in this case then not to do a full inspection of the blue
8 truck as well as to do no inspection of the red truck?

9 A That's correct. And ladies and gentlemen, in these --
10 in these guy's defense, they work a lot of cases. And, you
11 know, I don't know that they can do a full examination on
12 every vehicle. But they probably work too many case, to be
13 honest with you. But that's not this family's loved ones
14 fault and it's not this young man's fault that they didn't
15 get a full examination done. So, you know, it's hard to
16 prioritize on these kind of things when someone's died and
17 someone's life is in the balance. So I would have liked to
18 have seen a full --

19 Q Can I ask you a question about mechanical --

20 A Yes, sir.

21 Q -- very briefly. As far as lights are concerned, would
22 you want to see whether or not all the lights were working
23 or all the bright lights were working or what condition or
24 what position they were in at the time of the impact?

25 A Well, lights are always important. I've always kind of

1 leaned toward lamps and lamp examinations. What your
2 headlights are doing. Whether they were working. Your
3 brake lights. We took some training years ago from a guy
4 that referred to himself as lamp nerd. I mean, he knew
5 everything about headlights, taillights and so forth, and
6 it's really interesting. But it was dark out there. It was
7 nighttime, and headlights were in use. And that's always an
8 issue. I mean, it can't become an issue. Did someone maybe
9 have a headlight out. Did someone maybe have their bright
10 lights on and didn't -- you know, didn't dim them. Those
11 are things that could have, you know, possibly been looked
12 at after the fact and determined -- which could also
13 possibly be causation factors in a collision.

14 Q So as to the blue truck, where are we at on the blue
15 truck as to the partial work on the blue truck? Which tire
16 did they -- are you there yet or --

17 A I'm getting there. Yes, sir. This is -- this is a
18 MAIT form. Mechanical examination form that says basically
19 left front could not be removed due to impact damage, and at
20 the bottom it says no mechanical defects could be found.
21 And, you know, you obviously can't find them maybe on every
22 wheel if you don't examine every wheel. This is the left
23 front of Mr. Rowell's truck. The one that was not examined.
24 It just simply was not removed to examine the brakes.

25 A lot of measurements were taken in this case and a lot

1 of angles were measured. Distances were measured and so
2 forth. And to determine speeds, speeds were attempted to be
3 determined in several different ways on this case. And I'm
4 just going to talk about a few of those ways now.

5 Q Hold on.

6 A Accuracy of speed determination. The post-impact
7 travel distance for red truck restricted by guardrail. I
8 don't think there's any argument about that. Sergeant
9 Duncan testified yesterday, not a true head-on inline
10 calculation. It was a ballpark number. And sometimes --
11 you know, I don't like the term ballpark, but ballpark may
12 be the best you can do. But we just need to make sure we've
13 done the best we can in this kind of investigation.

14 Here his notes, he clearly designates that the distance
15 was shortened by contact with the guardrail and the red
16 truck after impact. The vehicles rotated -- both rotated
17 counterclockwise basically and the red truck traveled about
18 10 feet and hopped up on the guardrail with the back bumper
19 and was -- it's post-impact travel which is -- which is a
20 factor is taken into speed calculations was deterred or cut
21 short by the guardrail. No question in my mind that that's
22 actually what happened. There's just a photo showing that
23 the truck was rotated and stopped by the guardrail.

24 Q So let me help -- help try to understand. Are you
25 saying that had that guardrail not been there and had that

1 traveled further in reverse, or backwards, that that might
2 have changed the ability of you as experts to determine the
3 speed of the truck, or both trucks?

4 A Yes, sir. It could have -- it could have affected the
5 speeds of both vehicles. As I've said, the post-impact
6 travel from impact out to rest is a -- is one of the
7 ingredients that you use in this type speed calculation, and
8 this one was cut short by the -- by the guardrail.

9 Q I believe Mr. Duncan concurred with you on that issue?

10 A Yes, sir. I -- Yes, sir.

11 Q All right. Go ahead.

12 A Just another -- just another angle of the same -- same
13 thing, showing the truck is on the guardrail. And that
14 would -- that would cut the travel distance short.

15 Q Is that damage down the left-hand side?

16 A Right-hand side?

17 Q I'm sorry. The right-hand side? The passenger side?

18 A Yes, sir. If you're sitting in the truck, the
19 right-hand side. There appears to be some minor damage.
20 Some paint flecking or flakes, like maybe some sort of minor
21 impact under the molding there.

22 Q What about that tire on the right-hand side? Is that
23 -- back there. Does that look -- what's that little --

24 A It looks like maybe there's possibly some areas where
25 something had been rubbed or possibly a slight contact.

1 Tire sizes, we've heard a lot about that from the stand
2 yesterday. The MAIT mechanical here, general vehicle exam
3 form shows MasterCraft AXT 205/70R17s on the vehicle. On
4 Mr. Rowell's vehicle. Actually they were 265/70R17s. So
5 just, you know, could be -- could be just it was written
6 down wrong. Okay? It was written down wrong. But in these
7 type investigations, these type serious investigations, just
8 pointing out some discrepancies. We have to be careful when
9 we're documenting these type situations. When you -- when
10 you use those sizes -- here we have other sizes. The
11 vehicle was designed for P235/75R16s and it actually had
12 265/70R17s, which is actually a different -- if you notice,
13 that's a different size than the one here. It's 205 here.
14 So that -- you know, there was a lot of speed calculations
15 done to show that that changes speed calculations. I
16 actually did some research and found that Yokohama,
17 Goodyear, Tire Rack, GM, some of those -- some of those
18 actual tire makers recommend several different sizes. So
19 one of the sizes they recommend is actually a size that was
20 on -- that was on this vehicle. So I really don't know that
21 the tires -- in my opinion, the tires didn't have a whole
22 lot to do with the speed variances.

23 Q Well, let me ask you this. Did you receive notice that
24 the MAIT team, in its initial report and its initial
25 analysis, decided to change its analysis as it related to

1 speed and distance based upon the tire?

2 A Yes, sir. There were changes made. And that's what I
3 was trying to point out. The -- at first, as I said, I
4 guess, the size was written down wrong, and then Auto Stats
5 a common program that reconstructionists use, that say these
6 type -- these sizes should be on the truck. But they're
7 actually in contradiction with some manufacturer's
8 recommendations. So all of which could change the speed
9 possibly as calculated, but I'm just of the opinion that I
10 don't know about this tire thing, because there are so many
11 tires that are recommended for this vehicle that I'm not
12 sure the changes. The size. I'm not sure all the
13 recommended sizes are what change the speed.

14 Q What about the speed of the red truck?

15 A Well, this -- this first red truck speed here is 58 --
16 58 miles per hour. That was the original speed calculation
17 done.

18 Q So you're saying that MAIT originally said that the red
19 truck was going how fast?

20 A Fifty-eight miles per hour at the beginning of skid and
21 47, I think it is, at impact. Yes.

22 Q Did that change?

23 A That did. That did. When we decided we had the wrong
24 tires on it, it changed -- the second calculation came out
25 to be 41.81 at the beginning of skids, and 24 miles per hour

1 at impact, based on different tire sizes.

2 Q Why? Well, how in the world would you determine the
3 speed of the red truck based upon the tire size of the blue
4 truck?

5 A Say that again, sir?

6 Q How would you determine the speed of the red truck by
7 looking at the tires of the blue truck --

8 A Well, the tires --

9 Q -- in this case?

10 A The tires -- the blue truck, an ACM speed was used. A
11 black box speed was used. Heard testimony about that
12 yesterday. The ACM, SDR, whatever black boxes in the
13 vehicles. That speed was used for Mr. Rowell's vehicle.
14 And then once -- once it was discovered that maybe the tires
15 were different than what the -- than what one reference
16 called for, the Auto Stats, then the calculation was done on
17 the difference in the circumstances and it changes the
18 speed.

19 Q I understand how it can change the speed of the blue
20 truck, but help this jury understand how it changes the
21 speed of the red truck.

22 A The blue truck speed in the type calculation that MAIT
23 did on the speeds for both vehicles. As I've said, the blue
24 truck, the ACM, or the black box speed was used. Well, this
25 is a -- this is a near head-on. It's pretty close to a

1 head-on collision. In my opinion, it's not a true head-on.
2 And we had testimony yesterday from Sergeant Duncan that he
3 pretty much agrees it's a ballpark, or it's not a true
4 head-on, so -- but in a head-on calculation you have to have
5 the speed of one of the vehicles. So we had the speed of
6 the blue truck, Rowell's truck, from the ACM. And that's
7 the one that kept changing because of the discoveries of
8 different size tires. So in turn, that changed not only his
9 speed but it changed the speed of the red truck a couple of
10 times.

11 Just an observation from the animation. The second
12 animation. This is the red truck. Ladies and gentlemen of
13 the jury, you all saw the animation yesterday. This is a
14 still shot at about 15 seconds in the animation. You can
15 count -- you get real close and put your glasses on like I
16 have to do, you can count 15 guardrail posts -- or, I'm
17 sorry, 20 guardrail posts on the sides. And they actually
18 line up. There's 20 on each side and they're actually
19 straight across from each other. Those guardrail posts are
20 six to six and a half feet apart. This is more like six and
21 a half. So that's 120 feet with 20 pots. And just doing a
22 little time and distance, constant speed takes -- takes 1.68
23 seconds. I actually ran -- ran the vehicle through several
24 times and timed it to that point. Got an average 1.68.
25 When you do constant speed calculation that's 49 to 51 miles

1 per hour depending on whether you're looking at 120 or 125.
2 So just a little range there. So from the second animation
3 that as produced by MAIT we get another speed. We get like
4 a third speed.

5 Q So let's talk about the first, second and third speeds
6 then. In their last animation how fast do they have the red
7 truck going pre-impact?

8 A On the animation here it's -- like I said, based on
9 this calculation it's 49 to 51 miles per hour.

10 Q And the second one, what was their calculation of the
11 red truck?

12 A This -- this is the second animation.

13 Q Excuse me. The second speed that they came up with for
14 the red truck.

15 A It was 41.81 miles per hour.

16 Q And then what was their -- so what was -- so it went
17 from 41 -- excuse me.

18 A It actually went from 58 to 41, to 49 to 51.

19 Q Is that -- I mean, if this is mostly an exact science,
20 why would you have such a deviation between their three
21 analyses?

22 A Well, it's not an exact science, ladies and gentlemen,
23 but it's -- you need to be consistent. And this was given
24 -- this was given to you all as a visual aid to show you
25 what happened in this collision. And it's not -- what I'm

1 just pointing out is it's not in agreeance -- it doesn't
2 agree with their former calculation. So the time and
3 distance calculation is not showing this truck from point A
4 to point B on this scale diagram, or this scale CAD drawing
5 that was put into motion, it's not showing the same speed as
6 the calculation.

7 Tire size, again, just another documentation of tire
8 size. One of the -- one of the places where the tire --
9 tire size changed.

10 Q And so, that's all your backup for your tire issues?

11 A Sir?

12 Q That's all your backup? You've got backup behind that,
13 just to try to get to the bottom line so we don't bore this
14 jury to death --

15 A Yes, sir. It is. It is.

16 Q -- with this -- this --

17 A That was. That last slide, yes.

18 Q So that'll be the last slide on tire stuff that we need
19 to talk about?

20 A Well, yes, sir. I was going to mention one more here
21 that has to do with actually the red truck. We were talking
22 about tires on the blue truck and how there were so many
23 different sizes of the question. And even the manufacturer
24 specs called for -- can recommend several different sizes.
25 However, the red truck had the wrong size tire on it as

1 well.

2 Q But did they do an analysis on the red -- the red
3 truck's tires size?

4 A Not that I saw. There was no analysis on this. This
5 wasn't -- this wasn't pointed out.

6 Q So was there any analysis on the red truck?

7 A Well, there's -- there's a speed analysis based on the
8 blue truck's speed, but no mechanical or no -- no tires or
9 basic mechanical examination on the red truck. No, sir.

10 Q Well, let's talk about pre-impact skid evidence, if
11 you're through with your tires. Do you feel like you've
12 covered the tires?

13 A Yes, sir.

14 Q I know there's a lot of specifications --

15 A Yes, sir.

16 Q -- and a lot of detail. Go ahead.

17 A Pre-impact skid evidence for the red truck, which tires
18 made the marks. You'll see a CAD drawing here which shows
19 -- is highlighted in yellow. Tire -- tire marks that appear
20 to be coming from the back of the red truck. So it kind of
21 appears to me that there are rear skids in that -- in that
22 depiction.

23 Q As opposed to front skids?

24 A Yes.

25 Q Would that make a difference as to your speed time and

1 distance determination?

2 A Not necessarily. It's just more of a -- it's more of a
3 documentation issue. Was the documentation accurate. Was
4 it accurately documented. Here a clip at 27 seconds from
5 animation, the first animation, looks like rear skids as
6 well. The skids stop at impact and they are behind --
7 behind the vehicle there as you can see. Behind the red
8 vehicle.

9 Q Are those tires in their animation lined up with the
10 skidmarks?

11 A Well, this is -- this is at impact and it started to
12 rotate here. Here we see another clip of animation on the
13 left where the skidmarks don't line up -- I actually have a
14 better -- better photo there. At 52 seconds into the first
15 animation I don't have an idea which tires made those marks.
16 As you can see, they're in front of the rear tires and
17 they're beside the front tires, so that's -- that's the
18 problem with the evidence lining up and being accurate.
19 Being an accurate depiction.

20 Q So with that 360 they were talking about yesterday, if
21 the truck is over to the right a little bit in your 360
22 dynamic that would throw it off somewhat?

23 A Well, it could. I mean, it just depends on your other
24 factors. But the point here is just that the animation is
25 not accurate. It's not accurately depicted on the evidence

1 that was on the scene.

2 Q Go ahead.

3 A Just another -- another clip at one minute. Right side
4 skidmarks for the red truck, and the mark is actually in
5 front of the front tire. So not an accurate depiction
6 there. And the truck is beside the mark. The wheels are
7 not actually on the mark. That's -- you know, the question
8 becomes left of center. Blue truck left of center. When
9 did he go left of center. When did he decide to go left of
10 center. Who was left of center at impact. Were both
11 vehicles left of center at some point. What's actually the
12 causation.

13 MR. DOWTIN: Objection, Your Honor.

14 MR. BLACK: We'd like to just get that off.

15 MR. GARRETT: Take that off.

16 MR. BLACK: I don't know if we need to address this or
17 not, but --

18 MR. GARRETT: We do.

19 (Whereupon, a sidebar was held.)

20 Q I want you to skip over that one for the time being.
21 But did you have an opportunity to review all witness
22 statements and that type of thing in this case?

23 A Yes. Yes, sir. I did.

24 Q And in trying to determine pre-impact, post-impact,
25 impact and causation did you consider some of those things

1 as well?

2 A I did, yes.

3 Q Don't discuss what Mr. Pennington said. We'll have to
4 bring him here on that. But go ahead, without that.

5 A Yes, sir. Next line is a view -- an animation view
6 from the first animation at 39 seconds. I mean, I'll let --
7 I'll let the jury decide. It appears to me this red truck
8 is left of center from -- from this animation clip. He's
9 showing the red truck left of center.

10 Q And would that be consistent at least early on in --
11 that's the first -- that's the first one, right?

12 A Yes, sir.

13 Q And so, that would be consistent that the red truck was
14 left of center, based on everything you've observed?

15 A Yes, sir.

16 Q Keep going.

17 A Same -- same type deal a few seconds later. Impact is
18 in view on this one, 47 seconds maybe. Still appears to be
19 left of center. Moving on down the road, this looks like
20 the red truck is hugging the center line now. Maybe on the
21 center line moving back into the proper lane of travel.

22 Q And in the simulation do they have him left of center
23 there or is he kind of straddling up there?

24 A He's -- he meaning Mr. Rowell -

25 Q Mr. Rowell. The blue truck.

1 A Yes, sir. The blue truck is -- appears to be
2 straddling the nearest side solid double yellow line in the
3 median nearest his side.

4 Q Is there any evidence of that? I mean, other than the
5 animation, is there any evidence as to where the blue truck
6 was in relationship to the red truck at or about this time?

7 A No, sir, other than -- red or whatever.

8 Q Go ahead.

9 A This is a -- this is a very important picture or
10 observation for a reconstructionist. This is the impact
11 point where the two vehicles came together. You can
12 actually see the end of the left front tire. In some of the
13 slides earlier the skid stopped before they got to impact in
14 the depiction. In the animation. You can clearly see here
15 the red line, the bottom red line --

16 THE WITNESS: I kind of need to walk up there, Your
17 Honor.

18 MR. GARRETT: Go ahead.

19 A These lines -- just to show the angle of these gouges.
20 These gouges are the point of impact. No -- no disputing
21 that by me or MAIT. Not contradicting them on that. It was
22 not real clear yesterday. Didn't really get testimony out
23 that this was the left front that I observed all the way to
24 impact and then after impact. This is like a Y-mark we call
25 it. So the vehicle stops and rotates back. The red

- 1 vehicle. The question could be, well, you know, who made
2 these gouges. Well, if you really look at the evidence and
3 examine the evidence, you know, the thought is, well, it
4 could be from either vehicle. But if this is the left front
5 of the red truck then the undercarriage and everything that
6 would make gouges would be in this direction. So these are
7 clearly from the blue truck. And the importance of that is
8 to show the angle at impact, or maximum engagement of the
9 blue truck. The blue truck is heading in this direction.
- 10 Q So the blue truck is clearly in the red truck's lane
11 but heading out of it?
- 12 A Yes. Heading back to the proper side.
- 13 Q At the point of impact?
- 14 A Yes, sir.
- 15 Q In your opinion?
- 16 A Yes, sir.
- 17 Q Go ahead.
- 18 A And there's other evidence that's pointed out yesterday
19 that ties in with that at the top of the red lines that lead
20 to the area of rest where the blue. So it all goes
21 together.
- 22 Q Animation number two. This is just the measurements I
23 took that I've talked about earlier and the timing. The
24 timing -- or I used this slide twice. Once in the speed and
25 once in the tires to show the difference in speeds. Same

1 thing. Just a speed contradiction, 49, 51 based on the
2 animation.

3 A I this clip at, it looks like, 38 seconds in the second
4 animation the truck is not accurately depicted on the
5 evidence. On the skidmark evidence.

6 Q Which truck?

7 A The red truck.

8 Q Why not, or can you determine why not?

9 A This photo -- this photo was looked at extensively
10 yesterday and it shows the left front wheel at rest on the
11 skidmark of the right side. So that skidmark goes on under
12 the truck to impact. And this just happened to end up here.
13 That's not the skidmark of the left front. It's actually
14 the skidmark of the right front. And that's what was
15 testified to. However, here the point is the animation
16 shows the left front not really even close to the right side
17 skidmark at rest.

18 Q Let me ask you this. Would you go back to that one
19 just before this. Yeah. No, it's the one after that.
20 That, yeah. If you were to take the standard width of that
21 truck and put that right tire on that line, how close would
22 it have been to the center line at that point?

23 A How close would the truck have been?

24 Q Yeah.

25 A Well --

1 Q You can see, is that a left skidmark there?

2 A It is. It is.

3 Q So that's the left -- the little -- the little marking
4 there to the left is the left side -- is the left --

5 A Yes, sir. This photo shows -- it doesn't show the
6 entire left side, but it shows the left side skidmark coming
7 in with the orange paint got it on it, and then there's a
8 lot of debris and you can't see it. That's both skidmarks.
9 And they appear to be at an angle to the right, showing that
10 the vehicle is sliding. At the end of the skids it's closer
11 to the white line than at the beginning of the skids. Just
12 another clip from the animation showing an inaccuracy. We
13 just saw that the skidmarks go to impact without a doubt.
14 This clip shows the left side stopping. You can't see the
15 right side. But the left side skidmark has stopped before
16 impact. The vehicles have not touched yet in this -- in
17 this clip.

18 Q And based on that line you drew just a moment ago about
19 the -- the placement of the blue truck, would it be going
20 from left to right or would it be going from right to left
21 based upon that earlier --

22 A It would be going from left to right. The --

23 Q That's got it going the other way though.

24 A Yes, sir. The angle at impact is off somewhat, in my
25 opinion. The blue truck was actually traveling -- had

1 clearly been in the lane. Been in the opposing lane. Been
2 on the wrong side of the road and was trying to correct back
3 at impact.

4 Another picture that we've seen already but just
5 another example of impact. At the bottom right corner you
6 can see that left -- left mark coming in from the red truck
7 and it Ys back around to rest, and actually comes to rest at
8 the left front on the right side skid.

9 Followup picture. Very similar to the one I had the
10 arrows on earlier showing the same depiction. The end of
11 the left front skid right at impact where the big gouges
12 are. And the direction -- the importance there again is the
13 direction of those gouges showing which direction their
14 headed. And that helps with the placement of vehicles in
15 calculating speeds based on linear moment. Just another
16 same thing. A picture here with a little better lighting,
17 but it shows the same thing.

18 MR. GARRETT: Judge, may we approach?

19 (Whereupon, a sidebar was held.)

20 Q Your next section deals with very definite tire sizes
21 and whatnot?

22 A Yes, sir. I've just got that documentation I spoke of
23 earlier of variance in tires. I was just going to run
24 through that kind of quickly.

25 Q Okay. Go ahead.

1 A Just research Tire Rack for Mr. Rowell's vehicle shows
2 a 17 inch 245 70/17 which is the size under the tire that
3 was on that vehicle. Yokohama shows LT245 75R16E. So it
4 even recommends a 16 as an accepted tire size. So we've
5 heard pretty much about 17s until now, but this size 16 is
6 even recommended by Yokohama. Goodyear -- Goodyear actually
7 has the tire listed that was on Mr. Rowell's vehicle at the
8 time of the collision, B265 70R17. That's the middle one
9 there at the bottom just above the blue. That's the tire
10 size that was on the vehicle and it's recommended by
11 Goodyear. And then 245 is to the left, and the four-wheel
12 drive is recommended for the same size tire that he had on
13 his vehicle under the two-wheel drive category. So it could
14 be on the two-wheel drive or the four-wheel drive.

15 Q Can we go ahead on past the tire information?

16 A Yes, sir.

17 Q It's getting kind of late and that's very technical
18 detail and --

19 A Yes, sir.

20 Q -- as long as you're making your main points.

21 A Yes, sir.

22 Q If you need to back some of it up, that's fine.
23 Otherwise, let's move on.

24 A I calculated the speed based on some of that evidence
25 that I showed you earlier, the angle, the weight. This is

1 linear moment. The calculation takes into account the
2 weights of the vehicles. It takes into account the
3 post-impact travel after impact. How far did it go. What
4 was the drag factor of that period. What was the distance.
5 What was the surfaces. And the angles, the weights. Those
6 distances. The angles that the vehicles approached before
7 they came together and the angles after as they departed
8 from each other. So this is a 360 momentum -- linear
9 momentum. It's not an inline calculation. I felt like this
10 would be a more accurate depiction of the speed of the two
11 vehicles. When the approach angles get as close as these
12 did, MAIT - MAIT was right in using -- you know, you can use
13 what they used. I don't know that it's the best scenario to
14 use. But the thing with this momentum is you have to be
15 careful when the angle -- the approach angles look that
16 close because it's just -- you're off a little bit you can
17 get some crazy numbers. But if you -- if your angles are
18 off you will get crazy numbers. So you'll know
19 -- you'll know that that's not accurate. And then this
20 program actually runs what's called a Vector Sum Analysis
21 and it -- it shows whether the calculation actually is good
22 or not, basically in layman's terms, because energy in has
23 to equal energy out, and that all checked out in this
24 calculation. In my speed calculation for both vehicles was
25 59.9 for Mr. Rowell's vehicle, the blue truck, and 18 miles

- 1 per hour at impact for the red truck, and it was 40 to 41 at
2 the beginning of the skid. And these are just the numbers,
3 the inputs that go in, and one of the Vector Sum Analysis
4 diagrams that shows the equal weights on both sides. The
5 equal -- not equal weight as in pounds but equal momentum on
6 both sides coming in and out. Just to kind of check to show
7 the calculation was good. These are just supporting
8 calculations that go into the main calculations.
9 Post-impact speeds and so forth. Angles. Just a little
10 diagram of angles that were drawn to get the approaches and
11 departures. And then when I obtained those speeds then I
12 used this little depiction to try to figure out what
13 happened. What actually happened in this whole scenario.
14 And based on information that I had reviewed --
- 15 Q Whose that red -- whose that red car down there in your
16 depiction?
- 17 A That was Mr. Pennington's.
- 18 Q All right. Go ahead.
- 19 A That was at the intersection of Scotch Cross Road. Mr.
20 Rowell was headed in the direction from Scotch Cross to the
21 left. His distance from Scotch Cross would have been 500
22 feet to impact based on the red line there. Can I point?
- 23 Q Yes, please do.
- 24 THE COURT: Sure.
- 25 A I thought my pointer was going to work, but my pointer

1 didn't work. From this point to impact, 500 feet. Based on
2 my speed calculation of 59 miles per hour that would take a
3 constant speed of 59, that would take Mr. Rowell 5.78
4 seconds to reach impact. Also, there as information that --
5 I'm sorry. I've got to get where I can reach it.

6 MR. BLACK: Objection, Your Honor.

7 THE COURT: You need to speak up, Mr. Sims.

8 THE WITNESS: Okay.

9 A 313 feet back. The information I --

10 MR. BLACK: Judge. Judge, I think this is the issue
11 that we addressed previously that he's about to start
12 talking about. We're objecting to about -- what he's about
13 to say. I think that we discussed that two sidebars ago,
14 maybe three. I lost count.

15 MR. GARRETT: Well, he's not going to speak about --

16 THE COURT: Well, come on over.

17 (Whereupon, a sidebar was held.)

18 Q Again, don't say anything about what Mr. Pennington
19 said. Again, don't say anything about Mr. Pennington and
20 the red vehicle, but you can go ahead -- don't say anything
21 anybody else told you. Just tell us --

22 A Based on the information I obtained --

23 Q Yes, sir.

24 A -- the red truck had possibly crossed the center line
25 in this area at 40 miles per hour calculated speed. My

1 calculated speed, which would put him 4.41 seconds back.
2 Information I obtained, that made him cross the center line,
3 dropped off the road or whatever. There was actually some
4 guardrail damage here at 313 feet that could possibly match
5 the damage to the right side of the red truck. And
6 something that appeared to be rubber that could -- black
7 marks that could have been from tire rubs. But anyway, from
8 this point at 313 feet it takes the red truck 4.41 seconds
9 to reach the beginning of the skidmark, and there's a 50, 54
10 feet of skidmark there. And the time of the skid to go from
11 40, 41 miles per hour to 18 miles per hour is going to be
12 1.3 seconds. So when you add the 1.3 and the 4.41 you come
13 up with 5.71 seconds for this whole maneuver to occur. And
14 based on information of Mr. Rowell's vehicle being, at this
15 point in time -- I just thought it was kind of interesting
16 on the speeds. It kind of made me feel good about my speed
17 calculations, that at 59 his times are so close to Mr.
18 Cockrell's time to get to impact within tenths and a few
19 hundredths. This would give -- if there -- if there was any
20 maneuvering going on up here, this time would be enough time
21 to kind of -- to kind of show what happened in the
22 animation, or as the animation showed Mr. Cockrell's vehicle
23 on the center line and moving back to the beginning of the
24 skids and then sliding to impact at somewhat of an angle to
25 the right which could tend to lead you to believe that he

1 was coming from left to right at the end of the skid.

2 Again, the 500 foot of travel, same time as the maneuvers
3 over here on this side from the red truck.

4 Q So you're saying that it's possible then that the red
5 truck had crossed the center line and then eventually came
6 back into his lane?

7 A Yes, sir. It's possible based on -- based on
8 everything that I've looked at. The whole -- the whole
9 approach and, you know, going back. Going back further and
10 looking for evidence.

11 Q Now, did MAIT - you may want to come back over here
12 now, unless -- unless you want to stay over there longer.

13 (Whereupon, the witness returned to the witness stand.)

14 Q Now, did MAIT do any analysis on the red truck?

15 A Not to my knowledge. No, sir.

16 Q Did MAIT do any analysis, to your knowledge, of the
17 road -- I guess it would be north of the -- north of the
18 area of impact? In other words, north along the guardrail
19 and maybe even towards the fairground?

20 A Not -- not that I've seen. No, sir.

21 Q You heard the testimony of one of the officers, it
22 might have been Duncan, who said that when people serve in
23 and out of lanes or whatever they sometimes leave very light
24 marks that dissipate relatively quickly.

25 A Yes, sir.

1 Q Do you recall him saying that?

2 A I do. You could -- you could leave scuff marks, scuff
3 marks or, you know, could be -- I like to use the term scuff
4 or something like that. And they are going to dissipate
5 rather quickly because it's not a -- it's not a locked tire
6 actually putting a dark mark down. It's a rotating and slid
7 slipping tire that leaves a scuff mark. So it's just like
8 when you go into a curve too fast and you maybe hear a
9 little noise. That's your tire scuffing. You're starting
10 to lose friction, brake traction, so your tire is scuffing
11 but it's not sliding. It's not skidding.

12 Q To your knowledge, did any -- was any analysis done on
13 the road for that 319 -- I'm sorry.

14 A 313.

15 Q 313. Any analysis done to that area of the road -- on
16 the road to look at it and see whether or not there was any
17 yaws or anything where the red truck might have crossed the
18 center line in that area?

19 A Not to my knowledge. I didn't see anything documented.
20 I don't think that the -- the animation didn't go back as
21 far as the end of the guardrail.

22 Q It did not?

23 A It did not actually.

24 Q All right. And so whereabouts did you -- I guess you
25 ought to help us find out where you -- where did you find

1 some damage to the vehicle vis-a-vis -- or consistent with
2 damage to the guardrail?

3 A Well, just a couple more slides.

4 Q Yes, sir.

5 A But I can come back down.

6 (Whereupon, witness steps down from the witness stand.)

7 Q These are just some photos, ladies and gentlemen, that
8 show -- I can zoom up and show you it's six feet between the
9 post, which I thought was important based on the calculation
10 I gave you earlier. I wanted to let you know the distance
11 is correct. This was just a picture of the guardrail on the
12 left side traveling the direction of the red truck. This is
13 my measuring instrument showing I measured the 313 feet.
14 Again, the distance between the post. You can actually see
15 -- you can actually see some damage and some black marks
16 there on the guardrail at that point, which is about 313
17 feet.

18 Q Let me ask you this. I mean, at this late of date, if
19 that wasn't pretty well documented at or about that time is
20 there any definitive way to show whether or not, without
21 having the red truck or the tires on the red truck, would
22 there be any definitive way to determine whether or not that
23 truck actually made those marks along the rail?

24 A No, sir. Not really, no. Not definitive.

25 Q And again, were you aware at the beginning of this

1 case, if no analysis was done whatsoever on the red truck's
2 direction into -- towards the Hot Spot or --

3 A Yes, sir. That's correct.

4 Q You found that out?

5 A Yes.

6 Q So you went out there and did that on your own?

7 A I did. Yes, sir.

8 Q Go ahead.

9 A Just showing the guardrail on the right-hand side in
10 Mr. Cockrell's direction. There's a measurement taken down
11 there which is about 18 inches, I think it is, which would
12 be about the same height as just under the molding on the
13 right side of Mr. Cockrell's truck.

14 Q So that little -- at the bottom, would that be the tire
15 mark?

16 A It could possibly be. Yes, sir.

17 Q Would that be consistent with that ring?

18 A It would. There's black scuffing, black marks, and
19 actually some indentation there on the guardrail in that
20 location as well.

21 Q Is there -- what about that -- the step guard on the
22 right-hand side of that --

23 A Yes, sir.

24 Q -- on the passenger side of the truck?

25 A It's damaged as well. It could have possible made some

1 impact. I really -- it would be hard to say. But it -- it
2 is damaged.

3 Q Did the rail look like it got damaged? I mean, the
4 door on the passenger side and then the -- do you have that
5 picture again?

6 A I do.

7 Q Was there any -- any impact on that?

8 A The -- once again, this was -- this was a horrendous
9 impact between the two vehicles. But the step -- the step
10 on the passenger side is actually pushed backwards some, it
11 appears from photos. This photo and other photos. And
12 there's what could possibly be some impact damage, paint --
13 paint damage there. Paint being removed under the molding
14 on the -- on the passenger door, as well as possible paint,
15 tire impacts or imprints with the tires there. Just had one
16 more slide.

17 Q Okay.

18 A This is -- this is just an overhead shot of the area of
19 impact. And if you look closely at the end of the corner
20 there over impact you can see those two gouges that lead
21 back to the right inside of the road. And just to point
22 out, there's -- there's a culvert at the bottom of the
23 picture there on the right. There's a small -- small thing
24 of water there that you can see, and then there's a large
25 water hazard further on up. There's actually a swampy area

1 which ponds up at times there. And, of course, the end of
2 the guardrail on the right. So with all those obstructions,
3 you know, a person might decide to go left instead of right,
4 especially if they thought they were observing someone
5 coming at them on their side of the road.

6 Q And going back to the little box. Did it show an
7 increase in speed for a second there? In other words, is it
8 consistent with somebody trying to power -- power drive
9 around the problem?

10 A It could be considered that. The speeds were pretty
11 well consistent several seconds out and then they -- and
12 then they slowed by a mile per hour or two and then it
13 accelerated by --

14 Q Kind of like somebody let off the gas to kind of make a
15 decision and then get on the gas to try to drive through it?

16 A Very possibly. And then it accelerated for a second or
17 two right before impact. I haven't looked at that today,
18 but that's from my memory, yes.

19 Q If you'll return to the --

20 A Yes, sir.

21 Q If you'll return to the stand.

22 (Whereupon, witness returns to the witness stand.)

23 Q In your opinion, based upon everything you've shown us
24 today, is -- let me give you a hypothetical. Is it possible
25 that a person who is driving the 59 miles an hour as you

1 indicated in the blue truck, and the 40 something mile an
2 hour of the red truck at or about the points that you point
3 out, for them to come together, based on your numbers it's
4 pretty close. Do you feel very comfortable with that?

5 A Yes, sir. I do. The times match up and the speed
6 looks -- you know, it's a big calculation based on my best
7 knowledge, yes.

8 Q Is it also consistent that there is some evidence out
9 there that there might have been some goings on in that
10 truck coming out?

11 A Yes, sir. That's -- that's very possible.

12 Q Two people arguing and whatnot and getting over into
13 the side of the road or coming -- coming at you. Would it
14 cause you to pause and try to figure out what to do next?

15 A Yes, sir. The -- usually when folks aren't maintaining
16 their lane of travel there's something going on. There's a
17 distraction. So yes, sir.

18 Q And this is a unique thing in the sense that as you
19 approach this from Scotch Cross Road you actually got a
20 median that you can kind of hang out in the median there a
21 little bit until you can figure out which way they're
22 coming?

23 A That's correct. Maybe they'll turn -- you have some
24 wiggle room or whatever. You're not -- at that point you're
25 not just across a narrow line into someone else's lane.

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Hon. Donald Hocker, Circuit Court Judge**

**Appellate Case No. 2018-000022
Lower Case No. 2015-GS-24-0535, 0536**

State of South Carolina Respondent,

vs.

Adam Rowell Appellant.

**RECORD ON APPEAL
VOLUME III**

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1 Q And the red truck, once it got -- if it got
2 straightened out it couldn't go off to the right because of
3 the guardrail, right?

4 A That's correct.

5 Q But if the impact had taken place, the other side would
6 either have to go off the -- into the gully or into the
7 creek over there or hit the guardrail.

8 A The blue truck. Yes, sir. Yes, sir. Mr. Rowell's
9 truck. They were -- as I pointed out, there were obviously
10 some hazards over to the right there.

11 Q Are you trained as a South Carolina Highway Patrol how
12 to drive a vehicle?

13 A Well, we had -- we had training, yes, sir, from -- from
14 early on, and consistent in-service training usually every
15 year on driving.

16 Q And is that a lawful maneuver if you're trying to
17 defend yourself against somebody else coming at you to try
18 to anticipate -- how many seconds did you have to make that
19 decision once you saw them in your lane, if you did in your
20 hypothetical, how much time do you think, based on your
21 analysis, did a person in the blue truck have to make a
22 decision about what to do?

23 A Well, as we saw, there were several seconds there. But
24 when it comes down to actually deciding and committing to
25 one way or another, probably a second or less.

1 Q A second or less?

2 A Yes.

3 Q So you could have got a hesitation and then an attempt
4 to drive through?

5 A Yes, sir. And then what you touched on, in our
6 training we're taught not to brake and to drive -- you know,
7 to try to steer through and maintain your speed, or either
8 slow down, or maybe even accelerate in some -- in some
9 instances to avoid the collision, because -- especially in
10 the old days if you -- you know, when you got on the brakes
11 you're going -- you're going to lose a lot of control,
12 especially if you're on the shoulder or on a wet surface or
13 whatever.

14 Q It takes, you know, more hand/eye control to try to
15 power drive one through a situation, doesn't it?

16 A Yes, sir. Anyone can just lock it up and hang on, you
17 know, for the ride. But to try to drive through and avoid
18 obstacles takes -- takes more input. Yes, sir.

19 MR. GARRETT: Thank you. Please answer any questions
20 opposing counsel may have.

21 THE COURT: Cross-examination.

22 MR. DOWTIN: Beg the Court's indulgence.

23 MR. GARRETT: Judge -- I'm sorry. I need to move the
24 part into evidence. I move at this time to put it into
25 evidence, but we're going to have to -

1 THE COURT: Right.

2 MR. GARRETT: -- make some changes to it to have it for
3 the Court's liking.

4 THE COURT: So long as those discussed changes are
5 made, any objection?

6 MR. BLACK: The ones that I mentioned up at the bench,
7 Your Honor. Yes, sir.

8 THE COURT: Right. And what we'll do, we'll go over
9 those in the record before we leave today and you can just
10 -- tomorrow.

11 MR. GARRETT: Yes, sir.

12 THE COURT: All right.

13 MR. DOWTIN: Your Honor, I don't have many questions,
14 but before I get started I think we need to approach about
15 something.

16 THE COURT: Okay.

17 (Whereupon, a sidebar was held.)

18 THE COURT: Cross-examination by the State.

19 MR. DOWTIN: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. DOWTIN:

22 Q Mr. Sims, I'm going to try and be pretty quick here,
23 sir. Just briefly. I mean, are you up here for free?

24 A No, sir. No, sir.

25 Q How much are you getting paid to be here?

1 A Well, I got paid a fee to do an initial look -- kind of
2 look see for a few hours to Mr. Garrett first called me --
3 or actually Mr. Henderson. Told me a little bit about a
4 case they had and that -- you know, didn't know if I could
5 help them or not, but they wanted me to try to find out the
6 truth. And if I could help them we'd go forward. If not,
7 we would stop there. And it's probably not real good for my
8 business, but I've told a lot of attorneys not what they
9 want to hear and had to stop and didn't make as much money.
10 But in this case I really thought I could help them. So
11 initially I was paid \$1,000 for the work I did, and I've
12 been paid 2,000 since then. I bill at one twenty-five an
13 hour.

14 Q Okay. Thank you, sir. Now, going back to this -- you
15 said something about 313 feet and it's possible that the red
16 truck could have come into the other person's lane. You
17 said that was based on some information you received?

18 A It was, yes.

19 Q And where did you receive that information from?

20 A Well, I've actually received that information from a
21 couple different places and I wasn't sure I could talk about
22 that.

23 MR. GARRETT: I believe he's opening the door.

24 THE COURT: Well, the question is based upon our
25 sidebar conferences.

1 Q Is one of the people you received that information from
2 here in the courtroom?

3 A Yes.

4 Q Can you tell us who that is?

5 A Mr. Rowell.

6 Q Okay. Thank you. Let's go back to the --

7 A Let me -- let me clarify that, please. Mr. Rowell
8 didn't say anything about 313 feet. He said that it
9 appeared to him there was a vehicle coming at him that was
10 crossing the center line and --

11 Q Yes, sir.

12 A --. weaving back and forth. Then I went out and did my
13 investigation. What I like to think was a thorough
14 investigation, and found evidence that supports that.

15 Q When did you go out to the scene? I guess, the -- do
16 you recall?

17 A No. It was a while afterwards. It was out there on
18 the 11th. I've actually got some dates there at your feet.
19 The 11th --

20 Q 11th of?

21 A August the -- August the 11th --

22 Q Of this year?

23 A -- '15. '15.

24 Q Thank you, sir.

25 A It happened -- it happened '14.

1 Q Yes, sir.

2 A Yes. Yes. August of '15.

3 Q So almost a year later.

4 A Yes, sir.

5 Q And going back to the crash data retrieval. As far as,
6 you know, the blue truck potentially could have swerved in
7 the red lane, changes the speed, what have you, the most
8 accurate information we have as far as the speed is from the
9 ACM, correct?

10 A No, sir.

11 Q It's not?

12 A No, sir. For the blue truck?

13 Q For the blue truck.

14 A Well, I mean, I guess maybe I didn't make my point too
15 good. But I went through all these slides of tires and the
16 changes we made in speeds and everything and how that
17 affects the speed. So I really don't know how much stock we
18 can put in that, in that speed, because the tire sizes do
19 make a difference and then they don't make a difference. So
20 I'd rather calculate the speed such as what I did.

21 Q Well, let's focus on there -- I'll narrow it down then.
22 That was kind of general speed. Five seconds before the ACM
23 is not the most accurate we have?

24 A Well --

25 Q For the blue truck, the speed?

1 A -- it's -- you know, what part of it is accurate -- you
2 know, if we get to tearing it apart as to what part is
3 accurate and what part is not, I'm not saying that it's not.
4 It doesn't have any use or accuracy. But we can see in this
5 particular case, based on all the modifications we've had to
6 do in this case to get different speeds, I mean, I'd rather
7 just come to my speeds another way.

8 Q So not by the computer that says one second before the
9 blue truck was going 66 miles an hour?

10 A Well, I'm saying at impact he was going 59. So there
11 was no skids or anything, do he didn't decelerate that much.

12 Q Were there any brake marks in the blue truck's lane?

13 A Not that I've ever seen. No, sir.

14 Q And you want to dispute that the majority of the gouge
15 marks and fluid were in the red truck's lane of travel,
16 would you?

17 A I've said that many times, yes.

18 Q And also -- I mean, I know you wanted to focus on the
19 animation, but you've seen the photos from that night,
20 correct, sir?

21 A I used most of them. Yes, sir.

22 Q I'm just making sure.

23 A Yes.

24 Q You've had a chance to look at all the photos?

25 A Yes, sir.

1 Q I mean, you've seen the brake marks from the red truck,
2 correct?

3 A That's correct.

4 Q You refer to some of them in your photos.

5 A That's correct.

6 Q And it's obvious even to, I mean, a layperson that the
7 red truck's brake marks were in his lane of travel?

8 A Both marks were in his lane, and I also observed they
9 were at an angle coming from left to right. Coming from
10 toward the center line back to the right.

11 Q The ultimate area of impact was in the victim's lane in
12 this case?

13 A The red truck's lane.

14 MR. DOWTIN: Beg the Court's indulgence.

15 THE COURT: Sure, take your time.

16 Q So again, you agreed with the MAIT team in this case
17 that this collision occurred in the victim's lane of travel?

18 A Yes. Impact was clearly in that lane, yes.

19 MR. DOWTIN: Thank you very much, sir.

20 THE COURT: Is there any redirect in direct response to
21 anything that the State asked in cross, Mr. Garrett?

22 MR. GARRETT: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. GARRETT:

25 Q The 1990 vehicle didn't have a black box, did it?

1 A No, sir.

2 Q The blue truck did?

3 A Yes.

4 Q In the old -- you've been doing this for quite some
5 time. Before black boxes, did you go back to your old
6 science?

7 A Yes, sir. It's not old. It's still used. The black
8 box is just an addition that's been added -- added to it.
9 But yes, I did.

10 Q So doing your analysis you considered the black box as
11 part of the total picture?

12 A I did, yes.

13 Q But you didn't use it exclusively?

14 A That's correct.

15 MR. GARRETT: Thank you.

16 THE COURT: Thank you, Mr. Sims. You can step down.

17 THE WITNESS: Thank you, sir.

18 (Whereupon, the witness steps down from the witness
19 stand.)

20 THE COURT: Okay, Mr. Foreman, ladies and gentlemen of
21 the jury. It is five after 6:00. You've had a long day
22 with us. Appreciate your patience, your hard work. And
23 we're going to start back tomorrow. The plan is -- and, of
24 course, plans do change. But hopefully they won't change in
25 this situation. We're going to start back tomorrow. Hope

1 everybody's good with Saturday. I really hate taking your
2 Saturday from you. But, I mean, it had been suggested that
3 we just take the weekend off. Take the President's Day off
4 and start back Tuesday, but that gives you three days away
5 from this case. And I think -- it's been my experience you
6 need to keep things as fresh as possible. And so, that's
7 why we're going to start back in the morning and hopefully
8 finish all the testimony and the evidence in this case
9 tomorrow. That's the hope. And then on Monday -- we will
10 not work on Sunday. And then on Monday come back and we
11 will -- the lawyers will have their closing arguments and I
12 will charge you on the law in this case. So that's the plan
13 right now. I hope everybody's good with that, or at least
14 willing to accept it. Maybe reluctantly somewhat, but
15 nonetheless accept it. So get you good rest. Get yourself
16 some good food tonight. And we'll see you back in -- back
17 in the morning at 9:30. And once again, remind you no
18 discussion about this case with anybody and we'll see you
19 back in the morning. Have a good evening.

20 (Whereupon, the jury was released at 6:06 p.m.)

21 THE COURT: Appreciate everybody's hard work. We'll
22 see you in the morning at 9:30.

23 (Whereupon, the proceeding was adjourned at 6:06 p.m.)

24 TRIAL DAY 6-02/18/17

25 THE COURT: Let's bring the jury out, please.

1 (Whereupon, the jury entered the courtroom at 9:40
2 a.m.)

3 THE COURT: Let the record reflect the jury is back in
4 the courtroom. Good morning, ladies and gentlemen. Maybe
5 some of you are used to working on Saturdays because of your
6 job. No, I see some -- no? Okay. Well, I think it's kind
7 of new for most of us. We don't work on -- well, maybe they
8 do getting ready for cases. But anyways, we appreciate you
9 being here. We really do appreciate your hard work.

10 Mr. Garrett, you read to call your next witness?

11 MR. GARRETT: I am, Your Honor. I call Justin
12 Pennington to the stand.

13 JUSTIN PENNINGTON, having first
14 been duly sworn, testified as follows:

15 THE COURT: You may proceed. Yes, sir.

16 MR. GARRETT: Thank you.

17 DIRECT EXAMINATION

18 BY MR. GARRETT:

19 Q Mr. Pennington, could you tell me what your name is for
20 our Court record.

21 A Justin Pennington.

22 Q Mr. Pennington, who are you? Who do -- just tell me a
23 little bit about yourself. Where you live. Your
24 background.

25 A I live on Rock House Road.

1 Q That's out in Greenwood?

2 A Yeah. I'm from Ninety Six.

3 Q Did you happen to witness an accident on the evening of
4 the 15th of November, '14? 2014?

5 A Yes, sir.

6 Q And at the time -- who were you working for at the
7 time?

8 A Asset protection for Walmart.

9 Q And just tell us, if you don't mind, about what you
10 actually saw that night, if you don't mind.

11 A I was coming up to the stop sign. I, of course, looked
12 both ways.

13 Q Hold on a minute. Is that the -- let me kind of put us
14 on -- would that be the stop sign at Scotch Cross Road?

15 A Yes, sir.

16 Q Let me get you to step down for just a moment.

17 THE COURT: What you'll need to do, Mr. Pennington,
18 since you're away from the microphone, when you are speaking
19 be sure to speak up loud enough so we can hear you, and
20 especially the court reporter. Okay, sir?

21 THE WITNESS: Yes, sir.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 Q Do you recognize the this area? The Hot Spot?

25 A Uh-huh.

1 Q The fairground here. And this is Scotch Cross Road
2 here?

3 A Yes, sir.

4 Q And would you tell the jury, please, where you in
5 relationship to this accident?

6 A Stop sign.

7 Q The stop sign?

8 A Uh-huh.

9 MR. GARRETT: Step back up there.

10 (Whereupon, the witness returned to the witness stand.)

11 Q Now, had the wreck already occurred when you got up to
12 the stop sign?

13 A No, sir.

14 Q Tell us what you observed, if you can recall.

15 A I got up to the stop sign. Of course, looked both
16 ways. And I seen a blue truck go by. He might have been
17 going 55, 60..

18 Q Was he going -- was he going in front of you from your
19 left to your right or from your right to your left?

20 A Right to left, coming from the Hot Spot.

21 Q Coming from the Hot Spot?

22 A Yes, sir.

23 Q All right. Well, that way. He'd be going north?

24 A Yeah.

25 Q Go ahead.

1 A And when I seen a red truck coming around the curve --
2 I'm not 100 percent on its speed, but I noticed that it was
3 swerving.

4 Q In whose lane was it swerving?

5 A Into the right lane. The blue truck.

6 Q So the red truck was swerving into the blue truck's
7 lane?

8 A Yes, sir.

9 Q And then what happened?

10 A It looked like they both tried to correct. Well, he --
11 they looked like they tried to correct to miss each other
12 and they just hit.

13 Q Okay. And did you give a sworn statement, a statement
14 to law enforcement right after this happened?

15 A Yes, sir.

16 Q Actually there was a tape recording of it, wasn't
17 there?

18 A Yes, sir.

19 Q Telephone?

20 A Yes, sir.

21 Q And did you talk to Trooper Anderson about what you
22 observed?

23 A Yes, sir.

24 Q Okay. Do you recognize what that is?

25 A Phone call.

- 1 Q So actually there is a -- there's an actual phone call.
2 There is a recording of the phone call where you told them
3 what you saw happen; is that correct?
- 4 A Yes, sir.
- 5 Q All right. Is it consistent with what you've testified
6 here to today?
- 7 A Yes, sir.
- 8 Q All right. And you didn't see the whole accident? You
9 just saw parts of it?
- 10 A Yes, sir.
- 11 Q But you did hear -- did you hear the boom and turn
12 around and look at the boom or --
- 13 A Yeah, I was -- I was actually already looking that way.
- 14 Q So you actually saw the boom?
- 15 A Yeah.
- 16 Q And from your direction you thought that it happened in
17 the blue trucks lane; is that correct?
- 18 A Yes, sir.
- 19 Q Okay. But it didn't happen in the blue truck's lane?
- 20 A No, sir.
- 21 Q You know that now. Now, the red truck, when you were
22 talking about it coming from the fairground, you were clear
23 that it was the red truck that was swerving out into the
24 blue truck's lane; is that correct?
- 25 A Yes, sir.

- 1 Q And you actually saw that?
- 2 A Uh-huh. Yes, sir.
- 3 Q And at the point -- at or near the point of the impact
- 4 how many lights did you see on on the red truck?
- 5 A One.
- 6 Q How many could you see?
- 7 A One.
- 8 Q And which side was that?
- 9 A Left.
- 10 Q So you saw -- you were able to see one -- one light of
- 11 the -- of the red truck --
- 12 A Uh-huh.
- 13 Q -- in the blue truck's lane?
- 14 A Yes, sir.
- 15 Q You couldn't see the other light? That doesn't mean it
- 16 wasn't on, you just couldn't see it?
- 17 A Yes, sir.
- 18 Q Did it appear to you that both of their lights were on?
- 19 When the truck came by you -- the blue truck came by you was
- 20 his regular lights on?
- 21 A Yes, sir.
- 22 Q Did he have any bright lights on that would have caused
- 23 you to have to dim yours or anything like that?
- 24 A I'm not 100 percent on that?
- 25 Q Don't recall? Actually there was -- there was -

1 MR. BLACK: Judge, I'm going to object. I think this is
2 direct examination. Open-ended questions are appropriate.

3 THE COURT: Right. Try to rephrase and not lead, Mr.
4 Garrett.

5 MR. GARRETT: Yes, sir.

6 Q Was there any -- was there a car directly in front of
7 you at the intersection?

8 A Yes, sir.

9 Q And did you ever -- was that person ever identified?

10 A Not that I know of.

11 Q And then after you talked to law enforcement have you
12 had any further conversations with anybody about this wreck
13 scene?

14 A I had a few people call me.

15 Q Did they identify who they were?

16 A No.

17 Q Okay. And I got a call to you last night. Did I
18 identify who I was?

19 A Yes, sir.

20 Q Did I ask you to come here today, to subpoena you to be
21 here?

22 A Yes, sir.

23 Q And I believe you had a little daughter and had to make
24 arrangements to try to take care of your daughter?

25 A Yes, sir.

1 Q Have I paid you anything or promised you anything to
2 get you here today to testify?

3 A No, sir.

4 Q Are you testifying truthfully?

5 A Yes, sir.

6 Q And that's what you saw?

7 A Yes, sir.

8 Q And at the time you considered yourself one of law
9 enforcement because you actually helped them out there on
10 the scene for a little while, didn't you?

11 A Yeah. Yes, sir.

12 Q Being at loss prevention at Walmart, if you all catch
13 thieves and whatnot you all work with law enforcement to
14 prosecute them and that's what you were doing?

15 A Yes, sir.

16 MR. GARRETT: Please answer any questions.

17 THE COURT: Cross-examination from the State?

18 MR. BLACK: Yes, sir, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BLACK:

21 Q Mr. Pennington; is that right?

22 A Yes, sir.

23 Q You actually know Mr. Rowell?

24 A I actually know both.

25 Q You do? How do you know him?

- 1 A I went to high school with him.
- 2 Q Where did you go again, Ninety Six you said?
- 3 A Yes, sir.
- 4 Q So you went to -- were you all at school at the same
- 5 time?
- 6 A I think so.. Yes, sir.
- 7 Q When did you end up graduating?
- 8 A I didn't.
- 9 Q Okay. Are you still at Walmart, Mr. Pennington?
- 10 A No, sir.
- 11 Q Where are you working now?
- 12 A I'm actually unemployed.
- 13 Q Okay. So you were sitting at Scotch Cross Road; is
- 14 that right?
- 15 A Yes, sir.
- 16 Q And then the wreck happened back up kind of to your
- 17 left?
- 18 A Yes, sir.
- 19 Q Back up towards the fairgrounds; is that right?
- 20 A Yes, sir.
- 21 Q How far is it from Scotch Cross Road to where the wreck
- 22 happened? Do you know about how far it is?
- 23 A No.
- 24 Q If you had to estimate do you know how far it is?
- 25 A About 300 yards.

- 1 Q Three hundred yards? That's just an estimate?
- 2 A Yeah.
- 3 Q And your testimony today you said that you saw the red
- 4 truck swerving before the wreck happened; is that right?
- 5 A Yes, sir.
- 6 Q So you -- if it's -- if it was 300 yards from where the
- 7 wreck happened, you saw -- you saw beyond that?
- 8 A Yeah, you can see most of around that curve.
- 9 Q And you could see it in the other lane; is that right?
- 10 A Yes, sir.
- 11 Q Further than 300 yards?
- 12 A Not 100 percent.
- 13 Q If I were to tell you from where you were sitting from
- 14 where the wreck happened that it was about 500 feet, 166
- 15 yards, does that sound right?
- 16 A A little better, yeah.
- 17 Q So 166 yards. I see you got a Clemson shirt on. You
- 18 like football?
- 19 A Yes, sir.
- 20 Q You've been to a -- have you ever been to Clemson games
- 21 before?
- 22 A Yes, sir.
- 23 Q Have you ever sat in one of the end zones or on the
- 24 hill?
- 25 A Yes, sir.

1 Q You have? Now, when the team is on the other end of
2 the field how far -- how far is a football field?

3 A A hundred yards.

4 Q Okay. But if you're in the end zone it's really 120,
5 right?

6 A Yeah.

7 Q Now, when the team is on the other end of the field can
8 you see clear as day what's going on on the other side?

9 A It's harder, but you can see.

10 Q You can see the numbers on the back of the jerseys?

11 A Yeah.

12 Q Clear as day?

13 A No.

14 Q Okay. Now, your testimony is before the wreck
15 happened, the impact, you saw the red truck swerving in the
16 other lane, correct?

17 A Yes, sir.

18 Q And so, there's a -- there's a yellow line in the
19 middle of the road; is that right?

20 A Yes, sir.

21 Q So you saw the red truck's tire cross the other lane?

22 A Yeah, it looked like coming around the curve right
23 there.

24 Q It looked like or it did, because this is really
25 important.

- 1 A It as in the other lane.
- 2 Q It was clearly in the other lane?
- 3 A Yes, sir.
- 4 Q So you can see -- so if it happened at 166 yards you
- 5 saw past that, right?
- 6 A Uh-huh.
- 7 THE COURT: You need to give a verbal answer.
- 8 A Yes, sir.
- 9 Q And you clearly saw that tire in the other lane?
- 10 A Yes, sir.
- 11 Q But didn't you just say that even at a football game
- 12 120 yards you can't really see as clear?
- 13 A Well, that's also players and, you know, it's a lot
- 14 bigger. His vehicle.
- 15 Q And maybe it's daylight if it's a day game or something
- 16 like that. Well, let's talk about the lighting. Are you
- 17 familiar with that stretch of roadway?
- 18 A Yes, sir.
- 19 Q Are there street lights on the side?
- 20 A No.
- 21 Q Now, when the wreck happened it was November the 14 --
- 22 or November the 15th, 2014. Did that road have lights on it
- 23 on that particular day?
- 24 A No, sir.
- 25 Q Are there lights out there now?

1 A No, sir.

2 Q It's not lit? And it happened about -- do you know
3 what time it happened?

4 A No, sir.

5 Q Was it dark?

6 A Yes, sir.

7 Q You don't know what time it happened?

8 A No, sir. Not 100 percent.

9 Q And, in fact, when Ms. Anderson called you five days
10 later you didn't know what time it was when it happened?

11 A Uh-huh.

12 Q That's correct?

13 A Yes, sir.

14 Q And you actually told her that in your statement, you
15 didn't know what time it happened?

16 A Yes, sir.

17 Q Now, you keep saying, and it's in your statement, too.
18 Your statements -- well, it sounds like it's relatively
19 consistent.

20 MR. GARRETT: Objection, Your Honor. Make a comment or
21 ask a question.

22 MR. BLACK: I'll rephrase.

23 THE COURT: Yeah, rephrase. Just ask a question.

24 MR. BLACK: Yes, sir, Your Honor.

25 Q You told us today, your testimony today is that both

1 vehicles looked like they were swerving and trying to
2 correct; is that correct?

3 A Yes, sir.

4 Q Did you say that in your statement to Ms. Anderson when
5 you talked to her five days later? What are you looking at?
6 I don't even know what you're looking at. What is that?

7 A My statement.

8 Q Same thing, okay. Have you had a chance to look at
9 that?

10 A No, sir.

11 Q You haven't? Well, take a minute to review that and
12 see if you can see anything about you telling Ms. Anderson
13 that five days after the wreck.

14 A And your question was again?

15 Q That both vehicles were swerving and they both tried to
16 correct.

17 A "It looked like the car coming from the fairgrounds
18 kind of swerved and hit the other vehicle."

19 Q And what page is that? That's on page five it looks
20 like?

21 A Yes, sir.

22 Q But you didn't say anything about the blue truck doing
23 the same thing?

24 A No. It actually looked like the blue truck was trying
25 to swerve to get out the way.

1 Q So the blue truck was swerving to get out of the way?

2 A Yes, sir.

3 Q So both trucks were swerving. But you didn't say that
4 in your statement though, did you?

5 A No, sir.

6 Q Okay. And so, this is -- I don't even know what day it
7 is. February of 2017. You would agree with me on that?

8 A Yes.

9 Q And this was -- your statement was on 11/20/2014?

10 A Uh-huh.

11 Q So now your memory is more clear today than what it
12 was?

13 A Yes, sir.

14 Q All right. Mr. Pennington, do you have any -- I know
15 you worked loss prevention. We might have even talked about
16 a case at one point or another. I don't remember. Do you
17 have any training or experience in accident reconstruction?

18 A No, sir.

19 Q You don't? Now, in your statement to Ms. Anderson on
20 page eight, do you see that? Do you see that on your -- on
21 page eight?

22 A I'm on eight.

23 Q Down at the bottom? You said it was in the blue
24 truck's lane. The wreck happened in the blue truck's lane.
25 Do you see that?

1 A Yes, sir.

2 Q Now, you said -- I think Mr. Garrett said now you know
3 that's not correct; is that right?

4 A Yes, sir.

5 Q I'm showing you what's been marked as State's 27 and
6 entered into evidence. You were out there that day, right?

7 A Yes, sir.

8 Q Do you remember seeing this? A photograph similar to
9 this, or do you remember seeing the wreck?

10 A No. I wasn't that close.

11 Q You didn't get that close?

12 A No, sir.

13 Q Now, if the red truck was coming from the fairgrounds
14 you would admit that's in the red truck's lane, correct?

15 A Yes, sir.

16 Q And just talking briefly about when the blue truck
17 passed you. The blue truck was coming up from the Hot Spot;
18 is that right?

19 A Yes, sir.

20 Q And you specifically remember it --

21 A Yes, sir.

22 Q -- passing you, right?

23 A Yes, sir.

24 Q And you were sitting at the stop sign. Were you the
25 first car?

- 1 A No, sir.
- 2 Q You were the second car?
- 3 A Yes, sir.
- 4 Q Now, you remember telling Ms. Anderson that it went by
5 kind of fast?
- 6 A Yeah. Yes, sir.
- 7 Q The speed limit out there is 55, isn't it?
- 8 A Yes, sir.
- 9 Q And then your testimony today was that it was 55 to 60
10 miles an hour. Did you tell Ms. Anderson that it was going
11 55 to 60?
- 12 A No, I just said it was, you know, going real fast.
- 13 Q Well, is 55 to 60, is that fast or is that just the
14 speed limit?
- 15 A I mean, at the beginning right there that's fast, but,
16 I mean, that's the speed limit.
- 17 Q So that's not really that fast. You're just -- he
18 would be complying with the law at that point, right?
- 19 A Yes, sir.
- 20 Q So was he complying with the law or was he going faster
21 than 55 or 60?
- 22 A I really don't know.
- 23 MR. BLACK: That's all the questions I have.
- 24 THE COURT: Anything in redirect, Mr. Garrett?
- 25 MR. GARRETT: Just briefly.

1 REDIRECT EXAMINATION

2 BY MR. GARRETT:

3 Q You're well familiar with that road there? The 225
4 Bypass?

5 A Yes, sir.

6 Q And is it a -- do most people run pretty fast down that
7 road?

8 A Yes, sir.

9 Q And you've been living out there for how long?

10 A Almost four years.

11 Q And you recognize what you said, the blue truck did
12 come by, and your statement was a little fast?

13 A Yes, sir

14 Q Okay. But you're not an accident reconstructionist,
15 right?

16 A No, sir.

17 Q All right. But you tried to help law enforcement that
18 night, didn't you?

19 A Yes, sir.

20 Q And did you also tell Kevin Fallaw who was there that
21 when they got settled down that you welcomed -- welcomed
22 them to come call you about what you observed?

23 A Yes, sir.

24 Q And sure enough they got in touch with you on the 20th,
25 five days later -

1 A Yes, sir.

2 Q -- and this is when you gave that statement --

3 A Yes, sir.

4 Q -- is that correct? Now, you know the deceased's
5 family, you know the Rowell family, and you know some law
6 enforcement; is that correct?

7 A Yes, sir.

8 Q Do you have a dog in the fight as far as trying to help
9 one over the other?

10 A No, sir.

11 Q Are you the only independent witness that we've got to
12 this accident?

13 A Yes, sir.

14 Q That's independent of both sides and everybody?

15 A Yes, sir.

16 MR. GARRETT: Thank you.

17 THE COURT: Recross?

18 RECROSS-EXAMINATION

19 BY MR. BLACK:

20 Q Looking through your statement it looks like there's a
21 lot of it looked like, it might have been, maybe. Do you
22 remember saying all those things when you were talking to
23 Ms. Anderson?

24 A Yes, sir.

25 Q And you've got your statement right there?

1 A Yes, sir.

2 Q And that's -- that's what's in the -- on the paper,
3 right?

4 A Yes, sir.

5 Q Looked like, maybe, might have been?

6 A Yes, sir.

7 MR. BLACK: Thank you.

8 MR. GARRETT: Your Honor, can he be excused?

9 THE COURT: Sure. Any objection?

10 MR. BLACK: No, sir.

11 THE COURT: All right. Without objection, sir, you're
12 free to leave the courthouse.

13 (Whereupon the witness stepped down from the witness
14 stand.)

15 MR. GARRETT: Defense calls, Your Honor, Gene Rowell
16 for the limited purpose of identifying the person in that
17 photograph there.

18 THE COURT: Okay.

19 GENE ROWELL, having first been duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GARRETT:

23 Q Thank you, Mr. Rowell. Would you tell the jury your
24 name, please, sir?

25 A Donald Eugene Rowell.

- 1 Q All right. I want you to step down from here.
- 2 (Whereupon, the witness stepped down from the witness
- 3 stand.)
- 4 Q Into evidence there's some videos and these are a still
- 5 -- these are still pictures. And I will tell you that
- 6 there's been testimony that it was about 7:00 -- 6:37
- 7 timeframe. Do you recognize this person right here walking?
- 8 A Yes, sir. That's my son.
- 9 Q Is that Adam Rowell?
- 10 A Yes, sir.
- 11 Q And is that the clothes he was wearing that evening?
- 12 A Yes, sir.
- 13 Q At some point in time did you have -- did you get his
- 14 blue jeans that were cut off of him?
- 15 A Yes, sir.
- 16 Q Were you able to get his shoes?
- 17 A No, sir.
- 18 Q And then what about his coat?
- 19 A I didn't see it, sir. A coat.
- 20 Q I believe -- and you recognize this vehicle right here?
- 21 A Yes, sir.
- 22 Q How do you recognize it?
- 23 A That's a 2005 Chevrolet that we purchased. And
- 24 actually I further recognize it by there's a box in the back
- 25 that came UPS to our home a few days earlier that had a .

1 guitar stand in it.

2 Q And then is that the toolbox?

3 A Yes, sir.

4 Q And you actually owned that truck; is that correct?

5 A Yes, sir.

6 MR. GARRETT: That's all I have, Your Honor, for him
7 right now. We reserve the right to recall him.

8 THE COURT: Okay. Is that 16 and 17?

9 MR. GARRETT: They're into evidence, 16 and 17.

10 THE COURT: All right. Very good. Cross-examination
11 from the State?

12 MR. BLACK: Mr. Rowell, just briefly.

13 I don't think I have any questions for you.

14 THE COURT: Okay. Thank you, sir. You can step down.

15 MR. GARRETT: Your Honor, he still needs to be
16 sequestered?

17 THE COURT: Yeah.

18 MR. GARRETT: Because he's on the stand -- he's been on
19 the stand he doesn't need to talk to anybody.

20 THE COURT: That's right. And especially if you
21 possibly intend --

22 MR. GARRETT: I do intend to call him back.

23 THE COURT: All right.

24 (Whereupon, the witness steps down from the witness
25 stand.)

1 MR. GARRETT: I'd ask the bailiff to make sure he gets
2 into a situation where -- Mr. Sims. Calling Mr. Sims back.

3 THE COURT: Okay. For what purpose?

4 MR. GARRETT: Your Honor, to reaffirm that's the person
5 he talked to is Mr. Pennington in coming to his conclusions.
6 We were unable to do that without Mr. Pennington's
7 statement. He's testified now, so he should be able to
8 comment on it as part of his --

9 THE COURT: What says the State?

10 MR. BLACK: Judge, I think he testified that he also
11 received information from the Defendant as well in making
12 his conclusions. So I don't --

13 THE COURT: I guess what I'm asking, Solicitor, is the
14 State opposed the Defense recalling Mr. Sims?

15 MR. BLACK: I don't think so, Your Honor.

16 THE COURT: No opposition? Come around, please, sir.
17 Yes, it's a different day. You need to reswear him.

18 MATT SIMS, having first been duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GARRETT:

22 Q We're not going to talk about tires today, right?

23 A Yes. I hope not. Yes, sir.

24 Q Okay. Let me ask you a question. When you were
25 testifying you said some of the things that you were doing

1 was trying to interview independent eyewitnesses?

2 A That's correct.

3 Q And had you interviewed Mr. Pennington before coming to
4 your conclusions there?

5 A No, sir. I'd heard -- well, I knew there was a
6 statement.

7 Q Had you read his statement?

8 A Yes. Yes.

9 Q Okay. You hadn't interviewed him or --

10 A No, sir.

11 Q -- talked to him?

12 A No, sir.

13 Q And did you use his statement along with other
14 statements to come to the conclusions that you've told us
15 about yesterday?

16 A Yes, I did.

17 MR. GARRETT: Thank you.

18 THE COURT: Solicitor?

19 CROSS-EXAMINATION

20 BY MR. BLACK:

21 Q Mr. Sims, you were on MAIT for a while; is that right?

22 A Yes, sir. A good while.

23 Q You started, what, '95 you said?

24 A Training started in '95. We actually started working
25 in '96, yes.

- 1 Q And you retired in when?
- 2 A 2012, June.
- 3 Q And during the course of your time at MAIT you talked
- 4 to -- you did everything that Sergeant Duncan with the MAIT
- 5 team did, correct?
- 6 A Yes.
- 7 Q You talked to witnesses?
- 8 A Yes.
- 9 Q You would -- you would go out to the scene, take
- 10 measurements, examine the scenes --
- 11 A That's correct.
- 12 Q -- paint?
- 13 A Yes.
- 14 Q All those type things?
- 15 A Yes.
- 16 Q And you were here when the MAIT team testified. I
- 17 think that was on a Wednesday now. I could be wrong.
- 18 Either Wednesday or Thursday.
- 19 A That's correct.
- 20 Q And you heard Ms. Anderson and Sergeant Duncan say that
- 21 they took everything into account making their decision?
- 22 A Yes, sir. There's -- you know, there's -- I mean, I
- 23 have trained those folks as -- as it came --
- 24 Q Right. And that's --
- 25 A -- came out, yes, in Court and whatever. But there's

1 -- you know, you can -- you can do 100 percent of the job or
2 you can do 80 percent or you can do 50 percent.

3 Q Right. And talking to -- talking to witnesses is a
4 part of the job?

5 MR. GARRETT: Objection, Your Honor.

6 THE COURT: You're objecting he didn't allow him to
7 finish his answer?

8 MR. GARRETT: I want him to finish his answer, yes.

9 THE COURT: Finish your answer, Mr. Sims.

10 A As I was saying, you can do -- you know, you can follow
11 your training or you can not 100 percent follow your
12 training, so that's an individual thing. So I pointed out
13 some things that I would have done if -- if I was still
14 their supervisor, or that I would have had them do. That's
15 -- this is a very serious case, as we've talked about
16 before, so we need to have a very thorough investigation
17 done.

18 Q In Mr. Pennington's statement he said it happened --
19 the wreck happened in the blue truck's lane?

20 A That's correct.

21 Q The area of impact was in the red truck's lane?

22 A That's correct. He also --

23 Q I thought --

24 A He also said that --

25 MR. GARRETT: Objection, Your Honor. Let him finish.

1 THE COURT: Okay. He can -- he can finish his answer.

2 A He also said that the red truck was swerving. That it
3 appeared to be going left of center prior to the collision.

4 Q Were you in here when Matthew Sanders testified?

5 A I was.

6 Q And you heard him testify that they didn't swerve at
7 all? That they were in their lane the whole time?

8 A That's correct. And I also heard him testify that
9 there was something -- some argument, or something going on
10 in the vehicle.

11 Q They were having a discussion, right?

12 A Distraction.

13 Q A discussion.

14 A Well, he didn't want talk about it.

15 Q Right.

16 MR. BLACK: That's all the questions I have. Thank
17 you.

18 THE COURT: You can step down.

19 (Whereupon, the witness stepped down from the witness
20 stand.)

21 MR. HENDERSON: Call Dr. Valentine.

22 THE COURT: Sir?

23 MR. GARRETT: Call Dr. Valentine.

24 THE COURT: Okay. Come around, Dr. Valentine.

25 DR. JIMMIE VALENTINE, having first

1 been duly sworn, testified as follows:

2 MR. GARRETT: Please the Court.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. GARRETT:

6 Q Tell us your name for our Court record, please, sir.

7 A Yes, sir. It's Dr. Jimmie Valentine. I spell my first
8 name J-i-m-m-i-e.

9 Q Yes, sir. ,

10 A Last name is Valentine, just like Valentine's Day.

11 Q Okay, sir. Just had that pass.

12 A We did.

13 Q All right, sir. Tell me a little bit about you and
14 about your educational background and help the jury know who
15 you are.

16 A Yes, sir. I'll be glad to. Actually I grew up in
17 Shreveport, Louisiana and went to high school there, and
18 actually went to college at Centenary College in Shreveport,
19 Louisiana. I received a Bachelor's degree in biology in
20 1962 and a Bachelor's degree in chemistry in 1964. And then
21 I went from there to the University of Mississippi where I
22 received the Master's degree in medicinal chemistry, and
23 then the PhD degree in medicinal chemistry. Finished there
24 in 1968.

25 Q Yes, sir. And what have you done since then?

1 A Well, after I left University of Mississippi I went to
2 Mallinckrodt Pharmaceuticals in St. Louis, Missouri with
3 some of the staff there as a senior research scientist for
4 five years. And then I accepted a position as an associate
5 professor and lectured in medicine at the University of
6 Missouri in Kansas City. Of course, that's in Kansas City,
7 Missouri. And I was on faculty there for a total of five
8 years, and then went to the Oral Roberts University School
9 of Medicine in Tulsa, Oklahoma where I was an associate
10 professor of pharmacology. At that institution I was
11 promoted to full professor and then later became the
12 chairman of the Department of Pharmacology there and served
13 in that capacity until that school closed in 1990. And my
14 wife and I were both on the faculty there. We had to
15 relocate, so we relocated to the University of Arkansas
16 College of Medicine in Little Rock, Arkansas, and I finished
17 out my career there. It was 19 years at the University of
18 Arkansas College of Medicine in Little Rock where I was a
19 professor of pediatrics and pharmacology.

20 Q All right, sir. Are you a published author?

21 A Yes, sir. I am.

22 Q How many writings have you -- have you prepared?

23 A Well, there's several different kinds of writings that
24 you do as an academic person as I was all those years. You
25 publish what's called peer reviewed journals, and I think I

1 had 59 peer reviewed articles in scientific literature.

2 I've published a number of chapters in books. Then I've
3 actually been the editor of two different books as well.

4 Q And so, what are you -- what areas of science are you
5 qualified to testify in?

6 A Well, over the course of my career I used the
7 techniques of gas chromatography. Gas chromatography mass
8 spectrometry. Liquid chromatography, mass spectrometry, so
9 forth, in all the research programs that we did. So I'm
10 very qualified in the area of analytical chemistry because
11 we use that as a research tool for the research that we did.
12 And I've published widely with articles in those areas. I
13 am also board certified in clinical pharmacology. I taught
14 clinical -- medical pharmacology to medical students for
15 almost 40 years before I retired. And so, I'm boarded --
16 boarded in that. I'm also a fellow of the American
17 Chemistry Institute as well, too. So I kind of have a
18 multidiscipline type of background in pharmacology and
19 analytical chemistry. And then we -- we've done a lot of
20 forensic toxicology over the years because the capabilities
21 we had in our laboratories, we were often called on by law
22 enforcement and others to analyze samples that were in
23 various cases.

24 Q Have you testified as an expert before in court's of
25 law?

1 A Yes, sir. I have.

2 Q Federal courts?

3 A Both federal and state, and also in hearings as well,
4 too.

5 Q Have you testified for the prosecution previously?

6 A Yes, sir. I have.

7 Q Have you testified for the defense previously?

8 A Yes, sir. I have.

9 Q What percentage of your testimonies as an expert would
10 you say you worked for the State or you worked for the
11 Defense?

12 A Well, I don't do any work for the State any longer but
13 simply because I'm not employed by the State. When I was at
14 the University of Arkansas almost all the testimony I did at
15 that time was related to cases either for the Attorney
16 General's Office. I was a consultant for the medical -- the
17 different professional boards in the state. The medical
18 board, pharmacy board, nursing board and so forth. And I
19 testified in hearings for those organizations on a regular
20 basis. Since I had retired I still am the consultant to the
21 Arkansas State Board of Nursing, and also the Arkansas
22 Department of Corrections. And so, I regularly write
23 reports for them concerning drug testing that's going on
24 with their employees or people in their jurisdiction, and I
25 frequently testify in hearings before them as well still.

1 MR. GARRETT: Your Honor, at this time I'd move to
2 qualify Dr. Valentine in the areas of pharmacology,
3 toxicology, forensic -- forensic examinations and -- one
4 other thing. Hold on just a minute. Let me make sure I get
5 them. Chemistry. Chemistry.

6 THE COURT: All right. What says the State?

7 MR. BLACK: No objection.

8 THE COURT: All right. Without objection I find that
9 Dr. Valentin is an expert in the area of toxicology,
10 pharmacology and chemistry.

11 MR. GARRETT: Thank you.

12 Q As a medicinal chemist are you sometimes called upon to
13 determine whether or not alcohol or drug screens are valid?

14 A Yes. When I was still active in academia, as well as
15 since then, I frequently testify in court cases. Alcohol is
16 involved in a number of cases. There's a lot of drugs that
17 are involved in cases, too. And so, I routinely testify in
18 that area.

19 Q Are you free?

20 A No, sir.

21 Q How much do you cost?

22 A Well, I charge -- I charge for my time. In this
23 particular case I charged 1,500, my retainer fee, to --
24 first off, I visited with you and Mr. Henderson over the
25 phone and went over the merits of the case. I always do

1 that before I ever accept a case. And then I -- I got a
2 \$1,500 retainer from you all to look at the records. And
3 then after I looked at the records I felt like that I had
4 something to offer in the case. And so, I agreed to take
5 the case. Since that time I've done a lot of work in this
6 case because I had to look at a lot of medical records. I
7 had to look at all the records from the SLED analyses. And
8 so, I charged you for that, for my professional time. My
9 professional time I get \$1,500 per day. And so, whenever
10 I'm someplace like now I get paid \$1,500 per day for my
11 professional time, plus expenses.

12 Q I understand. Now, as a medicinal chemist are you able
13 to try to compare what someone's alleged blood alcohol level
14 would be and their abilities to drive a vehicle and/or to
15 walk in a straight line?

16 A Yes. Part of the discipline of pharmacology that I've
17 taught in medical school all these years, alcohol is a drug.
18 We consider it a drug. So we would teach the medical
19 students, and then I taught the residents as well, too,
20 about the effects of alcohol, because they have to
21 understand when they see a patient what to expect clinically
22 from a person that's intoxicated with any alcohol. And that
23 goes along with the blood levels that correspond to the
24 physiological state that you would expect at that point in
25 time. So I'm very versed in that area.

1 Q When it was found out that we had a recording of Mr.
2 Rowell some 20 minutes before this accident, did that peak
3 your interest? Did you want to look at that?

4 A It certainly did. I said I wanted to look at that,
5 because that's important to see what his demeanor is, what
6 physical signs he's showing 23 minutes before the accident.
7 Correct.

8 Q Now, it wasn't set up to be a test where you could
9 actually ask somebody to walk a line or talk or carry on,
10 and there's no -- there's no audio?

11 A That's correct.

12 Q So really you're simply left with that you -- what
13 we've got?

14 A That's correct.

15 Q But you did find that important to look at?

16 A Yes, sir. I did.

17 Q So at the beginning of this case, once you've reviewed
18 the records and we found that, you wanted to see that
19 immediately; is that correct?

20 A I did. And you all sent me the video of that. Yes,
21 sir.

22 Q What I'd like for you to do is I'd like for us to play
23 that and to take our time for a minute and I want you to
24 talk to the jury about what you observed about Adam's
25 abilities in that.

1 A Yes, sir. I'd be happy to.

2 Q Are you more comfortable there?

3 A I think they can hear me well here and I can see the
4 screen just fine, so I believe it would be fine.

5 THE COURT: Which video is this, 13 or 14? Just for
6 the record.

7 MR. GARRETT: 14, Your Honor.

8 THE COURT: 14, okay.

9 MR. GARRETT: Defendant's 14.

10 Q Dr. Valentine, what parts did you find important to
11 you, if any, in that video?

12 A One of the things on driving performance under the
13 influence of alcohol is being able to control a vehicle
14 appropriately. We saw on this particular scene the truck
15 came in. The Silverado truck came in. That's it that we
16 saw just a moment ago. And it -- there you go. And it
17 turns into the -- into the lane of the parking garage.
18 Parking lot. You'll see it turn in now. And then he's --
19 he's actually behind another vehicle and he appropriately
20 stops behind the vehicle and then waits. Obviously there
21 was somebody -- you can see the parking lot was kind of
22 crowded that night. Somebody is there and he's waiting for
23 someone to back out. Another car comes in behind him at
24 that point in time. And then you'll notice in a moment that
25 he puts on his turn signal. Again, these are all

1 appropriate actions for driving a vehicle. And he pulls --
2 you'll notice as the car backs out he pulls into the parking
3 spot that's there. We can't see whether there's a car on
4 the other side, but I assume there were multiple cars there
5 and he's pulling in between the cars. And again, that's an
6 appropriate action being able to pull into a parking spot.

7 Q So based upon that driving, would that be consistent
8 with either of the tests that you have examined in this
9 case? Either of the alcohol tests that you've examined in
10 this case?

11 A Typically police officers, for example, are taught in
12 their training to look for swerving of a car, inappropriate
13 braking action, failure to put on blinkers, single light, or
14 pulling into parking places. Those are all things that can
15 be looked at, and I've seen that on -- I've looked at
16 literally hundreds of videos over the years where police
17 action has been exercised when people that those kind of
18 characteristics.

19 Q If someone was a 22 level -- true 22 level, would they
20 be able to do that?

21 A No, sir. If you were at a point -- it's a .22 level.
22 If you were at a .22 level your faculties would not all you
23 to do -- appropriately drive a vehicle like that.

24 Q Now, that's all they had of the outside. They don't
25 have him coming in or anything.

1 A Yes, sir.

2 Q The only other thing we were able to find was this next
3 one. And we sent you this next one as well at the same
4 time; is that correct?

5 A Yes, sir. You did.

6 Q And help the jury understand what this -- and that
7 would be Defendant's 13. What does that show you, or kind
8 of give the jury --

9 A You're going to see -- you're going to see Mr. Rowell
10 walking down the aisle of the Walmart store there. Of
11 course, I did not have the opportunity to observe his gait
12 or anything prior to this, so I had no -- no concept of how
13 he walked. We'll see it in just a moment. We'll just let
14 him -- just let him walk all the way down the aisle and let
15 the jury observe it and then I'll comment on it after that.

16 Q Okay. Can you tell us approximately when he comes into
17 the screen as to which one he is? We'll try to get that --

18 A Yes, sir. When I spot him here I'll let you know.
19 There he is now. He's the second gentlemen walking there.
20 That's the complete -- that's complete -- all we have.

21 Q We lose sight of him and we don't -- we don't see
22 anything more than that?

23 A Yes, sir, that's correct. That's all we see.

24 Q Doctor, based on your observations, could a person walk
25 that way if they were a true 22?

1 A No, sir. They could not.

2 Q And did you have an opportunity to look at Mr. Rowell's
3 gait? All of us have, I guess, our own gait or our own way
4 of walking.

5 A We do. I did. When I first met him, I believe it was
6 last -- a week ago today that I met Mr. Rowell for the first
7 time. I asked him to actually walk down the hallway to your
8 office so I could take a look at his gait. Now, I'll remind
9 you that he's had multiple surgeries on his legs because he
10 had injuries, so he may not walk the same as he did at that
11 point in time. What I did notice about his gait, he tends
12 to splay out his feet when he walks.

13 Q Is that called being pigeon toed or --

14 A Well, they would be inward like this. He tends to walk
15 out like that. Some people -- I assume that's his normal
16 gait. And I observed that on this same -- this video here.
17 It seemed like to me that that's what he was doing. He was
18 splaying his feet outward just a little bit as we walked.

19 Q And did you see whether he was having any balance
20 problems or anything in his walk?

21 A No, sir. He didn't appear to be having any balance
22 problems. I mean, you know, someone at a .22 would be
23 trying to put their arms out for balance or be holding on to
24 things because they simply don't have any balance at that --
25 at that level.

1 Q And was he able to maneuver around -- or slow down
2 behind people and maneuver around some of the --

3 A I think that's kind of typical at Walmart. You're
4 always having to move around people, I guess, aren't you.
5 But he seemed -- it seemed to be fine. I mean, I didn't see
6 anything out of the ordinary with that.

7 Q He didn't bump into anybody or anything like that?

8 A No, sir. I didn't see anything like that.

9 Q Is that -- is that way of walking consistent with a
10 .22?

11 A No, sir. It's not.

12 Q Let's -- then let's start talking then about your
13 findings. Did you have an opportunity to review all of Mr.
14 Rowell's medical records?

15 A Well, I -- what I reviewed in his medical records were
16 the transport records. The records of the Greenwood County
17 emergency group, both the fire and the EMS people. I also
18 looked at the LifeFlight records. I looked at all of the
19 emergency records, or trauma records, and the surgery
20 records that were done on him. I did not look at -- I did
21 not have records to look at from his extensive hospital stay
22 that he was there. That really wasn't necessary for my --
23 my part of this case.

24 Q All right. So then tell us what your analysis found.
25 What did you find? And start, if you don't mind, at the

1 beginning when he was inside of the vehicle still trapped
2 inside. Was there any type of medical procedures being
3 performed on him in the vehicle?

4 A Yes. It appeared from the medical -- from the EMS
5 records that they tried to start an intravenous line in his
6 arm while he was still in the vehicle and that was
7 unsuccessful. Apparently they did get that established once
8 they got him out of the vehicle and into the -- into the
9 back of the ambulance.

10 Q What is commonly used -- do you have an opinion as
11 what's commonly used to start the IV? Do they just stick it
12 in or do they wipe it with something, or do you know?

13 A Well, it's a septic procedure. You're supposed to wipe
14 it down with some type of disinfectant. Usually isopropyl,
15 and alcohol swab is what's typically used.

16 Q You don't know what was used in this case?

17 A I do not know what was used, and it's not recorded in
18 there what they used either.

19 Q Now, if they tried to stick and they stuck him and he
20 bleed, would that be a contamination of his blood system?

21 A It could be if there was contamination of the needle or
22 anything that was used. Typically they have a sheath over
23 those needles, so they're supposed to be sterile. And so
24 long as no one touches it, it is sterile.

25 Q Okay. And then -- so then, you say they get him out,

1 they get him up on a gurney or whatever, and then they do
2 get the IV started; is that correct?

3 A Yeah, once they got him into the -- into the back of
4 the ambulance they did get an IV started. And then I think
5 you heard some testimony yesterday of how he was -- his
6 breathing was supported.

7 Q Are you familiar with those bags? The bags that you
8 use for --

9 A Yes, sir. I am.

10 Q And as the nurse testified yesterday, is that true?
11 Does the exhaust of his breathing come directly into your
12 face?

13 A I believe those are set up -- it's typically -- it's a
14 mask that fits over both the nose and the mouth. And then
15 it comes -- it has a metal piece that comes up. It's
16 stainless steel that comes up. It's got a T on at the end
17 and the T goes over to the side. There's a bag here that's
18 used to manually breath for the individual. And then you've
19 got an exhaust port that's up on the top. And so, the
20 exhaust port would be if someone were leaning over bagging
21 them they would get that exhaust up into their face, or
22 close to their nostrils.

23 Q In a closed -- in a closed environment inside, let's
24 say, the back of the ambulance, at the distance that you saw
25 yesterday with the Nurse Boyter, you believe you would have

1 been able to smell any alcohol or anything on the person at
2 that time?

3 A Yes, sir. I believe you would.

4 Q If a person was truly a 22, would you -- what
5 percentage or chance would you have of smelling a strong
6 odor of alcohol?

7 A Well, let me say this. There's no certain smell of
8 alcohol associated with a level. Okay?

9 Q Okay.

10 A That's never been shown to be scientific. What we do
11 smell on the breath of somebody after they're drunk any kind
12 of alcoholic beverage, you're smelling what we call
13 congeners. They're the things that are in there from the
14 fermentation process. You're not smelling the alcohol
15 itself. You're smelling these congeners. And so, a person
16 who has been drinking beer does smell a little bit different
17 than somebody who's been drinking whiskey and so forth. But
18 all one has to do is drink one drink and you can smell it on
19 their breath. Okay? So the blood level can be very low of
20 alcohol and still you smell it on their breath.

21 Q I understand. So there's no scientific correlation
22 between a smell of alcohol and it being --

23 A There have been -- there have been studies in the
24 scientific literature trying to correlate the two, but it's
25 not correlatable.

1 Q Now, after they got him loaded on the gurney, got the
2 IV in him and they were bagging him, what next did they do?

3 A Well, by that time the life support people had arrived.
4 Now, the EMS people had initiated -- they had gotten a
5 saline infusion going in him. They were just hanging a bag
6 of saline on him. And then the Life people came and they --
7 they did the intubation, as we heard, in the back of the
8 ambulance. They gave him the paralyzing drugs to do that,
9 and then they mechanically breathed for him at that point in
10 time.

11 Q What would the -- if you paralyze somebody as it
12 relates to a normal -- there was some discussion yesterday
13 about a normal time dissipation of alcohol. Would that
14 change that?

15 A Well, one of the roots of excretion of alcohol from our
16 body is on our breath. We the police, for example, use a
17 Breathalyzer to analyze alcohol concentration on the breath.
18 So that's one of the roots of elimination. So if you
19 paralyze someone's breathing and you are breathing for them,
20 you are still eliminating some alcohol from the lungs, but
21 it's changed. The main thing about when you have somebody
22 that's in severe trauma, like we've heard described of Mr.
23 Rowell at this point in time, is that their metabolism is no
24 longer functioning like it would be in a normal person. He
25 is not a normal person at this point in time.

1 Q He's not normal?

2 A He is not normal at this point in time.

3 Q So, in other words, the science of trying to determine
4 how much alcohol someone has in their system goes out the
5 door when they become abnormal?

6 A Let's say it this way. The metabolic processes in the
7 body change dramatically. And so, when one is trying --
8 that's one of the ways that we eliminate alcohol from the
9 body is through -- through metabolism. The liver primarily
10 does that. And when you get problems with -- essentially
11 when you -- you don't have any blood flowing through the
12 liver that's what -- when you're bleeding and you've got a
13 loss of blood you don't have as much blood coming through
14 the liver, so the metabolism has changed dramatically.
15 There's no question about that.

16 Q So as opposed to being a normal person, an average
17 person, once you find that you've got a liver injury and
18 once you find that you've got a paralytic situation for
19 breathing, then that metabolism is changed markedly from
20 what the metabolism of a normal person would be?

21 A Yes. And in addition to that, too, they've also given
22 him drugs for sedation, too. They gave him Midazolam, or
23 Versed, which is a drug, too, to -- and it shows down the
24 metabolism as well, too, so...

25 Q And go from there as you're working your way through

1 the chain of what all happened to him. He was on the -- I
2 guess at some point loaded on the air transport. Tell us
3 what happened --

4 A Yes, sir. He was loaded on the helicopter. And again,
5 you heard testimony by the person who was there that did
6 that, and they transported him -- I think she said it took
7 about 23 minutes or so for them to fly to Greenville to get
8 him to the -- to the trauma center there. And so, once at
9 the trauma center they took him into the -- into the trauma
10 bay, as you heard.

11 Q Now, on the way there did they give him -- in addition
12 to fluids did they give him blood?

13 A Yes, sir, they did. They gave him additional -- they
14 call it a unit of blood. Now, we're going to be talking in
15 a little bit about these units of blood. These are not
16 whole blood in the sense that you -- that's drawn from you,
17 for example, if you donated blood. But rather what it is,
18 is it's a blood component. So they've concentrated things
19 down. So what he received in the helicopter was a unit of
20 blood, but it was packed red blood cells. We call them RBCs
21 for red blood cells, and he received that. And then he also
22 received what we call fresh frozen plasma. Now, plasma, I
23 think you heard it described -- I believe Dr. Reddic, was
24 it, his name? I believe from the Greenville Hospital,
25 talked about it. And what happens is if you take whole

1 blood and you put it in centrifugion and spin it down, the
2 speed with pack the cells down at the bottom and up at the
3 top it will be this clear yellow looking fluid, and that's
4 what we call plasma. And so, he received fresh frozen
5 plasma which is -- again, it comes from many people. It's
6 not just from one person, because they -- when you collected
7 this and you collect the red cells you pull the plasma
8 together. And so, fresh frozen plasma is typically a
9 multi-donor fluid.

10 Q Now, but regardless what it is, there were certain cc's
11 put into him; is that correct?

12 A That's correct. Yes, sir.

13 Q And why were they -- why would the doctors be putting
14 cc's of blood and cc's of saline and the FF and also the
15 plasma? Why would they be doing that?

16 A When they arrived on the scene his blood pressure was
17 very low. I think you heard it was something 80 over 40 I
18 believe I heard on that, and I think that's what it said in
19 the records as well, too. When you get a person that's got
20 very low blood pressure like that it means that they're in
21 shock or they've lost some -- have lost some blood. And so,
22 the first thing you've got to do to -- in an emergent
23 situation like that is to try to replace fluids. You're
24 trying to get more volume back into the body so that you can
25 -- you can bring the pressure up. Just kind of aside of

1 that, too, is that when you -- your pressure gets real low
2 like that it's hard to find a vein to go into. And so, by
3 pushing fluids into people you can -- you can get it -- get
4 it up higher. And I think you heard the transport nurse say
5 the other day that they tried to use the gun. It's a gun
6 that puts the needle right into the bone and you can fuse
7 stuff right into the bone. Because he had all these
8 injuries in extremities they could even go into the bone.
9 So they had to find a line -- you know, vein to go into.

10 Q Let's move on from there. Then what happened to him
11 next?

12 A Well, he arrives at Greenville Hospital then and that's
13 when we start getting some blood samples drawn from him.
14 You heard testimony about a blood sample was drawn. It then
15 went to the laboratory to be analyzed for -- one of the
16 things analyzed for was alcohol.

17 Q Okay. You want to talk to us then about that one first
18 and then --

19 A Yes, sir.

20 Q -- kind of go through it? However you want to approach
21 it.

22 A Yes, sir. I think that would be good, if we could. I
23 felt like the jury's heard so much on this that I to
24 summarize what happened from the -- as I got it from reading
25 the medical records, hearing the testimony that I've heard

1 over the past few days as well, too, and I've made a series
2 of slides that I'd like to show the jury, if we could, to
3 kind of summarize that.

4 Q That'll be fine. Would you like to do that now?

5 A Yes, sir. We'll see if Jane has got it on -- Ms. Jane
6 has got it on for us.

7 MR. GARRETT: It's good to have these young people know
8 what they're doing.

9 THE WITNESS: I'm sorry. I think I didn't have my -- I
10 got it now. If you'll just fix it so it's -- Jane, we've
11 got it. That's got it. Thank you.

12 Q So what's your first slide show?

13 A Well, this showed -- again, I got this from the
14 LifeFlight records itself. It showed them arriving at 20:59
15 hours at the Greenville facility. And then going to the
16 hospital records. Greenville Hospital Systems is what GHS
17 stands for here. The patient arrives there, according to
18 the nursing notes, at 21:00 hours. So it was pretty close
19 in time of the two that arrived. And then the first thing
20 obviously, because they do them right away, is they take his
21 vital signs. Blood pressure and so forth. And that was
22 recorded in the nursing records as being 21:04 hours. And
23 then next we get into a little problem with these blood
24 draws that we -- we heard some testimony this the other day.
25 There's apparently a blood specimen drawn on him at 2:054

1 hours.

2 Q That would be 8:54?

3 A 8:54. Yes, sir.

4 Q Go ahead.

5 A And then we heard some testimony the other day that it
6 arrived in the laboratory, according to their records, at
7 21:24. So that's about a -- roughly about a 30 minute block
8 of time before it arrives in the laboratory.

9 Q Does that shock you that it would take 30 minutes to
10 get an emergency --

11 A It does. Yes, sir. I mean, you've got an emergency
12 situation here. You want this data from this. It seems
13 like you'd get it there pronto. Okay? But anyway, I'm just
14 going by what the records show.

15 Q Yes, sir.

16 A Now, this particular blood is what's supposedly the
17 alcohol analysis is done on by this hospital test. I'm
18 going to cover that in just a few minutes. But then there
19 was another blood specimen that was drawn from a central
20 line that Dr. Snow, the surgeon that you heard the other
21 day. He put in a central line. And you remember there's
22 some testimony there was a blood specimen drawn at 21:08
23 hours from Mr. Rowell as well. And so, we think from the
24 records, and looking at the next slide here -- actually,
25 this was entered into evidence the other day. Up there at

1 the top -- and this is what was put on it by the personnel
2 from -- from Greenville Hospital trying to help us
3 understand what was happening. You see up there where it's
4 got 1. That doesn't mean it was collected. You see that
5 time in there 20:54. And then where they've got a box
6 around the 2, that's the time it was received in the
7 laboratory. And then you remember them interpreting that
8 saying that number that was there was the person that
9 collected them. You see that other box is, is the person
10 that collects that sample was identified as Nurse Amanda
11 Baker, I believe was her name that collected -- collected
12 the sample. So that was the sample that we -- that according
13 to the audit trail went to the laboratory and was the one
14 that was analyzed for the alcohol. I'm not sure my laser
15 pointer will work on this screen. It won't. But you see
16 the -- where it says ALCP. That's the alcohol test. That
17 was the code for the alcohol test that was supposed to be
18 run.

19 And then this, again, is just from the records from the
20 hospital. And I just put a red box around this to show
21 again that this is the lab that was -- see, it clearly says
22 labs drawn from the central line 21:08 by Snow. And that
23 would be Dr. Snow that drew those samples. And then down at
24 the bottom of that record it said central line again, 21:08.
25 So

1 Q So --

2 A Yes, sir. Go ahead.

3 Q So how is that -- how is that possible?

4 A Well, I'm not sure. I mean, I'm just showing you
5 what's in the records. We've got -- we've got a sample that
6 was collected at -- supposedly at -- if you go back to the
7 previous slide, that one was collected at 28 -- 20:54. And
8 then we have this other sample that's collected from the
9 central line at 21:08. So I'm not sure. You know, we never
10 were able to get clear the day who collected that -- that
11 one at the -- this one, the 20:54 sample. That one's
12 identified as being collected by Nurse Amanda -- her last
13 name, but --

14 Q Right.

15 A I'll call her Nurse Amanda for a moment. And that's
16 her -- was her number. She identified that as her number
17 collecting the sample.

18 Q That would be from a central vein, or from a central
19 line?

20 A No, sir. Well, I don't know. I don't know the site.
21 That's the reason I put a question mark on the site. I
22 don't know what the site is. It's not -- not identified.
23 Okay.

24 Q Go ahead.

25 A So that 20:54 sample is the one that looks like it goes

1 to the hospital laboratory. Now, this is the actual
2 printout from the hospital records again. This is the
3 hospital test that was done for the alcohol. And you'll see
4 as I've got it in the block there, again it's showing that
5 it -- it has a level of 219. Now, the hospital reports out
6 in milligrams per deciliter, it's a different unit, and
7 it's converted over to a level that would be a forensic
8 level. A legal level would be you'd move the decimal three
9 points to the left. And so, it would be a .219 is what we
10 -- what essentially the hospital was reporting out. Now,
11 you'll notice that they say that that is alcohol plasma.
12 And again, so this is not a whole blood sample for -- the
13 law identifies whole blood as using for legal purposes. And
14 so, again you heard some testimony about you'd have to
15 convert this level over to a whole blood level. Use some
16 kind of conversion factor to try to convert it over to a
17 whole blood level. So at this point it's just simply what
18 they're reporting there. But again, I just put a little
19 note out to the side to remind everyone again, this is not
20 apparently the 21:80 -- the 21 -- whatever it is. I can't
21 quite read it from here, sample that was there. This must
22 be that 20:54 sample that we're talking about.

23 Q Hold on a minute. I thought I saw earlier on where he
24 didn't arrive until 21:00.

25 A Yes, sir. That's another kind of a puzzle in the

1 records. When you go back to when the person -- let me go
2 back to the very first slide here. When they actually
3 arrive, according to the note, they arrived at 20:59. Okay.
4 And then the nursing notes has them arriving at 21:00.

5 Q Is that the -- is that the LifeFlight?

6 A Yes, sir. The LifeFlight is the 20:59 record, and then
7 the arrival at the Greenville Hospital System, that's in the
8 nursing notes, it said 21:00 hours. And then you see that,
9 you know, the vital again in the nursing notes were taken at
10 21:04 hours. So that's pretty close. Those two are pretty
11 close.

12 Q Let me let you look at what's been marked for evidence
13 State Exhibit 70. Is that what you got that --

14 A Yes, sir.

15 Q -- 21:00 from?

16 A Yes, sir. It is. They have a -- they have in here a
17 thing. It's called transport down here and they arrival at
18 facility time. They have it -- I'm sorry. That's the
19 estimated one there. That's not the exact one. Oh, here it
20 is. Arrive at scene. And they've got -- they've got 20:09
21 as when they arrived. Okay? I'm sorry. That's estimated
22 time. That's the estimated time. Forgive me. I'm looking
23 at the wrong page. They have what they call an event log in
24 their -- in their report. And so, they give the -- they
25 give the time -- they gave the time as the patient being

1 placed in the trauma bay one as 20:59, and that's what I put
2 on my slide.

3 Q Okay. So if he was --

4 A And they were taking him from the helicopter and taking
5 him -- putting him in the trauma bay, and that's what
6 they've got as their recorded time is 20:59.

7 Q So if it's 20:59 and they've got him loaded, how could
8 you take a blood sample at 20:40 --

9 A 20:54.

10 Q Yes, sir.

11 A I don't know.

12 Q They said it was chaos. Have you been in trauma
13 centers before?

14 A Yes, sir. I have. I've actually worked in some
15 before.

16 Q Is it -- is it chaos?

17 A It is.

18 Q Is it very important that these times be accurate to
19 make sure that the blood that got taken was the blood that
20 was used in this case?

21 A Well, I think we can allow them a little slop in the
22 time. Okay?

23 Q Okay.

24 A But again, this one at 20:54 sample doesn't correlate
25 with some of these other times that we've seen. Okay? I

1 mean, it's close. But I guess close counts in horseshoes
2 maybe but not on this kind of work.

3 Q Let me let you get back on. I'm just trying to help
4 you --

5 A Yes, sir.

6 Q -- presentation.

7 A We've seen these. So the tests that they ran in the
8 hospital was a test that's run. What I did is I asked
9 actually the hospital to provide us what's called the
10 package insert, and the package insert is in the kit that
11 they buy from the manufacture to run the alcohol test. And
12 so, what I'm going to show you, the next few slides, are
13 just a few snippets out of this package insert.

14 Q Yes, sir.

15 A And so, this shows you this is an ethanol kit that
16 they're using. They purchased this. Over here to the right
17 is the machine that's designed to run on the Architect, and
18 that's what they testified was their clinical chemistry
19 analyzer that he ran this one.

20 Q So it's called the Architect?

21 A Yes, sir. It's called the Architect. It's made by
22 Abbott Laboratories and it's -- that's just a trade name of
23 it.

24 Q So let me make sure the jury understands this. So
25 there's a company called Abbott that has machines called

1 Architect which uses a reagent agent and that's what you're
2 showing us there?

3 A That is correct. This is the reagent that they buy
4 from the manufacturer to put on this Architect machine to
5 run this alcohol assay.

6 Q And is it -- can you explain the difference then between
7 the gas chromatography versus this enzyme test? Which is the
8 -- scientifically the better test?

9 A Yes, sir. I'd be happy to. The enzyme test that we're
10 going to be looking at here, the one that was run in the
11 hospital lab, is what's called an indirect analysis. We're
12 not analyzing for alcohol itself. We're analyzing for a
13 product that's produced from alcohol. And so, what you do
14 is you take ethyl alcohol and you add to that an enzyme
15 that's called alcohol dehydrogenase. And this alcohol
16 dehydrogenase comes from the yeast. That's where they get
17 it from. So it's from yeast. You put it in, and it takes a
18 hydrogen off of the ethyl alcohol. And that hydrogen is
19 transferred to that alcohol dehydrogenase. In that transfer
20 of that hydrogen, what you can do is to that with another
21 coenzyme which is called NAD. And it's got a fancy name.
22 It's called nicotine adenine dinucleotide, or NAD. We'll
23 just use NAD for the abbreviation. And so, NAD can pick up
24 that hydrogen. And when it picks up that hydrogen what
25 happens is that it changes the configuration of that NAD so

1 it now changes the wavelength of light that you measure it
2 at. And so, this machine, this Architect, is actually
3 measuring wavelength of light change that occurs when NAD is
4 converted over to NADH. And so, that's the reason you say
5 indirect assay. You're not analyzing for alcohol per se.
6 you're analyzing for that transfer of hydrogen. Okay? Now,
7 the gas chromatographic procedure, like SLED used, the test
8 we'll see in a little while, is a totally different
9 technology. It's used to separate out the ethanol away from
10 any other components that might be there. Chromatography,
11 we used to call it the separation of science, and it would
12 separate one component away from another. Gas
13 chromatography for alcohol is considered kind of the gold
14 standard to run by. This is a test that's designed to be
15 used in the clinic, and it helps a person get a quick --
16 quick answer. If you had to run it by gas chromatograph it
17 would take a little bit longer to run. Here the speed is of
18 essence. They want to know whether or not this person has
19 some alcohol aboard, because it would influence their
20 treatment of a person. Okay? How much anesthesia they give
21 him and so forth later.

22 Q All right. Go ahead.

23 A And so, you see the intended use of this is to do the
24 analysis on this Architect machine.

25 Now, in this package insert it provides for some

1 limitations of the procedure. I'm just taking the liberty
2 to put a couple red arrows here to kind of highlight a
3 couple of these. You see the very first it says legal
4 alcohol intoxication levels vary. And that's true. I mean,
5 you can get a lot of different levels legally in someone.
6 And then it says the test results should be interpreted in
7 light of clinical signs and symptoms. And so, that's what
8 this test is designed for is to allow the clinician to see
9 if it correlates with what they're seeing clinically in the
10 individual. And then notice it says the test is designed
11 for use with human urine, serum or plasma only. Well, the
12 hospital did that correctly because they used plasma to do
13 the analysis and that's the way it's designed for. And then
14 notice it says that increased levels of lactic acid and LDH.
15 Now, LDH is another enzyme that's in our level. It's called
16 lactate dehydrogenase. And they say in this one in
17 postmortem samples it can cause elevations of ethyl alcohol.
18 It is true, and in postmortem samples you will see this.
19 You can also see it in the living person, and I'm going to
20 speak more to that in just a few minutes as to how you can
21 see it in the living person. And then it says it's possible
22 that other substances and/or factors, either technical or
23 procedural errors, not listed in the specificity table, they
24 interfere with the test and cause false -- false results.
25 And again, that's so -- the manufacturer again is telling

1 you that this may -- you may get some false results from it.
2 You've got to be careful. You've got to, you know, know how
3 to use the test.

4 Any questions about that?

5 Q No. It seems like it's telling you up front to watch
6 out for the lactic acid and the LDH. Did you happen to, in
7 your studies of his medical records, did you find elevated
8 levels of lactic acid and LDH?

9 A Well, the LDH was not measured in him, so we don't know
10 what it is. The lactic acid, yes. And I'll show you that
11 in just a moment, okay, that it was elevated.

12 Now, towards the end of the package insert -- and I
13 didn't do this. You all highlighted this was done by, I
14 assume, someone in the lab and we asked for this record, and
15 I asked for who was the manufacturer of the kit. And they
16 highlighted this at the end of the thing. And notice it's a
17 place -- a company called Microgenics Corporation. So
18 Abbott Lab is basically buying from Microgenics Corporation
19 the ingredients that go in this kit and then they're
20 repackaging it and selling it for use on their machine.
21 Okay? But this Microgenics is actually the corporation that
22 makes the components of the kit.

23 Q Yes, sir.

24 A Now, the reason that's important you're going to see in
25 the next thing we're going to show you here. This is an

1 article that was in Clinical and Forensic Toxicology News.
2 This is a news letter that's put out. It's a joint
3 publication of the American Association for Clinical
4 Chemistry, and also the College for American Pathologists,
5 or CAP. And, in fact, you'll see right underneath that
6 toxicology it says an AACC. That stands for American
7 Association of Clinical Chemistry, slash, CAP. That stands
8 for College of American Pathology. Educational for
9 Toxicology Laboratories. So this is distributed to all
10 laboratories that participate in what we call the
11 proficiency testing that's done by College of American
12 Pathology. So there would be probably in the neighborhood
13 of 200 and 300 laboratories across the United States that
14 would get this news letter.

15 Q Would the Greenville Laboratory be getting this news
16 letter?

17 A They should, yes. It's given -- it's given to every
18 laboratory that participates in CAP, and I heard them say
19 they were CAP certified the other day. So they should have
20 received this. Okay?

21 Q So this is a learned -- a learned news magazine that
22 you folks get on different articles?

23 A Yes, sir. This is not what we call a peer reviewed
24 publication, but it is what's called an editorial reviewed
25 publication. Now, the reason I know that is I was on the

1 editorial board for clinical and pharmacology and toxicology
2 news. I was on there for four years as an editorial board
3 member. And so, when someone would submit an article like
4 this they would send it out to those of us in the editorial
5 board and we would review it for --

6 Q For science to make sure it's --

7 A Yeah, make sure the science is right. We're going to
8 make sure that, you know, things weren't being sent out to
9 laboratories that were incorrect.

10 Q Yes, sir.

11 A And so, the two people that wrote this particular
12 article, and you see it, it says, "Lactic dehydrogenase can
13 cause false positive ethanol." It's Dr. Frederick. I call
14 him Don because I know him well. He -- and you see there
15 are affiliations down below there. He is with the -- he's
16 in Peoria, Illinois. He's the head of a big commercial
17 laboratory there in Peoria, Illinois. Dr. King, the other
18 author, I do not know him, but he's at the -- as you see
19 there, his affiliation was at the Christian Hospital in St.
20 Louis. So they published this article in this clinical and
21 forensic toxicology news letter to try to alert people in
22 the laboratory that there might be a possibility you'll get
23 false positives with this.

24 Now, what they did is they did a study. They took --
25 they sent out samples to 50 laboratories that participate in

1 the College of American Pathology work and they asked them
2 to perform their normal serum alcohol test that they run
3 their laboratory to perform that.

4 Q So let me make sure I'm with you.

5 A Yes, sir.

6 Q You were talking about that they're worried about false
7 positives. False positives on alcohol tests like the one
8 performed on Mr. Rowell?

9 A Yes, sir. That's correct.

10 Q And so, in order to try and figure out whether or not
11 these machines are given false positives, the cause of the
12 lactate and the other things, they've now done a study on
13 it?

14 A Yes, sir. And they're reporting on the study.

15 Q Fifty laboratories. Do you know which 50 laboratories
16 it was?

17 A No, I don't. It would have been 50 laboratories that
18 are associated with -- they'd be doing CAP surveys, we call
19 it. So they would be 50 of those laboratories.

20 THE COURT: In the next couple of minutes, when you get
21 to a good stopping point, let's do that and take a break.
22 Okay?

23 THE WITNESS: Okay, sir.

24 THE COURT: I'm going to leave that up to --

25 MR. GARRETT: Judge, this might be a good time right

1 now because --

2 THE COURT: That's fine.

3 MR. GARRETT: -- then he could pick up --

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury, we're going to take a morning break
6 and let's go back to the jury room again. I'll remind you
7 no discussion about this case. We'll get you back out
8 shortly and continue with this witness.

9 (Whereupon, the jury exited the courtroom at 10:59
10 a.m.)

11 (Whereupon, a recess was held from 10:59 a.m. to 11:21
12 a.m.)

13 THE COURT: Let's bring the jury back out.

14 (Whereupon, the jury entered the courtroom at 11:21
15 a.m.)

16 THE COURT: Let the record reflect the jury is back in
17 the courtroom. Mr. Garrett, are you ready to proceed?

18 MR. GARRETT: I am, Your Honor. Thank you.

19 Q Dr. Valentine, before the break we were talking about
20 the plasma blood draw at the Greenville Hospital System --

21 A Yes, sir.

22 Q -- being a medical as opposed to a legal test.

23 A Correct.

24 Q You were talking about some studies about false
25 positives.

1 A Yes, sir.

2 Q So let's pick it up from there. What types of things
3 would create false positive alcohol tests?

4 A Well, that's what they were trying to show in this
5 study, whether or not the lactate dehydrogenase and the
6 lactate being in the sample would cause a false positive
7 with this serum ethanol test. And so, what they did is you
8 see down in that second bullet point, they sent out samples
9 to these laboratories that contained sodium chloride, and
10 that's saline that we've been talking about. It's just a
11 different concentration. It's table salt is sodium
12 chloride. And sodium lactate. And then they put in also
13 some human LDH. This lactate dehydrogenase enzyme we've
14 been talking about. And I notice that those samples contain
15 no alcohol at all. Okay?

16 Q Okay.

17 A No alcohol. So just these. And the test here is to
18 see whether or not you would get a reading for alcohol based
19 on just having lactate and the lactate dehydrogenase
20 present. That's the purpose here. Okay? And so, what they
21 -- what they found then is that -- they said in the article,
22 this is kind of what they were looking for, that in most
23 clinical settings the level of lactate and LDH are too low
24 to generate significant positive interference. And what
25 that means is that in a typical normal person you won't see

1 elevated levels of lactate or LDH.

2 Q Now, was Mr. Rowell a normal person --

3 A He was not.

4 Q Okay. Go ahead.

5 A He was not. And so, in that sort of situation you
6 would see a possibility that in the normal -- this test in a
7 normal person probably would work okay, because it wouldn't
8 have these interfering agents. Now, they say some other
9 sources of interferes as you see here would be. However,
10 lactate can accumulate as a result of tissue hypoperfusion.
11 Now hypo means low. Perfusion means you're not getting much
12 blood circulation through organs. Okay? That's what
13 hypoperfusion is.

14 Q Was that kind of the situation -- the abnormal
15 situation that Mr. Rowell was in?

16 A Yes, sir. He was in a shocked state. Okay? And
17 that's -- because he had this very low blood pressure he
18 wasn't getting -- he wasn't getting good perfusion.

19 Q So can lactate accumulate while --

20 A It accumulates more. Lactate is normally -- lactate
21 acid is normally stored in our muscles of our body. And, in
22 fact, when you exercise, if you have a sore muscle it's
23 because you produced a lot of lactic acid in your muscle.
24 Trauma can cause lactic acid to be released. And then these
25 other conditions we'll talk about here in just a moment.

1 And then it goes on to say that high levels of LDH, this is
2 that enzyme again, are also seen in liver disease. Now, we
3 know he didn't have liver disease because, you know, we know
4 that from the records. Acute liver failure, and that wasn't
5 true. He didn't have liver failure. Liver contusion or
6 lacerations. In other words, if your liver gets bruised in
7 some way or you get a laceration in your liver then that's a
8 possibility because LDH is in the liver. It could -- it
9 could be released.

10 Q In fact, Mr. Rowell had these problems?

11 A He had the -- yes, sir. He had the laceration for
12 certain. We'll talk about that more in just a moment.

13 And then the -- it says the lactate and LDH can be
14 significantly elevated in major trauma, such as in vehicular
15 accidents in which hemodynamic shock from blood loss and
16 tissue injury lead to lactate elevations that coexist with
17 hepatic injury to form contusions or lacerations. Bingo.
18 That's everything we had in Mr. Rowell.

19 Q Perfect storm?

20 A Perfect storm in Mr. Rowell for this. Okay?

21 Q All right. Go ahead.

22 A Now, here was the results that they had in their table
23 when they sent this out to these 50 different laboratories.
24 I took the liberty again to put a red arrow there just to
25 point to that's a Microgenic kit, you know, that I showed

1 you earlier that the Greenville lab was using.

2 Q And can you flip back to that real quick? So that's
3 the point you're trying to make is that --

4 A Yes, sir. I'll go back to that. This is on that --
5 right there. That was the -- that Microgenics Corporation
6 is where they got their kit. That's the one that made the
7 kit for Abbott. And so, going back to this table, there you
8 go. You see Microgenics. And that's showing it on a
9 dimension, which is another one of these chemical analyzers.
10 Okay? But again you see that they got -- there was no
11 alcohol there. They got a reading of 106 milligrams per
12 deciliter. So that's -- that's what we consider a false
13 positive. We know there was no alcohol in these samples and
14 yet it showed a positive reading.

15 Now, as you see -- you kind of run all over the place.
16 There was other -- other systems that gave, you know,
17 readings that were not too bad. Like the Siemens, for
18 example. They use a different type of reagent kit, and
19 notice that it gave a fairly low reading. And so, you know,
20 I mean, I wouldn't be here today talking about this if
21 Siemens had been used.

22 Q So Abbott -- even though it was an Abbott machine,
23 didn't use an Abbott reagent? They used a Microgenics
24 agent?

25 A Correct. They bought it from Microgenics. They

1 packaged it and sold it.

2 Q Is it cheaper?

3 A Well, I don't know if it's cheaper, but it's -- maybe
4 they have some kind of agreement. Maybe it's a subcompany
5 of them. I don't know. Okay? It's just that's the reagent
6 that was used in this kit.

7 So that shows us that there could, you know, be --
8 there is a possibility again that this thing -- that we had
9 some problem with it.

10 Now, this is from the medical records. This actually
11 -- this specimen was actually taken, I think, an hour after
12 what's supposedly the sample that was analyzed for him for
13 the alcohol. It was about an hour later. But it's -- and
14 it's also drawn from an arterial line. So it's arterial
15 blood instead of venous. Okay?

16 Q What's the difference in that?

17 A Well, the lactic acid would be a little bit higher in
18 venous than it is in -- than it is in arterial. Okay? But
19 simple because it's released from the muscle and goes out
20 into the vein first and it's picked up and brought back to
21 the heart. So typically it's higher in the venous system.
22 So this probably is a little bit lower. But nonetheless, it
23 is elevated. You can see there that it's high. It looked
24 like 3.3 from where I'm sitting.

25 Q What does that -- how do we determine what's high

1 versus what's not?

2 A Well, notice in parenthesis they've got right behind
3 it, that's their normal range that the laboratory would
4 expect the lactic acid to be in. And so, it looks like the
5 high is -- I can't quite see it, but it looks like 1.6. Is
6 that what it says? It would be the upper end of their
7 range. And so, this is greater than that. Then they've got
8 a -- they've got a little H by it that's -- so the doc can
9 scan down real quick that that's high. Okay. So the lactic
10 acid was high in him. We know that.

11 Now, as I mentioned earlier, nowhere in the records did
12 I find that they had measured LDH. And typically you don't
13 measure LDH unless for some reason you're looking for it.
14 Okay? So I'm not faulting them for not measuring it, but
15 I'm just saying it wasn't measured. So we don't know what
16 the LDH was. But we do know --

17 Q If we had that we could know better how it might have
18 affected --

19 A Correct.

20 Q -- this particular test?

21 A Yes, sir. That's correct.

22 Q All right. Go ahead.

23 A And then next I'm simply showing -- I got on the
24 lefthand side, this is actually the surgical notes from Dr.
25 Snow, and then I just, again, have taken the liberty to kind

1 of underline some places there. And there on the right over
2 here I just put up a picture of the liver -- human liver
3 that I had to show the jury again where Dr. Snow had the --
4 where the laceration might have lay. And you see in there
5 he says there is a laceration to the liver and it's in the
6 right lobe. So it's in that big lobe over there on the --
7 on your lefthand side when you're looking at this picture.
8 And he said the laceration was there and he had to put
9 packing -- he calls it packing gauze over top of that and
10 under the bottom of that lobe of the liver to stop the
11 bleeding from that.

12 Q Is it bleeding from both the front and from the back?

13 A I wasn't clear from his description here. I think the
14 laceration was just on the front side the way I -- but I
15 think he was using the backside to put pressure on it to
16 help stop it. But I don't know that for certain. Okay?
17 But that's what I -- that's my interpretation of it.

18 Q That's one of the ways he saved his life was by packing
19 that?

20 A Yes, sir. He had to stop -- you have to stop the
21 bleeding in the liver. The liver is a regenerating organ.
22 It can regenerate. And it's one of the -- an organ we've
23 got that can regenerate in our body, so it's an amazing
24 organ. And so, once you stop the bleeding in it and so
25 forth it'll come back and heal itself. Okay?

1 Q Okay.

2 A So again, that just shows us that he did have the
3 laceration there. And then also in the -- this is just the
4 second page of Dr. Snow's records there. I just again took
5 the liberty to underline here to call attention that he had
6 acidosis. And the acidosis is due to the lactate. Okay?
7 When you get an elevated lactate in someone that's going --
8 we talk about them being acidotic. Their pH has dropped.
9 It goes down. Our pH normally is about 7.4 in the blood.
10 And so it'll drop down to 7.2, 7.1, something like that
11 sometimes when you get acidotic. That's a life-threatening
12 situation again. And you see Dr. Snow's concern there about
13 it when he said he -- that he felt because -- to do damage
14 control he wanted to make sure that, you know, he covered
15 all his bases there.

16 Q If someone is acidotic how does that affect the test
17 results?

18 A Well, just from the standpoint that we know that
19 there's lactic acid there that can interact in this assay.
20 But we've got to have lactic dehydrogenase there as well,
21 too. Now, because he had the lacerated liver we can -- we
22 can make the assumption, and I think it's a good assumption,
23 that the laceration would have released some lactic
24 dehydrogenase out into -- into the peritoneal cavity. Also
25 into the bloodstream. That's -- that's --

1 Q What about all the broken bones and broken ribs and
2 that type of thing? Would that also have put --

3 A It certainly releases lactic acid, not LDH. LDH is
4 mainly in the liver.

5 Q I got you. Okay. But --

6 A But to some extent it's in the kidneys, too, but it's
7 mainly in the liver.

8 Q But acidotic, again, the rate was up substantially?

9 A Yes, sir.

10 Q And he was worried about it?

11 A Yeah. Yeah. I mean, that's a life-threatening
12 situation when you get acidotic. It's --

13 Q How do you treat it? I mean, how do they --

14 A Typically you give sodium bicarbonate to somebody and
15 try to reverse the pH and go back up to more -- get back up
16 to normal physiological pH of 74.

17 Q Go ahead.

18 A Okay. So basically this is just kind of a summary of
19 what we've just been talking about, about this -- I'm
20 calling it again the 20:54 hour blood specimen. The
21 hospital blood test showed an elevated alcohol. You saw the
22 result on it. It showed an elevated alcohol. Mr. Rowell
23 had elevated lactic acid. We know that he had a lacerated
24 liver, and that's a source of the LDH. That's the other
25 component we've got to have for this test not to work. And

1 so, I just simply put here I think it's a high probability
2 that this is a false alcohol positive test that the
3 laboratory got on him.

4 Q So based on chemistry, that's your conclusion then,
5 within a reasonable degree of scientific certainty that --
6 would you recommend somebody rely upon this result?

7 A Well, no. You cannot rely on this result simply
8 because of these other factors that we know that could
9 effect this test. Okay? So it's not -- it's not a test
10 that we can rely on from that standpoint.

11 Q And if you go back and you -- as you've said earlier,
12 you watched the videos of him walking and whatnot. Now I
13 want to try to talk a little bit about that reading. Not
14 only the science, but I want you to compare the science now
15 to him being able to walk and drive safely and whatnot.

16 A Well, as we talked about, if you -- if you're going to
17 try and use this level, because it's done in plasma, you've
18 got to convert it to what we call a whole blood sample to
19 get the legal -- to get in the legal realm where we use that
20 -- we use -- the blood alcohol concentration is from whole
21 blood when you try to correlate that with the clinical signs
22 and symptoms that you see for alcohol. And so, there's a
23 lot of controversy about how to do that conversion. But
24 pretty much everybody accepts it. It's something around
25 1.13, somewhere in there. You use that factor to do -- they

1 used 1.18 which is okay. So you can use that factor. And
2 so, some -- this test would convert over to a whole blood
3 level of about .18, 19, something of that nature. Okay?

4 Q All right. Now, let's just use that number, .18, .19.
5 Can you operate a motor vehicle safely at that?

6 A Absolutely not.

7 Q Could you -- would you be able to turn signal and stop
8 and wait and pull into a parking space, wait for people to
9 get by, that type of thing?

10 A No, sir, you would not at that level.

11 Q Any question about that in your mind?

12 A Generally in -- when we think about the clinical
13 effects of alcohol, any time you get up above .15, anytime
14 above .15, most of everyone -- and laypeople would all
15 recognize this person as being drunk, or having -- being
16 under the influence of alcohol. They would -- everybody
17 exhibits a little bit different signs, but you would -- you
18 would certainly observe the staggered gait. That is, when
19 they walk they'd be kind of shuffling a little bit, trying
20 to support themselves. They might be trying to lean up
21 against something as their walking to support themselves.
22 They would have slurred speech. So those are common things
23 that you would observe just overtly in them. As far as
24 driving performance is concerned, the -- all the studies --
25 certainly when one gets above .1 there is an affect on

1 driving performance. There's not question about that. The
2 epidemiology studies that have been done clearly, clearly
3 show that. There are some epidemiology studies that would
4 suggest that at .08 you -- it affects the driving. Not all,
5 but some will.

6 Q So if someone had to drive, say, 12, 13 minutes from,
7 say, south Greenwood all the way over to the Walmart to get
8 there, and then they had to drive 12 or 13 minutes after
9 that to get to the accident site, that person wouldn't have
10 been able to drive at all, would they?

11 A Well, they could have driven, but it would have been --
12 it wouldn't have been very effective. I mean, somebody
13 would be calling the police and reporting somebody on the
14 road drinking, I think.

15 Q Now, if we find this high false alcohol probability
16 with what you've got to observe, again I'm going back to the
17 question of reliability, would you have doubt about the
18 reliability of that false positive?

19 A Well, as I hope I've shown here, is that there is good
20 scientific evidence that this test can give false positives,
21 and we had everything in Mr. Rowell that lined up with the
22 fact that it was -- it could have been a false positive
23 test.

24 Q Let's move on then to -- let's go talk about the other
25 test that was performed.

1 A Now, what happened was that SLED received for analysis
2 a blood specimen that was collected after surgery on Mr.
3 Rowell, and it was collected at 0:54 hours. And again, that
4 was recorded to Nurse Childers that was here the other day
5 to testify. She gave the specimen physically to the police
6 officer shortly after that. And I think that's actually
7 shown on this next slide. This is actually the chain of --
8 chain of custody document that she signed. You see there
9 where she signed it where I've got the red arrow. She
10 signed it. And then she turns it over to the officer, it
11 looks like, at 1:05 in the morning. So that was -- this is
12 the sample that was sent to SLED for analysis.

13 Q So from the time of the accident, if the accident was
14 just before 7:20, what time is this when it's being handed
15 over to SLED?

16 A Well, that's what, about six hours, I guess. Something
17 like that. Somewhere around that.

18 Q Between five and six hours?

19 A Five to six hours, yeah, when that occurred.

20 Q Let me just talk to you about -- generally about
21 general alcohol testing --

22 A Yes, sir.

23 Q -- for breath and blood. What is usually a time period
24 -- if you're trying to show what somebody's alcohol level is
25 and you're using breath or you're using blood, are there

1 some time parameters on which one you should look at over
2 the other and how far out you should look at it for it to be
3 scientifically --

4 A I don't know what -- I don't know specifically what it
5 is here in South Carolina. But as I go around the country I
6 know that most states you've got to do the blood sample --
7 or the blood sample within two hours of the driving for it
8 to be legally admitted. Again, as I said, I don't know
9 what's in South Carolina.

10 Q I'm not asking about legal admission. What I'm asking
11 about is scientific. For you as a scientist, if you wanted
12 to look at a sample, how far out would you feel comfortable
13 being able to render an opinion that that is an accurate
14 reflection of what somebody had in their blood before --
15 before that test? What timeframe? Is it two hours, three
16 hours?

17 A Well, the two hours is a good -- is a good timeframe.
18 You can -- obviously you can take a sample into the
19 laboratory. We've got technology today to get minute
20 amounts of things. Okay?

21 Q Okay.

22 A And so, you can take a sample in the laboratory and you
23 can -- 24 hours later we can find some of these drugs in
24 people. Sometimes for eight hours afterwards. Okay? So it
25 depends on, you know, kind of what your frame of reference

1 is. Now, from the standpoint of alcohol, alcohol dissipates
2 from the body fairly rapidly so that we -- if you get it
3 within the first couple of hours it gives you a better
4 chance to know approximately where they were at the time of
5 the accident or the -- or the thing. You don't know -- you
6 can't -- we don't have good ways to do it precisely, but you
7 can get an approximation.

8 Q As a scientific test then from the very beginning, if
9 this is between five and a half and six hours, as a
10 scientist, is this the kind of sample you want to rely upon
11 to make a decision of the condition at, say, 7:20?

12 A Yeah. Not necessarily. I mean, everything can be
13 looked at in certain light. As I said, you're better off if
14 you get it the first couple hours. Okay?

15 Q Yes, sir.

16 A You start getting around five, six hours a lot can -- a
17 lot can happen. And in this case we had a lot happen in
18 that intervening time.

19 Q All right. Go ahead.

20 A So what I did next is I wanted to look at these blood
21 components and fluids that were actually given to Mr. Rowell
22 prior to this blood sample being drawn. Now, in the medical
23 records after this 0:54 hours there was other blood given to
24 him and so forth. I'm not -- I'm not considering that
25 because that doesn't apply to this sample. Okay? I'm just

1 going up to the time that this sample was taken from him.
2 So I went through the medical records, the transport
3 records, emergency room records to determine how much blood
4 components -- we were talking about that earlier about how
5 the blood is not whole blood but it's some kind of
6 component. I'll go into that more in just a moment. The --
7 and also the fluids that he was given because we've got to
8 count that in here, too, with saline and other fluids that
9 he was given during this period of time. So what I've done
10 on the next couple of charts -- and again, I apologize about
11 this being a little bit small, but I think all of you are
12 close enough you can see this okay. This first table that
13 I've prepared comes from the transport records, the
14 emergency room records and the surgery records. And so,
15 you'll notice in the column over to the left I've got a
16 date, and then I've got a time. And then you'll notice
17 there -- if you go down that column there's some places
18 where there's no times there. And the reason for that is
19 that all these things that were given to him in surgery were
20 in a transfusion record. They fill out a form, and whoever
21 filled it out didn't put times on it. So I don't know what
22 time that was. But I do know that it was given during this
23 surgery, period, because that's who was administering these
24 units to him. So what we've got then in the -- in that
25 third column, I put the type of blood component that he got

1 -- okay? Let me go through this kind of -- these with you
2 because they all coded it on this infusion form. So for
3 example, we've already talked about RBCs. That means red
4 blood cells. So packed red blood cells is what they gave
5 him in transport. And then you remember also I said earlier
6 they gave him some fresh frozen plasma. So that FFP stands
7 for fresh frozen plasma. They gave that to him in transport
8 as well. Now, the next column in there gives the volumes as
9 you'll see. So they gave him 350 of the packed red blood
10 cells and -- is that 150? I can't quite see it. 160, of
11 the -- of the fresh frozen plasma.

12 Q 180.

13 A Is it 180? Okay. I'm sorry. I just can't quite see
14 it from here. You'll help me with the numbers if I get them
15 wrong. And then notice that the next thing they gave him
16 was in the emergency department, or the trauma center,
17 whatever you want to call it, at Greenville Hospital. And
18 this time he received a PCL is the component. And that --
19 PC stands for packed cells, so that's just kind of a
20 nomenclature for the RBCs that we were talking about a
21 moment ago. And the L stands for -- it means that his
22 sample is undergoing what we call leukopheresis.
23 Leukopheresis means that you've removed some of the white
24 blood cells from the sample. You haven't removed all of
25 them, but you've removed the majority of them. And the

1 reason for that is that the white blood cells contain an
2 immune response. And so, if you take those out of the
3 sample then your -- it allows you to not get as much of the
4 immune response. In other words, you won't get any kind of
5 allergic reaction with the blood that -- when you give it to
6 individuals. So that's the reason for doing it that way.

7 Q Somebody else's blood?

8 A Somebody else's blood. Yes, sir. All this is from
9 donors that we're talking about here now. And then as they
10 were taking him down to the -- to the MRI or CAT scan,
11 whichever they used. I've forgotten which they used. They
12 gave him blood, and then they gave him blood on the way up
13 to the OR as well, too. They had a bag hanging. And so,
14 those are the two units they've got there. And those are
15 both PCLs again. Okay? And then in surgery he got mostly
16 the packed cells as you see. The PC. But then he also got
17 TP, which they -- is their designation for total plasma.
18 This means that this is plasma. Again, not the red blood --
19 packed red blood cells. So what I did then is I took all
20 that volume that he got -- the volume was recorded on these
21 forms, so I got the volume. I totaled that up and it's
22 4,000 -- you'll have to help me with that Mr. Garrett. It's
23 4,081. Is that what it is?

24 Q 4,081.

25 A 4,081. I knew it was about that.

1 Q Right.

2 A And then, so that's how much volume of blood he had --
3 or blood components he had transfused into his body before
4 this sample was every drawn. And then I wanted to compare
5 that with how much -- how much blood volume does he have in
6 him normally. Okay? And in Court the other day it was used
7 here that the was 200 pounds at the time of the accident.
8 So I used that figure, and that's -- you have to convert
9 that to kilograms. And so, that's about 90 kilograms, that
10 body weight that he has. And just for kind of a rule of
11 thumb you can multiply that times 75 and that'll give you
12 pretty close to what the volume is. I actually did it out
13 on a -- I used a calculator -- a program to do this. But
14 anyway, so it's real close. Okay? So you see his total
15 blood volume was about six -- 6,000. A little over 6,000
16 milliliters. Okay? And that's about what you'd expect a
17 man of his size. Somewhere between five to seven liters of
18 blood volume is about what you'd expect. So then if you
19 take that amount that they gave him and divide that by the
20 amount that we anticipate he should have, you see that he
21 had about 60 percent of his -- of his body blood was
22 transfused into him. Okay? Is what he received, again,
23 before the sample was given.

24 Q So that really -- the test was at least 60 some odd
25 percent that wasn't his?

- 1 A Correct. Yes, sir. That's another way you can look at
2 it. Now, we have to also consider the volume of fluids that
3 they gave him, too. They have him an awful lot of saline.
4 So you see the units of saline that they were giving him.
5 And oftentimes, like the EMS people hung a bag of 1,500 on
6 him at the scene. He got another 500 in the helicopter.
7 And then he got another 1,000 when he got to the trauma bay.
8 And then they gave him another thousand shortly after that.
9 You can see the times there. And then when he went to
10 surgery they gave him -- they gave him 3,000 liters total of
11 saline, plus they gave him what's called Plasma Lite. And
12 Plasma Lite is basically saline with most of the -- we call
13 it electrolytes. It'll have other things in it like
14 potassium and magnesium and other electrolytes in it as
15 well, too. So they gave that to him during surgery, too.
16 And you total up that volume. That's 11,000 cc's of fluid,
17 or milliliters of fluid that they got, or about 11 liters of
18 fluid, if you want to look at it that way. And again, using
19 that volume that we had before. And this time you've got
20 to, you know, divide that into that 11,000. So basically
21 that calculates out to about 160 percent -- 67 percent I
22 think it is that -- of his blood volume that's been replaced
23 by just fluids.
- 24 Q 161.7?
- 25 A Yes, sir.

1 Q All right. So I don't understand. If you've got -- if
2 you've replaced 60 percent of his blood with blood and you
3 replaced 11,000 in his blood, in theory, by the time the
4 test was done he had 11,000 something in his bloodstream, as
5 well as all of that other blood?

6 A You've got it. You're a good student. You're
7 listening. That's exactly right.

8 Q Well, I'm just asking. It was 67 -- the other one was
9 67 --

10 A Well, it was 60 percent, I think.

11 Q And you add that --

12 A Yeah, you would add those two together. It would be
13 about 200 and, what, 20 percent, something like that, of --

14 Q Well, why didn't he just blow up and pop?

15 A Well, they've got a catheter in him obviously. A Foley
16 catheter in him. So he's putting out urine. His kidneys
17 are still functioning. He's putting out -- putting out
18 urine. So he's putting out a lot of volume. So it's kind
19 of like you've got a tap up here. You're pouring in one end
20 and you're taking it out the other end here. But things are
21 changing, so nothing's the same inside of this -- in this
22 container you had to begin with.

23 Q And then what about blood loss? Is there blood loss in
24 this? I mean, are you replacing blood because it's being
25 lost?

1 A Well, we don't know the total amount of blood that he
2 lost other than that we had Dr. Snow's testimony the other
3 day when he did the laparotomy on him, opened him up. He
4 estimated somewhere between 500 to 700 milliliters of fluid.
5 It's called a hemoperitoneum. In other words, we go from a
6 peritoneum cavity and you've got this blood in it. And --

7 Q Is that a sack that kind of covers your guts and --

8 A Yes. The peritoneal cavity is where all your -- your
9 major -- your organs, or your intestines and your liver and
10 so forth. Okay?

11 Q Okay.

12 A It's underneath the diaphragm. The diaphragm is up in
13 the heart. It's in a little bit different cavity, but...

14 Q Okay.

15 A So what -- so we know he lost that much in the -- that
16 was out in this cavity. We don't know how much he lost from
17 all these broken bones and other lacerations and whatever on
18 his body.

19 Q Would that be bleeding out into his body?

20 A Not necessarily. It could be external. I mean, he
21 could have been bleeding externally.

22 Q Like when they said he had a busted nose or something
23 like that?

24 A Yeah, that is -- they call that epistaxis, right. He
25 had a bloody nose, too. Bleeding from his nose.

1 Q So is it fair to say, or can you tell us what
2 percentage of his blood was literally tested by this test,
3 or is it even scientifically possibly to determine that?

4 A I don't even want to venture a guess. I'm just -- what
5 I'm telling you is there's a lot of fluid been put in him.
6 So what we're -- what we're testing is not the same as it
7 would have been if no fluids had been put in him.

8 Q And it's not the same as it would have been if no blood
9 were put in him?

10 A True. And going back to what we talked about earlier,
11 too. A normal versus -- I can call it abnormal here. But
12 let's just be candid, Mr. Rowell was near death.

13 Q So he was not normal?

14 A He was not normal.

15 Q Is it fair -- can you tell us whether or not then, as a
16 scientific test, whether or not the attempt to determine his
17 alcohol concentration, was it a valid test based upon that
18 sample?

19 A Well, you can take anything and analyze it. We talked
20 about that earlier. The machine doesn't care where the
21 sample comes from. It's going to analyze it and give you a
22 number. And they did that in this case. They analyzed the
23 specimen and got a number. Whether that number is reliable?
24 I don't see how you can put any reliability in the number at
25 all because we had such an exchange of volume of fluid here.

1 It's just so different. Okay. And as I said, I can't
2 really estimate for you what percentage are we looking at
3 here. I don't really know. Okay? It speaks for itself
4 what was given to him.

5 Q Well, let me ask you this. If you get a result based
6 on that, is it reliable for you to be able to make a
7 scientific judgment about it?

8 A I wouldn't make a scientific judgment about it. Okay?
9 I mean, it's a number. Okay?

10 Q Okay. But it's a contaminated number?

11 A Well, I think you could -- you could view it as that.
12 Okay?

13 Q I mean, have you ever seen any study where anybody was
14 trying to determine the alcohol level of someone who's had
15 that done them ever in your -- in your science?

16 A Well, unfortunately I've seen this before in some --
17 some criminal cases.

18 Q You have?

19 A Yes, sir. I have.

20 Q So have there ever been any studies on it to try to
21 determine how to come to a conclusion?

22 A No, sir. There's been no scientific studies. And if
23 you stop and think about it, you just can't do this
24 ethically, because when you've got a person that's near
25 death you can't start drawing blood samples from them to

1 test for alcohol. You know, you'd have to do a whole bunch
2 of them and you can't do that. It's just unethical.

3 Q And he's dying and he's needing blood, so you've got to
4 --

5 A That's right. It would never been approved.

6 Q You're not worried about contaminating the subject
7 blood?

8 A Yeah. And so, there's just -- I don't have any science
9 to offer you as to what really went on with this. Okay?
10 Whether this test has any validity to it or not. I
11 personally don't think it has any validity, but I don't have
12 any scientific studies to offer you because it just simply
13 hasn't been done.

14 Q Let's move on then. Now, this was allegedly sent down
15 to SLED?

16 A Yes, sir.

17 Q You want to go ahead and start talking about that?

18 A Yes, sir. I'll be happy to. This is the first page of
19 the SLED analysis that they get at the laboratory. And as
20 you see they give us a number. They say it was a .09
21 whatever. I can't see the last digit there. So they give
22 us a number from this sample.

23 Q So it was -- so it was .096 percent of what -- that's
24 what the --

25 A This specimen that was sent to the lab, this is what

1 they say is how much alcohol is in him.

2 Q So let's talk about the unit that was used. What kind
3 of -- what kind of piece of equipment do they use to get
4 this result?

5 A They use what's known as a headspace gas chromatograph.
6 And a headspace gas chromatograph, basically alcohol is what
7 we call a volatile substance. And so, what they do is they
8 take a little bit of this blood that was sent -- that was
9 sent to them. They'll take 100 microliters of that and
10 they'll put it in a little tube that's about that tall. And
11 then they'll add what's called an internal standard to that.
12 And then they cap that tube and then they take it over and
13 put it on this instrument, and this instrument is what's
14 called an AutoAnalyzer. It'll take that tube and it'll heat
15 it up, usually to about 70 degrees centigrade. Something
16 like that. It'll heat it up. And that will cause the
17 alcohol to vaporize and come up into what we call headspace
18 above that little bit of liquid that's in there. And then
19 they put a needle into that to draw out that gas that's
20 there, and that goes over to the gas chromatograph. And the
21 gas chromatograph then has a column inside of it that will
22 separate one component away from another, and then it comes
23 out -- it goes through a detector. It's called a flame
24 ionization detector. It goes through that. And it will
25 then detect -- you'll get a peak on a chart that comes out.

1 We call that a chromatogram that comes out of the
2 instrument. And you can look at that chromatogram then and
3 get an idea of how much alcohol is in there. Now, you have
4 to -- you have to have previously calibrated the machine so
5 it knows what that size peak -- how much alcohol that
6 relates to.

7 Q And in your opinion, are these gas headspace, are these
8 pretty good -- pretty good machines?

9 A Yes, sir. They're considered -- they're considered the
10 gold standard for doing alcohol analysis.

11 Q Okay. So you don't have any problem with the machine?

12 A No, sir. I do not.

13 Q What about the specimen?

14 A The specimen itself is what -- where we've got
15 problems, okay, is because they're analyzing something that
16 we don't know really what -- if that's all him or not.
17 Okay? That's the problem I have with it.

18 Q Would it cause for you to speculate to be able to come
19 to that conclusion? To speculate?

20 A No, sir. I can actually look at the chromatogram that
21 came out on his run. And here's the way I tell people this.
22 I can look at a chromatogram, because I've looked at
23 literally thousands of them over my career. I can look at a
24 chromatogram and it's like a radiologist looking at an
25 x-ray. I can look at the chromatogram and tell you what's

1 going on. If this instrument was working right or not. I
2 can tell you whether or not, you know, what it looks like
3 they've produced in it. What they determine in this
4 particular one. So that's what I'd like to show the jury
5 next. This is just a -- that's the last page of that thing
6 that you saw -- Jennifer Brown, who was here to testify the
7 other day, signed that.

8 Q Before you get there, I'm still trying to understand
9 the validity of the sample.

10 A Yes, sir.

11 Q If you don't know whose blood went into that sample,
12 it's just rogue speculation as to what was in their blood
13 that got put into this sample?

14 A Well, we know that these were donor bloods. Okay?

15 Q Okay.

16 A We know that the blood banking facility does not test
17 for drugs in these. What they test for is viral components.
18 They're looking for infectious disease transmission. That's
19 their goal. They give if somebody gets a little bit of --
20 let's say they give them a little bit of Lisinopril for
21 lowering blood pressure. That's not going to hurt them.
22 Okay? Or you get a little bit of alcohol in it. That's not
23 going to hurt them from this -- from this transfusion that
24 they get.

25 Q But if there's West Nile in there it'll kill them?

1 A West Nile would kill them. Hepatitis B would, HIV. So
2 those are the kind of things that they're testing for, and
3 that's what we want them testing for.

4 Q In your history have you ever seen a situation where
5 blood donors sometimes are alcoholics and they actually do
6 that as a form of making money?

7 A Yes, sir. I mean, that's a common thing. That does
8 occur. I was going to just make the comment, too. In all
9 of the research work that we did we had to develop assays
10 for the drugs that we were looking for in people. We do --
11 we were doing what we call pharmacokinetic studies. We were
12 looking at the time the drug goes in the body and when it
13 comes out again. And so, to develop those we had to develop
14 it with Blood Bank blood. We'd walk down the hall and get
15 it from the Blood Bank down the hall. It was expired blood
16 that they gave us. And we'd bring it back to our lab and
17 that's what we'd use to -- for our standards -- standards
18 and everything. And we have seen the gamut of drugs in
19 those -- in those kind of specimens coming from donors.
20 Okay? So I know from personal experience that you will find
21 a lot of drugs in various samples. Alcohol included.

22 Q Alcohol included. And did you say you at one time
23 worked somewhere where you would see it done -- being done
24 regularly?

25 A Yeah. I saw -- when I -- I have to travel quite a bit

1 and I go to the Gulfport-Biloxi Airport, and where I turn to
2 go in there, there's a plasma center there. And most time I
3 have to catch an early flight out to get to Atlanta to get
4 somewhere, you know. And so, it's usually about 5:30 in the
5 morning, 5:15 or something like that, and these people are
6 all lined up out there waiting to go in and donate their
7 blood to get -- you know, that's a plasma center. So, you
8 know, people do it for pay. I mean, that's the way people
9 -- some people survive.

10 Q Not everybody -- not everybody comes from a church or
11 not everybody comes from work to give blood?

12 A No, that's true. And, you know, the blood drives will
13 go to churches and schools and stuff. That's wonderful. I
14 mean, we need that kind of thing, too. But that's not to
15 say that the people they're getting don't have some drugs in
16 them.

17 Q So is there any science to be able to figure out those
18 14 units of blood as to where they came from?

19 A Well, they -- on the transfusion record they had a code
20 number that apparently link it to a donor, and I don't have
21 any way to go back and back that up. So I have no way to
22 know. You heard the testimony from the lady from the Blood
23 Bank the other day and she identified two of those units. I
24 don't know about the others. I have no idea about them.

25 Q So we just don't know.

1 A We don't know. Yes.

2 Q So if we don't know, we have to speculate?

3 A I don't like to speculate in science. Okay?

4 Q Well, I understand.

5 A I try to go with whatever facts we've got. Yes, sir.

6 Q But if you're having to speculate then that's what
7 you're doing, you're doing, you're --

8 A Yes, sir.

9 Q -- speculating?

10 A I would be, yes, sir --

11 Q But --

12 A -- and I don't do that.

13 THE COURT: Try not to talk over each other, please.

14 THE WITNESS: Yes, sir. I was just saying I don't want
15 to speculate. I want to try and be as scientific as I can.
16 But you're right. I would have to -- have to make some
17 assumptions here as to the blood products that he got.

18 Q All right. Let's go ahead and start looking then at
19 your -- this is the actual graph that is Mr. Rowell's graph?

20 A Yes. This is what we call a chromatogram. And this is
21 actually the SLED printout. Just like they print it out.
22 They provided this to us and we were able to look at it.
23 And you'll notice that they've got one peak there where they
24 have -- they call it ethanol. That's the alcohol that
25 people drink. And then there's the next peak next to it is

1 identified as acetone. And then notice the next peak is not
2 identified. It's, you know, a small peak there and it's not
3 identified. And then the largest peak over there on the
4 right-hand side is identified as their internal standard.
5 They use tertiary demo, which by the way is the perfect
6 internal standard to use. I applaud SLED for doing that.
7 Most labs I see do not do that. This is -- that's the
8 perfect internal standard to use. It would never be in the
9 human body. Okay? You'd never expect to see it in the
10 human body. So what we've got then is we got ethanol that
11 they've determined.

12 Now, they ran Mr. Rowell's specimen twice, and that's
13 good practice. In other words, they do what they call a
14 sequence run. They run a lot of other samples on the same
15 day besides his. And they put his on two different places
16 on this sequence run. And I can't quite read it, but up on
17 the top there the vial number -- I think it's vial 27? Is
18 that correct? You might be able to see that. I think it
19 says vial 27. You see where it says the vial number?

20 Q You want to look at this?

21 A Yeah, that might help if I can look at that. I'll tell
22 you exactly what it is. I'm just at a little bit of an
23 angle here and it's kind of hard to read the number. Yeah,
24 vial 27. So that's vial 27 that they ran on him. And --
25 but this -- the next slide is the duplicate that they ran on

1 him, and that's vial number five, I believe, if I remember
2 correctly. Yes, sir. It's vial number five that they have
3 -- they have run that one on. So they've run the sample
4 twice. And then they take the values that they get here and
5 they average them from the two runs and that's what they
6 report out. And again, that's okay. Nothing wrong --
7 nothing wrong with that. Now, what I did on this very next
8 line is I simply took those two chromatograms we were just
9 looking at and I pulled them out and put them over -- laid
10 them one over top of the other so we -- we can compare the
11 two. And then on the bottom one you notice I circled there.
12 That little peak there. And notice it's not in the top one.
13 So there was something in vial number five that they ran for
14 him that wasn't in vial number 27, and I'm not certain why
15 that is. Okay? There could be several explanations. One
16 is they got what we call carryover. The sample right before
17 him had this in it and it all didn't come out and it comes
18 out on his sample. I don't know. That's one explanation.
19 Another explanation might be that they pipe -- they pipetted
20 two different samples from this sample that got to them and
21 they weren't homogeneous and there's something else in the
22 second pipette that wasn't in the first one. That would be
23 another problem.

24 Q You say they weren't homogeneous. What does that mean?

25 A It just means that they weren't completely mixed

1 together, so there's a little bit of variation in the sample
2 itself. Okay?

3 Q In other words, other peoples' blood potentially?

4 A Well, yeah, that too, or some other component in there.
5 Something that was causing it not to be completely mixed
6 together. Okay? I'm just -- that I just have to assume at
7 the moment I don't know. But the most likely explanation
8 here is carryover from a previous sample. That would be the
9 most likely explanation. Now, both of these -- you'll
10 notice both of these -- is the reason I overlayed -- another
11 reason I overlayed them. Notice that both of them contain
12 acetone. They --

13 Q Is that the peak in the middle there? That little --

14 A Yes, sir. That smaller peak in the middle there. Now,
15 normally when you run a sample like this from anybody, if we
16 were to take a blood sample from anybody in here today
17 that's not a diabetic and we would run it on this
18 instrument, we would not see that peak. Only a person that
19 is a diabetic and not very well controlled will we see
20 acetone showing up in their -- in their specimen. So
21 acetone is present in this -- in Mr. Rowell's sample. It's,
22 you know, alleged to be his sample here. Yet I have no
23 indication from the medical records that he is diabetic. So
24 again, the most likely explanation is that this acetone came
25 from somebody that donated blood. Somebody that was a

1 diabetic donated some blood.

2 Q So that's not one of the things that will prohibit you
3 from giving blood if you're a diabetic. Again, they don't
4 test for that?

5 A They don't test for that. They should ask for that, I
6 would think, but I'm not certain what their checklist says.
7 The blood banks I've been associated with before would ask
8 that question.

9 Q What about high blood pressure? Suppose you get high
10 blood pressure and you have to take high blood pressure
11 pills?

12 A They would not show up on this because this is
13 volatiles, and the high blood pressure medicine would show
14 up only if you did the GC mass spectrometry analysis.

15 Q All right. Go ahead.

16 A So that's basically what we've got on his -- on his
17 alcohol analysis. Now, they did some additional work on
18 this. They put it on another machine. The same -- I guess
19 it's another - the same thing. They put it on another
20 machine. This machine is called a headspace gas
21 chromatograph, but now it's got attached to it a mass
22 spectrometer. A mass spectrometer allows you to determine
23 what the compound is that's actually there. And so, they've
24 identified in this three different components when they
25 looked at it. Once is we just looked at the ethanol alcohol

1 that was there -- that's there. And then we've identified
2 in this one another component which is called isoflurane.
3 And then they're internal standard.

4 Now, when I looked at this -- the first time I looked
5 at these chromatograms I had not seen Mr. Rowell's medical
6 records. But when I looked at the chromatogram the first
7 thing I knew was this sample had to be taken after surgery.
8 And the reason I knew that is because of the isoflurane
9 being there. Isoflurane is one of the anesthetic gasses
10 that's used. It's never used in medicine or anything else
11 but anesthetic gasses. No reason for it to be there except
12 from surgery.

13 Q And that would be like Propofol or something like that,
14 that Michael Jackson might have had or something like that?

15 A Yeah, Propofol -- Propofol is a different compound.
16 This is one of the old standby anesthetic gasses that's been
17 used for years.

18 Q But you don't -- you can't just go out and buy it?

19 A No, sir. It's not available to the public at all. So
20 I knew that, you know, he had that. And then the lab
21 actually -- they did the mass spectrometry, and that's what
22 I'm showing here on these next few slides. This is the one
23 where they identified alcohol, and that's the one where they
24 identified isoflurane.

25 And then that brings us really, I guess, to kind of a

1 summary of what all I've kind of found in here. If you want
2 to go through that next.

3 Q Okay. Just getting back to whether or not we can rely
4 upon these results as being good science or being without a
5 doubt analysis of his blood. What are you -- what are your
6 findings, Doctor?

7 A Well, the science as far as SLED is concerned was okay.
8 The analysis -- there are a few things that I didn't like
9 about it. But by and large the analysis is okay. I don't
10 have -- I'm not picking on them for their analysis.

11 What I did see is that when you look at things here
12 we've got two different blood samples that have been
13 analyzed for alcohol in Mr. Rowell. The first one was that
14 -- this sample that we just talked about. We had talked
15 earlier about the one that was drawn that went to the
16 hospital lab to test. This is the one that went to SLED.
17 This 00:54 sample that Nurse Childers drew. And she drew
18 this from an arterial line, not from a venous line. And
19 we're going to try to say what is meaningful as far as
20 clinical signs and symptoms of alcohol, blood level, we use
21 venous blood. We don't use arterial.

22 Q So arterial blood would have a different kind of
23 reaction?

24 A Well, it -- you can get different levels of alcohol in
25 arterial blood. You see, arterial blood is being pumped

1 out. So it's going to be pumped out from the heart to all
2 parts of the body. And venous is the blood that's coming
3 back to the heart. And so, when we draw a sample from
4 somebody's arm we're drawing from the venous site. If you
5 drew from the arterial site and you didn't know what you're
6 doing the blood would shoot across the room because you've
7 got that heart heart pushing the blood out. So you will
8 have a -- the concentrations in arterial specimens will be
9 higher at certain points after one has drunk alcohol than it
10 will be in venous blood. Basically after you get out six or
11 seven hours, something like that, they're about the same.
12 Okay? But initially the arterial is higher. So it's not
13 the proper site to draw a sample. It was a convenient site
14 for her to draw because they had an arterial line in him and
15 she just draws from that. Okay?

16 Q Okay.

17 A And then I think, as I've shown here, is he got about
18 220 percent of his -- what we expect to be his blood volumes
19 been replaced by either blood components or fluids of some
20 sort. He received 13 as I count them -- 13 units of various
21 donor blood that he had gotten from people. And again, as
22 we've talked about, we don't know exactly what is all in
23 those donor bloods. And then the specimen that was analyzed
24 by SLED -- here's the way I said it here. I didn't know any
25 other better way to say it. It's just not attributable to

1 Mr. Rowell's body fluid, because we've changed so much of
2 his body fluid it's not the same as when he appeared at that
3 facility.

4 MR. GARRETT: Beg the Court's indulgence.

5 THE COURT: Sure.

6 Q Two or three points. I want to make sure I tie this
7 up. When Dr. Snow testified he was talking about initially
8 a percentage -- subsequently after doing more math, the
9 percentage. But that didn't -- that did not include
10 everything that you've included which is everything that
11 went into Adam's blood before that draw; is that correct?

12 A Yes, sir. Dr. Snow did not include in that the blood
13 that was given to him in transport, the blood components
14 given to him in transport, nor what was given to him in the
15 trauma center. Trauma bay.

16 Q Did you find anything in his blood, Doctor, that just
17 couldn't possibly be true in the blood results?

18 A Yes, sir. I did.

19 Q What did you find?

20 A The SLED analysis of this sample, I found that he
21 contained a drug called diphenhydramine, or Benadryl is the
22 trade name of it. And the laboratory reported that he had
23 4.9 micrograms per milliliter -- well, actually reported 4.9
24 milligrams per liter, but that's the same as 4.9 micrograms
25 per milliliter. Normally we associate -

1 MR. BLACK: Your Honor, I hate to object at this point,
2 but I think we might need to approach.

3 THE COURT: Okay.

4 (Whereupon, a sidebar was held.)

5 THE COURT: Mr. Garrett, you may want to restate -- or
6 not restate but re-ask the question and bring us back to
7 where we were.

8 Q We were talking about you found something extraordinary
9 in his blood that just couldn't be there.

10 A Yes, sir.

11 Q Do you have any documents available so we can put that
12 together right quick?

13 A That would be -- I'm not sure. I've got it
14 electronically. It's the SLED report we're talking about
15 now or the --

16 Q What I'm asking about, of your review of all the
17 records from SLED and whatnot --

18 A Yes, sir.

19 Q -- and you've shown us where there was some issues with
20 some acetones which you say normally for people who are
21 diabetic.

22 A Yes, sir.

23 Q Did you find something else in there that just couldn't
24 be right in the SLED work that you did?

25 A I did. Yes, sir.

1 Q And what did you find?

2 A Well, they ran a screen for the drugs that were in him,
3 and one of the drugs that they found was the diphenhydramine
4 that we talked about just a moment ago.

5 Q Okay. And it's a Benadryl?

6 A The Benadryl. Yes, sir.

7 Q And then tell us how much they found.

8 A They found 4.9. I'll use the units micrograms per
9 milliliter.

10 Q And to help the jury understand what that would be,
11 tell them what affect what 4.9 milligrams is what you called
12 it?

13 A Micrograms.

14 Q Micrograms?

15 A Yes, sir. Micrograms per milliliter.

16 Q If somebody had that in their blood what condition
17 would they be in?

18 A The -- that level would be what we consider to be at
19 the high end of a toxic dose. The -- kind of agreed a dose
20 in the literature for a lethal dose is five micrograms per
21 milliliter. So that was just below five micrograms. So it
22 certainly would be at a high toxic dose. Diphenhydramine is
23 a central nervous system depressant and a very high dose.
24 You would suspect somebody to be very sedated with that --
25 with that level.

1 Q And, of course, this is after surgery?

2 A Yes, sir.

3 Q But you saw in no notes showing that he received any
4 Benadryl?

5 A No, sir. As I said -- now, I didn't look at the
6 complete medical records because I didn't have them after
7 the surgery. But up to that time and point in the surgery I
8 didn't see any indication that diphenhydramine had been
9 administered to him.

10 Q Now, if a person -- a normal person has got 4.9
11 micrograms of that in their system, how much more would they
12 need to be to be lethal? In other words, kill them?

13 A Well, as I said, there's a variation in what lethality
14 is, but generally five micrograms per milliliter is
15 considered to be kind of a median level that's been shown in
16 the literature to be lethal.

17 Q So we're a tenth --

18 A We're just a tenth away, so it's very near being a
19 lethal level. It's certainly a level that would be -- you'd
20 see it in the person if -- you know, I mean --

21 Q As a medicinal chemist, Doctor, any way possible that a
22 person could have an 18-100ths of one percent alcohol and a
23 4.9 Benadryl in his system and be able to do anything other
24 than be in a comatose state?

25 A No, sir. There's not.

1 Q He'd be comatose, wouldn't he?

2 A I'm sorry. I didn't hear you.

3 Q He would be comatose, wouldn't he?

4 A Yes, sir. He would.

5 Q So it's not possible?

6 A It's not possible. Yes, sir.

7 Q Therapeutic levels, sometimes doctors will use it. If
8 they use a therapeutic level what is a standard therapeutic
9 level for Benadryl?

10 A It runs about .025 to point -- I'll say .1, .12,
11 something like that.

12 Q All right. And that -- there's no evidence that --

13 A A therapeutic level would be -- that would be the level
14 we'd expect for somebody that is using it as an
15 antihistaminic substance to dry up their nose and that sort
16 of thing.

17 Q But scientifically it's just not possible for somebody
18 to have that --

19 A Not that level. No, sir.

20 Q And does that Benadryl, does it also dissipate from the
21 body in a normal way?

22 A Well, it has -- it has what we call half-life in the
23 body and it will dissipate. The half-life is about nine
24 hours. So every nine hours one-half of the dose that you
25 gave would disappear.

1 Q So let's suppose that -- let's suppose that five and a
2 half hours before that test was taken, in a normal person,
3 what would their level have been?

4 A Well, it would have been higher than 4.9, and we'd have
5 to do the calculation to do it back. But it's -- it would
6 just be an estimation, but it's -- it's probably somewhere
7 around six, something like that maybe.

8 Q You probably wouldn't be alive to eliminate it, would
9 you, at six?

10 A Correct.

11 Q Five is enough to kill you?

12 A It is.

13 Q So now, with all of the things now that you've studied,
14 all of the things that you've looked at, then what is the
15 reliability of the SLED's .09 draw?

16 A Well, we've got -- we've got a lot of unexplained
17 things here. Okay? We've got this diphenhydramine that's
18 certainly a weird sort of thing to be there. I don't
19 understand it. And I don't -- you know, and this .09, even
20 at that level with this much blood and fluid exchange, that
21 doesn't make sense either.

22 MR. GARRETT: Beg the Court's indulgence. Please
23 answer any questions opposing counsel may have.

24 THE COURT: Solicitor, cross-examination?

25 MR. BLACK: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. BLACK:

3 Q Dr. Valentine, thank you for being here.

4 A Yes, sir. You're welcome.

5 Q I know you've got your slide up. But just briefly, I
6 think we printed this off. Is this your website? Is this
7 from your website?

8 A No, sir. I don't have a website.

9 Q This must be just the Texas DUI defense lawyers.

10 A That's correct. It's an organization in Texas and I --
11 I speak somewhat frequently for them. Okay?

12 Q Okay. But you live in, you said, Mississippi?

13 A Yes, sir. I live in Ocean Springs, Mississippi.

14 Q I guess that's not too far from Texas, is it?

15 A It's about -- it takes me about three hours to get over
16 there in my plane, something like that.

17 Q And you said that you primarily testify for the defense
18 now. You used to testify for the state back in the day --

19 A Correct.

20 Q -- when you worked for the state?

21 A Correct. Yes, sir.

22 Q You were at the state hospital, I believe, or maybe it
23 was the state lab or --

24 A Well, I was in the state lab. I wasn't at the -- I was
25 at the Arkansas Children's Hospital. I ran the clinical

1 toxicology service there.

2 Q Okay. And by my calculations it sounds like you have
3 been paid \$10,500 for your services thus far just this week
4 and then your retainer?

5 A That's probably accurate. You'd have to check with my
6 wife who is over it. I never -- I never look at it. I'm
7 sorry.

8 Q Yes, sir. And you all -- I guess you all are staying
9 here in Greenwood?

10 A Yes, sir. We are.

11 Q Are you covering your hotels or are they covering your
12 hotels?

13 A I believe they covered my hotel.

14 Q And meals? I guess they're probably covering meals as
15 well?

16 A I cover the meals. I pay for the meals. I paid for
17 the rental car and my gasoline for my plane to get here.

18 Q Okay. So you actually -- you flew here?

19 A Yes, sir. We did.

20 Q You're a pilot as well?

21 A Yes, sir.

22 Q And Dr. Valentine, you said you all have a -- you all
23 are renting a car?

24 A Yes, sir.

25 Q And have you all had a chance to travel the state or

- 1 you're primarily just here for Court?
- 2 A We're just here for Court.
- 3 Q Have you had a chance to go up to Greenville Hospital?
- 4 A I have not.
- 5 Q But you -- I think I saw you on Monday; is that right?
- 6 A Yes, sir.
- 7 Q So you've been here all week?
- 8 A I've been here all week. Yes, sir.
- 9 Q But you haven't necessarily been in the courtroom all
10 week; is that correct?
- 11 A Correct.
- 12 Q Dr. Reddic was here. I think he's the clinical
13 director of the lab. You heard his testimony?
- 14 A I heard his testimony. Yes, sir.
- 15 Q You didn't go up there and review any of his lab
16 materials, have you?
- 17 A I'm sorry?
- 18 Q You didn't go up there and review his lab materials or
19 anything like that, have you?
- 20 A We requested that he send us the package -- the insert,
21 which we got --
- 22 Q Yes.
- 23 A -- and then the records from their calibration of the
24 instrument.
- 25 Q I think you got that, right?

- 1 A Yes, we did get that.
- 2 Q But you haven't been to Greenville Memorial to look at
- 3 all of the patients that have kind of been run through the
- 4 lab to look at their results and stuff?
- 5 A I have not.
- 6 Q You were hear for Dr. Snow's testimony --
- 7 A Yes, sir.
- 8 Q -- is that right?
- 9 A Yes, sir. That's correct.
- 10 Q He's the doctor that operated --
- 11 A Did the surgery on Mr. Rowell. Yes, sir.
- 12 Q So you heard his testimony?
- 13 A Yes, sir. I did.
- 14 Q And Mr. Rowell, I think there was mention that he was
- 15 in a coma for some time after surgery. Have you seen those
- 16 records?
- 17 A I have not seen those records.
- 18 Q You just don't -- you don't know?
- 19 A I don't know.
- 20 Q But you have reviewed the surgery records for Dr. Snow?
- 21 A I have. Yes, sir.
- 22 Q Before we jump into those records, let's start kind of
- 23 when he -- when Mr. Rowell first gets to the hospital.
- 24 Okay?
- 25 A Okay.

1 Q Can we start there? At that point Mr. Rowell had
2 received 540 units of blood; is that right? Which is the
3 whole blood and the plasma. About 540?

4 A Yes, right. I think that's about right.

5 Q Feel free to look at your notes if you need to do that.

6 A Okay.

7 Q And I think there was testimony -- I think you probably
8 heard the testimony of the LifeFlight?

9 A Yes, sir.

10 Q And the nurses that gave him the blood?

11 A Correct. I had --

12 Q 360 whole blood and 180 of FFPs, which is the fresh
13 frozen plasma?

14 A Yes, sir. That's correct. That's what the LifeFlight
15 gave him.

16 Q And that's all the blood that he received before he got
17 to the hospital, correct?

18 A Correct. Yes, sir.

19 Q And then once he got to the hospital he started
20 receiving additional blood?

21 A Correct.

22 Q Now, I was just curious, because I don't know anything
23 about liters or milliliters. This is a Dr. Pepper bottle.

24 A Uh-huh.

25 Q Can you tell us how many liters are in that Dr. Pepper

- 1 bottle?
- 2 A Five hundred.
- 3 Q Five hundred milliliters?
- 4 A That's what it says right here. Yes, sir.
- 5 Q So 40 more milliliters of blood he received before he
- 6 got to the hospital?
- 7 A Correct.
- 8 Q And there was a blood draw that was done at -- there
- 9 was a blood draw that was done at 20:54; is that right, by
- 10 the hospital?
- 11 A Well, that was the one where we had the --
- 12 Q Nurse Baker, I think? Amanda Baker?
- 13 A Yes, sir. That was the 20:54, correct.
- 14 Q Yes, sir.
- 15 A It was identified as she -- she's the one that drew it.
- 16 Correct.
- 17 Q And then you talked -- and you've got tons of
- 18 experience. I'm not doubting that. And you said that
- 19 you've been in trauma centers before?
- 20 A Yeah, actually I worked my way through college working
- 21 in the trauma center at the -- what's called the Confederate
- 22 Memorial Hospital in Shreveport, Louisiana.
- 23 Q And you did agree that they're pretty chaotic?
- 24 A It is.
- 25 Q And he had some pretty bad injuries, didn't he?

- 1 A Yes, sir.
- 2 Q So they were -- he's lucky to be alive?
- 3 A Oh, yeah. I agree.
- 4 Q So they were trying to save his life when he got to the
- 5 hospital?
- 6 A Yes, sir.
- 7 Q And I think you mentioned clock slop. Is that
- 8 something that you said?
- 9 A I think somebody used that on the stand here. But I --
- 10 Q I think you said it too, but --
- 11 A Maybe, yeah. Yeah, you're allowed a little slop in the
- 12 -- in the timing here.
- 13 Q Yes, sir. And you don't know Ms. -- Nurse Amanda
- 14 Baker, do you?
- 15 A I'm sorry?
- 16 Q Do you know her personally?
- 17 A Whose that now?
- 18 Q Nurse Amanda Baker? The one that --
- 19 A No, sir. I've never -- I never met her.
- 20 Q -- collected the sample?
- 21 A No, sir. I saw her testify today but I've never met
- 22 her.
- 23 Q But would you agree with me that not everybody has
- 24 their watch set at the exact actual time?
- 25 A Sure.

1 Q Dr. Valentine, just kind of going back to the 540
2 milliliters of blood that were given to them. Mr. Rowell,
3 how much do you estimate him weighing?

4 A I used what you used in Court the other day. I heard
5 you use 200 pounds --

6 Q Yes, sir.

7 A -- and that's what I used.

8 Q And I don't know how much he weighs. Do you know
9 exactly how much he weighs?

10 A I do not. I've not put him in a scale. I suspect he
11 probably is a little bit more than 200, but --

12 Q Yeah, I'm 200. So he's probably 200 to 220. You could
13 probably guesstimate that's accurate?

14 A He could be. The only reason I used 200 is because I
15 heard you use it in Court the other day --

16 Q Yes, sir.

17 A -- and I want to be -- I want to be correct.

18 Q Yes, sir. He might be a little bit bigger than me
19 though.

20 A He might be, yes.

21 Q I'm probably taller, but he might be a little bit --
22 okay. How many liters of blood does a typical 220 pound man
23 have? Did you say seven liters?

24 A Somewhere between five to seven liters. And it would
25 be more to the larger amount with a bigger person.

1 Q And would you agree with me that the blood that he
2 received before he got to the hospital was probably about
3 five percent of his blood volume?

4 A Yes. It's not -- not that much. I mean, he's
5 obviously lost some blood, and so --

6 Q Right.

7 A -- we don't know exactly how much.

8 Q Right. But of his total blood volume would be about
9 five percent? You wouldn't disagree with that? Ballpark
10 it?

11 A Yeah, it's --

12 Q Five to --

13 THE COURT: Try not to talk over each other, Solicitor,
14 and Dr. Valentine.

15 Q If we went five, seven, eight percent that's probably
16 about accurate?

17 A Probably. You know, the thing we don't -- the unknown
18 to us is how much blood he had lost at that point in time.

19 Q Right. Yes, sir.

20 A He could have lost, say, you know, maybe up to a liter
21 of blood by that time. We don't know.

22 Q Now, talking a little bit about what the doctors found
23 in their report. Dr. Snow. You heard his testimony; is
24 that right?

25 A Yes, sir. I did.

1 Q Do you remember him talking about the liver having a
2 small little puncture in the liver?

3 A He said a small laceration, yes.

4 Q Small laceration. And you heard him testify to that?

5 A Yes, sir. I did.

6 Q And do you remember him saying it wasn't -- the liver
7 wasn't leaking anything?

8 A I'm not certain that I heard that. But a laceration of
9 the liver would be -- would be bleeding. There's no
10 question about that.

11 Q And he testified that there was no leaking from the
12 liver. Now, the bowels. There was some problems with his
13 bowels as well. Do you remember that?

14 A Correct. Yes, sir.

15 Q And he said there was really no leaking in the bowels
16 either. Do you remember that testimony?

17 A Yes. What he was talking about there is there was no
18 perforation of the bowels. So actually the contents of the
19 bowel were flowing out into the peritoneum.

20 Q Yes, sir.

21 A That's correct.

22 Q And they did put sutures just to make sure that nothing
23 was going to leak. You remember him testifying to that?

24 A He put the -- he put the sutures in him to stop the
25 bleeding.

1 Q Yes, sir.

2 A And then the sutures would have been there, so he'd
3 take out that little piece of bowel that he took out,
4 because it was going to die anyway.

5 Q And he talked about the acidosis that he -- that he
6 noted that in his operative report?

7 A Yes, sir. He did.

8 Q Would you agree that excessive alcohol can cause
9 acidosis?

10 A Excessive alcohol?

11 Q Yes, sir.

12 A I've not seen that personally. Okay?

13 Q But Dr. Snow, you remember him testifying to that?

14 A Yes. He did say he had acidosis. That's correct.

15 Q And you remember him saying that alcohol can cause the
16 acidosis?

17 A I'm not sure where he's getting that. Okay? I don't
18 know of any literature that would specifically say that.
19 Okay?

20 Q Okay.

21 A There may be. He may have some source that I'm not
22 aware of.

23 Q And I'm not going to be too much longer, Doctor.
24 Hopefully not. But I wanted to talk a little bit about the
25 tests that were -- that were run. You and I would agree

- 1 that there's two separate blood draws in this case?
- 2 A Yes, sir.
- 3 Q One about 20:54, nine o'clock p.m.?
- 4 A Yes, sir.
- 5 Q And then there's another one that's at 1:05 -- or well,
- 6 I guess, 12:56 a.m., which is the next day --
- 7 A Correct.
- 8 Q -- but still at night?
- 9 A Correct.
- 10 Q So two different blood draws, correct?
- 11 A Yes, sir. To clarify. There's two different blood
- 12 draws that are drawn for alcohol testing.
- 13 Q Yes, sir.
- 14 A Okay, good.
- 15 Q That's right. And in the first test, that was done at
- 16 nine o'clock, 9:00 p.m., kind of when Mr. Rowell first gets
- 17 to the hospital?
- 18 A Correct.
- 19 Q And the test that was used was an enzyme based test on
- 20 this Abbott machine by the hospital?
- 21 A Correct.
- 22 Q And that was a 219 plasma, would you agree with that?
- 23 A Yes, sir.
- 24 Q And this 219 plasma, I think you did a little bit of --
- 25 plasma is different than whole blood; is that right?

1 A Correct.

2 Q And if you convert the 219 to whole blood, that's about
3 an 18 or -- it's 186, right?

4 A Yes, sir. It would be close to that.

5 Q If you round it up to 18?

6 A (Non verbal response).

7 Q Yes, sir. And alcohol in a normal person metabolizes
8 -- what's the rate that it typically metabolizes at?

9 A In a normal male the average is .05 grams per deciliter
10 per hour.

11 Q And is that different than the testimony that was said
12 yesterday with SLED when they were talking about it?

13 A I think that's the figure she used as well.

14 Q So it's the same as the SLED -- her interpretation of
15 that as well?

16 A Correct. There's a range of elimination of alcohol
17 from people. In general it's somewhere between .01 and
18 .012. And so, I split the baby, so to speak, and got .015.

19 Q Yes, sir. I understand. And would you agree with her
20 assessment that if all circumstances were normal he would be
21 metabolizing at a .06 on a four hour window?

22 A Yes, you would take four -- you would multiply four
23 times .015 and that would be .06, correct.

24 Q Because 9:00 to 10:00, 10:00 to 11:00, 11:00 to 12:00,
25 12:00 to 1:00 is -- you would agree that that's about four

- 1 hours?
- 2 A Yes, sir.
- 3 Q It's probably a little bit more but about four hours?
- 4 A Correct.
- 5 Q So if normal -- normal circumstances were at play in
- 6 this case he would have metabolized .06 during this four
- 7 hour window?
- 8 A That's correct.
- 9 Q And 19 -- 19 minus six is what? Is it 13?
- 10 A 13.13, yeah.
- 11 Q So he -- if normal -- if everything was kind of going
- 12 normal in this case he would have been a .13 at 1:00 in the
- 13 morning when the second blood draw occurred, correct?
- 14 A If normal, that's correct.
- 15 Q And you would agree with me that the first -- the first
- 16 blood draw was on this enzyme machine, this Abbott machine
- 17 that measures the enzymes?
- 18 A Correct.
- 19 Q And that was the hospital?
- 20 A Correct.
- 21 Q Greenville Memorial?
- 22 A Yes, sir.
- 23 Q And the second blood draw, it didn't come back a 13,
- 24 did it?
- 25 A It did not.

- 1 Q It came back a .09 --
- 2 A Yes, sir.
- 3 Q -- 6, which I guess you could round it up to a 10,
- 4 right?
- 5 A Okay.
- 6 Q You have that, right? You've looked at that?
- 7 A Yes, sir. I've looked at it. You showed that on the
- 8 screen earlier.
- 9 Q And that was SLED's draw, right?
- 10 A That's their analysis. Not their draw. Their
- 11 analysis.
- 12 Q Their analysis, yes.
- 13 A Yes, sir.
- 14 Q And they used the gas chromatography machine, mass
- 15 spectrometry -- I might be butchering that; is that right?
- 16 A That's correct. They used what's called headspace gas
- 17 chromatography for it with ionization detector.
- 18 Q And you said that's pretty much the gold standard?
- 19 A It's the gold standard. Yes, sir.
- 20 Q And that -- and that test specifically kind of
- 21 separates the alcohol component and measures it more
- 22 directly, is that --
- 23 A It does.
- 24 Q -- is that what your testimony is?
- 25 A It does.

1 Q Now, there was -- there was talk in this case about a
2 false positive. You testified about that, correct?

3 A Yes, sir.

4 Q Now, in this particular case are you testifying that a
5 false positive occurred in this sample with the hospital
6 records?

7 A In the initial sample, yes.

8 Q So you're saying it definitely happened?

9 A Yes.

10 Q Now --

11 A If I could, I could define that by saying that all of
12 these circumstances line up with what we see in the
13 scientific literature. So that would be my conclusion that
14 it was a false positive.

15 Q Okay. Now, let's talk a little bit about the false
16 positive. You remember Dr. Reddic testifying -- I guess it
17 was Wednesday. Maybe Wednesday or Thursday. I don't
18 remember.

19 A Yes, sir.

20 Q The days are all running together.

21 A Right.

22 Q Now, he testified that he's been at Greenville for
23 about three years. You remember that testimony?

24 A Yes, sir.

25 Q And he's the clinical director of the lab?

- 1 A Correct.
- 2 Q So he's kind of responsible for a lot of stuff that
3 goes on there?
- 4 A Correct.
- 5 Q And kind of like your friend that's over the lab in, it
6 sounds like, Chicago at the hospital up there, right? Maybe
7 similar position?
- 8 A Correct. Similar to there, yes.
- 9 Q So possibly similar position?
- 10 A Similar, correct.
- 11 Q Now, do you remember Dr. Reddic testifying that he had
12 seen one case of that in his career since he's been at the
13 hospital?
- 14 A Yes, sir. I did.
- 15 Q And that was a situation where a kid had tested
16 positive for the alcohol and there shouldn't have been any
17 alcohol in his system?
- 18 A Correct.
- 19 Q And that testimony -- do you remember him testifying
20 that it should have been a zero and it was really a 30
21 deciliters per liter. Is that the correct measurement?
- 22 A Milligrams per deciliter. Yes, sir.
- 23 Q Milligrams per deciliter. I'm sorry. So it was a --
24 he was a 30?
- 25 A 30, yes, sir. That's what he said.

- 1 Q Is that plasma?
- 2 A That would be plasma or serum, either one.
- 3 Q So if we convert that to whole blood that's really a
- 4 .03, right?
- 5 A Well, it would be less than that.
- 6 Q So less than a .03.
- 7 A Yeah.
- 8 Q So probably a .02?
- 9 A Possibly, yes. But probably a .025, something like
- 10 that.
- 11 Q And that's the only example that he had seen since he'd
- 12 been at Greenville Memorial?
- 13 A Yes, that's correct.
- 14 Q And you heard that testimony?
- 15 A I heard that testimony, yes.
- 16 Q And you have -- have you seen other false positives
- 17 generated in your experience?
- 18 A I have.
- 19 Q And we had a -- you were nice enough to talk to us the
- 20 other day.
- 21 A Yes, sir.
- 22 Q And we appreciate that, Doctor. You told us the -- you
- 23 told us the highest false positive that you'd ever seen was
- 24 a 10?
- 25 A I just remember that it was over a .1. Okay?

1 Q So a 10 -- converted --

2 A A hundred. It would be over 100 milligrams per
3 deciliter.

4 Q But if we convert that to whole blood, you know, kind
5 of a legal standard that we --

6 A It would be about a .09. Something like that --

7 Q .09 --

8 A -- would be --

9 Q I'm sorry. I'm talking over you. I apologize.

10 A It would be a .09, .08, something like that.

11 Q And that's the highest you've ever seen in your career?

12 A If -- now, you have to use -- I have to give you a
13 little bit of reference on that. That was also in the
14 pediatric patient. We used this particular assay we did use
15 in our laboratory at Arkansas Children's Hospital. We were
16 -- as far as I know, we were the very first persons to ever
17 report this to the manufacturer that we got this false
18 positive on the alcohol on this child. We always use gas
19 chromatography as a backup when we got a positive. And so,
20 when we did that and saw what we -- we had a positive -- we
21 did not have a positive by gas chromatography, we contacted
22 the manufacturer to let them know about this.

23 Q And this is one that you personally saw at the lab?

24 A Personally I saw. Yes, sir.

25 Q That was the .09?

1 A I just recall -- it's been a good while back. But I
2 know it was -- I know it was greater than 100 milligrams per
3 deciliter when we looked at it. Okay?

4 Q Okay. And that's the highest one that you've ever
5 seen?

6 A That's the -- that's the only one that I saw. Now, you
7 have to remember that we were doing mostly pediatric and
8 adolescent patients, and so I wasn't using this in the adult
9 population, and we had not done a specific study to show the
10 rate of false positives with this test. And the reason was
11 that we always backed it up with gas chromatography.

12 Q Yes, sir. I understand. Now, I'm going to put this
13 back on. I'm going to go through a couple of your slides,
14 if that's all right.

15 A Sure.

16 Q I'm just curious. I forget which one it was.

17 A I think it's HAMI-2. Yes, sir.

18 Q All right.

19 A You let me know which number it was and I'll go to it.

20 Q Yeah, let's start at page nine. And your page -- you
21 might have an extra page --

22 A Yeah, I've got a number down in the bottom right-hand
23 corner.

24 Q I think ours might be a little different. That's the
25 one I was looking for.

- 1 A All right.
- 2 Q It looks like my page nine, your page 10.
- 3 A All right.
- 4 Q I see that word "can".
- 5 A Correct.
- 6 Q I guess -- I guess there's a difference between can and
- 7 always.
- 8 A Yes, sir. There is.
- 9 Q And in this case the word before can is the lactate
- 10 dehydrogenase; is that right?
- 11 A Yes, sir. That's correct.
- 12 Q And so, in this particular case, through any of the
- 13 records, was there any lactate dehydrogenase in any of the
- 14 records?
- 15 A It was not analyzed.
- 16 Q It was not analyzed?
- 17 A Correct.
- 18 Q So you haven't looked at anything to see how much
- 19 lactate dehydrogenase that Adam Rowell had in his system?
- 20 A There was nothing in the medical records. No LDH was
- 21 measured.
- 22 Q So no LDH was measured. Now, let's go to the next
- 23 page. These are -- these are studies, correct?
- 24 A Yes, sir.
- 25 Q And the laboratories that received these particular

1 studies, they got this particular sample. I'm looking at
2 the second bullet. The second bullet proof. Is that --

3 A Yes, sir.

4 Q Bullet point. I'm sorry. 120 mm sodium chloride, 25
5 mm sodium lactate, and 5,000 UL human LDH.

6 A That's correct.

7 Q I guess we'll just start with the human LDH. There's
8 none of that here in this case, right?

9 A That's correct.

10 Q The sodium lactate. Do we have a number in this case
11 --

12 A We do.

13 Q -- of what that was?

14 A We do.

15 Q And what was that number?

16 A It was 3.2 millimeter, I believe.

17 Q It was 3.2. But these labs analyze it at 25, correct?

18 A Yes, sir. That's correct.

19 Q But in this case the Defendant had -- his was only a
20 3.2?

21 A 3.2, and that was an hour after this alleged 20:54
22 sample was drawn.

23 Q But they're analyzing it and they're finding -- they're
24 finding problems with the test when it's elevated to a 25,
25 right?

1 A That's correct.

2 Q And if you go to the next page -- or, I think, the next
3 two pages, right?

4 A Which one --

5 Q Three pages over. I'm sorry. That has his actual
6 medical record. Yes, sir. With the red arrow up there.
7 That's --

8 A Yes, sir.

9 Q -- that's the 3.3; is that right?

10 A Right. I think I said 3.2, but it's 3.3, yeah.

11 Q 3.3. Yes, sir. And normal for a human being is a .5
12 to a 1.6?

13 A That's the range for this laboratory.

14 Q Okay. And that's about, you know, twice -- probably
15 twice what a normal person should be?

16 A According to their values, yes.

17 Q But when it was analyzed in the laboratories where
18 there was a problem it looks like there was 25 times, maybe
19 50 times what the lactate should be?

20 A At least -- probably 20 times more, correct.

21 Q 25 to 50?

22 A Let's see. They had the 20 and 3.2.

23 Q Well, if normal is a .5 to a 1.6, let's just split the
24 baby and call it 1. That's -- it would have to be 25 times
25 more to start getting --

- 1 A Sure.
- 2 Q -- the interferences.
- 3 A Sure.
- 4 Q And, Doctor, you would agree with me that having excess
- 5 lactate -- lactic acid in a person is not unusual? And let
- 6 me preference this by saying I told you I played college
- 7 baseball, right?
- 8 A Yes, sir, you did.
- 9 Q And I was a pitcher in college. And after I pitched
- 10 I'd have to run like two to four miles to flush the lactic
- 11 acid. So it's not unusual, is it?
- 12 A To have an elevated lactic acid?
- 13 Q Yes, sir.
- 14 A It's not. If you exercise profusely, that's correct.
- 15 Q It flushes it out. Gets into the legs and gets it out
- 16 of the body, right?
- 17 A It can. Yes, sir.
- 18 Q At least that's what I was told by my coaches. Now,
- 19 that might have just been a ploy, but you're saying --
- 20 A No, that's right.
- 21 Q You're saying --
- 22 A I used that -- I used that word can again. Yes.
- 23 MR. BLACK: Your honor, may I have just a brief moment?
- 24 THE COURT: Sure. Take your time.
- 25 Q Dr. Valentine, Ms. Merrill's gracious enough to help me

1 out, to help out with your guy's technology. Before we get
2 to that though, there was some talk of Benadryl, correct?

3 A Yes, sir.

4 Q And can you buy that over-the-counter?

5 A You can. Yes, sir.

6 Q And some people use it even to help them go to sleep at
7 night, right?

8 A Correct.

9 Q I apologize, Doctor. I'm trying to work technology.
10 Doctor, we'll just skip this part. I was going to show that
11 video again. But you've analyzed the video?

12 A Yes, sir.

13 Q And you've analyzed the video in the parking lot --

14 A Yes, sir.

15 Q -- with Mr. Rowell allegedly driving?

16 A Correct.

17 Q Based on what you've seen -- based on what you've seen
18 on those two scenarios, would you agree with me that those
19 are 15 second clips at the most?

20 A Yes. They're not very long. That's correct.

21 Q And so, in your -- in your professional experience you
22 can judge somebody whether or not they're intoxicated based
23 on a 15 second clip?

24 A I wouldn't go so far as to say that. But what I would
25 say is you can look for certain indications, and that's

1 basically what I was looking for here. Again, we had no --
2 we had no audio on this. So I don't know speech pattern and
3 that sort of thing.

4 Q You just observed a 15 second clip of him walking in
5 Walmart?

6 A That's correct.

7 Q And then him allegedly driving his truck in the parking
8 lot?

9 A Yes, sir. Correct.

10 Q Okay. Doctor, you said something while you were
11 testifying about the SLED blood draw. Well, before we get
12 to that, it looks like Ms. Merrill's got the video working.
13 It looks like it's playing now.

14 A Yes, sir.

15 Q I'm going to rewind that again. You had a chance to
16 watch that a couple times, Doctor?

17 A I have.

18 Q Are you testifying today that this is straight walking?

19 A Well, no one walks in a straight line except when
20 you're asked to by the police. Okay? I mean, that's not
21 normally our walking pattern.

22 Q Well, slow it down. It's going backwards now. It
23 looks like he's on the left-hand side. Now he's on the
24 right-hand side.

25 A Well, if you'll notice, there are people in front of

1 him, too. It may be he's trying to maneuver around them. I
2 don't know.

3 Q The people that are walking with him?

4 A In front of him.

5 Q That are walking in the same direction he's walking?

6 A Yes, sir. And that one guy stops there momentarily.

7 Q It looks like when he first comes on screen he's on
8 that right side.

9 A Yes.

10 Q And then he goes -- veers off to the left over here.

11 A Yes.

12 Q And you've seen this video a couple of times?

13 A Yes, sir.

14 Q And you're testifying that this is straight walking?

15 A Well, just stepping off to the side there he -- maybe
16 he's following the line behind the other people.

17 Q We'll play it again.

18 A It looks like perfectly normal gait to me. Okay?

19 Q I understand.

20 A The only thing that's a little bit different is he --
21 as I talked about earlier, he does splay his feet out just
22 slightly when he's walking.

23 Q And probably most of us southern people do that anyway.

24 A Could be. You see a lot of it in Texas, but...

25 MR. BLACK: Thank you for being here, Doctor. We

1 appreciate it. I think that's all the questions I have
2 right now. Please answer any questions Mr. Garrett might
3 have for you.

4 THE WITNESS: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. GARRETT:

7 Q The test was 5,000 what in the test? What was -- it
8 was 5,000 what?

9 A It was lactic dehydrogenase.

10 Q No tests were done on Adam?

11 A Correct.

12 Q So we're just simply having to speculate as to how many
13 of those he had in his system?

14 A That's correct.

15 Q Is there a body -- if it was full of it what would it
16 have? How much would it have?

17 A It could be up as high as 17, 18,000. I mean, I've seen
18 -- I've seen levels like that in individuals that have liver
19 disease. That's a common level you see postmortem.

20 Q A trauma?

21 A From trauma, yes.

22 Q And he certainly didn't get -- wasn't able to go out
23 and run a bunch of laps before he took this test, was he?

24 A No, sir. He wasn't.

25 Q All right. So the lactate and the bad stuff that you

1 were trying to look for simply wasn't eliminating from his
2 body; is that correct?

3 A That's right. I mean, it -- what we have to remember,
4 too, is that the one sample we do have with the lactic acid
5 was an hour after this blood test was done. So the lactic
6 acid could have been higher at that -- at that point.

7 Q So there's just no -- there's just no way to know
8 exactly what it would be?

9 A Exactly.

10 Q So are you having to speculate to be able to put
11 science to this?

12 A I'm not speculating. What I'm doing is I'm saying this
13 is what the scientific studies have shown. We have all
14 indications in Mr. Rowell that he met the criteria of what
15 we saw -- discussed in that paper.

16 MR. GARRETT: I'd like to go ahead and move his
17 presentation into evidence. Judge, we may have to modify it
18 slightly, too, based on our conferences yesterday.

19 THE COURT: Okay.

20 MR. BLACK: I'm going to object to that, Judge, and if
21 we need to take that up out of their time I don't have a
22 problem discussing that at a later --

23 THE COURT: Okay. We will -- we'll just -- once we
24 break for lunch, we can either do it before we actually go
25 to lunch or after. That'll be probably about the best time

1 to deal with that.

2 MR. GARRETT: I'll just go ahead and mark it, Judge, if
3 I may.

4 THE COURT: Sure, not a problem.

5 (Whereupon, Defendant's Exhibit No. 18 was marked for
6 identification.)

7 Q Doctor, you reached that several times; is that
8 correct?

9 A Yes, sir.

10 Q And he didn't bump into anybody, did he?

11 A No, sir. He didn't.

12 Q If a person truly had, based on SLED, a .09 and a 4.9
13 Benadryl, would they even be able to walk at all?

14 A No, sir. They would not.

15 MR. GARRETT: Thank you.

16 THE COURT: Any recross, Solicitor?

17 RECROSS-EXAMINATION

18 BY MR. BLACK:

19 Q Were you in the state of South Carolina while this
20 incident happened?

21 A I was not.

22 Q So you have no idea the Defendant's state either before
23 or after this?

24 A No, sir. I do not.

25 MR. BLACK: Thank you, Doctor.

1 THE COURT: You can step down, Doctor.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 THE COURT: Okay. Ladies and gentlemen, it's the one
5 o'clock hour. It'll be a good time to break for lunch. And
6 let's try to start back at 2:15. Hopefully an hour and 15
7 minutes will be good enough for you. And again remind you,
8 as I've been do so all week long, no discussion with anybody
9 about this case, and we'll see you back at 2:15. Have a
10 good lunch.

11 (Whereupon, the jury exited the courtroom at 1:00 p.m.)

12 THE COURT: We'll start back at 2:15.

13 (Whereupon, a lunch recess was held from 1:00 p.m. to
14 2:20 p.m.)

15 (Whereupon, Court's Exhibit No. 21 was marked for
16 identification.)

17 (Whereupon, Defendant's Exhibit Nos. 19 and 21 were
18 marked for identification.)

19 THE COURT: Let's bring the jury out, please.

20 (Whereupon, the jury entered the courtroom at 2:20
21 p.m.)

22 THE COURT: Let the record reflect the jury is back in
23 the courtroom. Mr. Garrett, are you ready to call your next
24 witness?

25 MR. GARRETT: I do. Defense calls Adam Rowell.

1 THE COURT: Come around, please, sir.

2 ADAM ROWELL, having first been duly
3 sworn, testified as follows:

4 MR. GARRETT: May it please the Court.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. GARRETT:

8 Q Adam, tell us your full name for our Court record.

9 A Adam Martyn Rowell.

10 Q And what's your date of birth?

11 A September 15th, 1988.

12 Q And how old are you now?

13 A Twenty-eight.

14 Q I want to talk to you a little bit about your
15 background and that type of thing. Where were you born?

16 A I was born in Greenwood, South Carolina.

17 Q At Self over here?

18 A Yes, sir.

19 Q And where did you grow up?

20 A Greenwood and Ninety Six.

21 Q And where did you go to high school?

22 A Ninety Six High School.

23 Q Did you graduate from Ninety Six High School?

24 A Yes, sir. I did.

25 Q After graduating Greenwood High School where did you

1 go?

2 A I went to the Citadel.

3 Q Did you graduate the Citadel?

4 A Yes, sir. I did.

5 Q After the Citadel where did you go?

6 A I worked at Velux.

7 Q Velux?

8 A Yes.

9 Q And on the night of this wreck where were you working?

10 A At Velux.

11 Q Adam, I want to kind of talk to you about that entire
12 time period, if we can. Let's talk about, did you work the
13 night before?

14 A Yes, sir. I did.

15 Q I'm going to ask you to speak loudly so this young lady
16 can take down what you say.

17 THE COURT: You might want to slide a little closer to
18 that microphone.

19 A Yes, sir. I did.

20 Q I want you to start there and tell the jury about that.
21 What time did you get off on Friday night?

22 A Friday night I got off about midnight. I was working
23 the second shift.

24 Q Was that normal for you working second shift?

25 A I started working it a little bit. We usually get off

1 at 10:00, but I had been training for a new job, so I got
2 off a little later. So about midnight.

3 Q And then after leaving work where did you go?

4 A I went by the Hot Spot on the south end of town. 25
5 South.

6 Q And what did you do?

7 A Went in and purchased two bottles of Red Stripe and a
8 can of Grizzly Wintergreen.

9 Q So what time of the morning was that?

10 A It's a little after -- a little after 1:00. Probably
11 about 1:10, 1:15.

12 Q Do you recognize Defendant's No. 19?

13 A Yes, sir. I do.

14 Q What time does that say you made your purchase?

15 A Ten minutes after midnight.

16 Q Is that an accurate reflection of the receipt from the
17 Hot Spot there?

18 A Yes, sir. It is.

19 Q And it had two beers on it and a Grizzly?

20 A Yes, sir.

21 Q Can you tell us what a Grizzly is.

22 A Grizzly Wintergreen is a can of tobacco.

23 Q Tobacco dip?

24 A Yes.

25 MR. GARRETT: I move to introduce this into evidence.

1 MR. BLACK: No objection.

2 THE COURT: Without objection, No. 19 for the Defense
3 into evidence.

4 MR. GARRETT: No. 19. Thank you, Your Honor.

5 (Whereupon, Defendant's Exhibit No. 19 was admitted
6 into evidence.)

7 Q So it's Friday night at 12:10. What did you do after
8 that?

9 A After that I came home.

10 Q When you say home, tell the jury where home is.

11 A Home is -- if you go down to the House of Colors, right
12 down from the Hot Spot, we live in the back end of that
13 subdivision.

14 Q So going down south Greenwood, take a left at the Hot
15 Spot, go down to that House of Colors?

16 A Yes, sir.

17 Q Is there a road that goes to the right?

18 A Yes, sir. It's called Sherwood Drive.

19 Q Sherwood Drive?

20 A Yes, sir.

21 Q So you and your family live there?

22 A We live in the back of that where it changes over to
23 Meadow View.

24 Q Were you -- at that time were you living with your
25 parents?

- 1 A Yes, sir. I was.
- 2 Q Are you still living with your parents now?
- 3 A Yes, sir. I am.
- 4 Q How is your place kind of setup inside of their home?
- 5 A We have the main livingroom. Down the hallway, first
- 6 one to the right. Down the hallway is my room.
- 7 Q And that's where you were living at the time?
- 8 A Yes, sir. I was.
- 9 Q All right. So what time would you say you got home?
- 10 How long does it take you to drive from the Hot Spot to your
- 11 house?
- 12 A Not long. It's probably five to six minutes at most.
- 13 Q Got to your house. Tell the jury what you did.
- 14 A I brought everything in inside. I'd been working the
- 15 paint line, so changed my clothes. Changed -- I had paint
- 16 on my clothes. So I changed into my -- something cleaner.
- 17 Came in. Got a microwave dinner. Warmed it up, and had one
- 18 of the Red Stripes.
- 19 Q And after having one of the Red Stripes did you stay at
- 20 home?
- 21 A Yes, sir. I did.
- 22 Q Did you drive or anything like that?
- 23 A No, sir. I didn't.
- 24 Q So you had your meal, and then would you say you -- how
- 25 long you stayed up that night before you went to sleep?

1 A I had a movie going. I just stayed up watching that
2 movie and went to bed probably -- probably 2:00, 2:30.
3 Somewhere in there.

4 Q And so, you went to sleep that night there?

5 A Yes, sir. I did.

6 Q And about what time did you get up Saturday morning?

7 A Probably a little after 10:00.

8 Q Were your parents there at the house when you got up?

9 A Yes, sir. They were.

10 Q And was there anything planned for that day at all?

11 Did you have something scheduled, or what were you all
12 trying to do that day if anything?

13 A Well, my grandmother and my father's birthday falls on
14 the same week, and so we're -- we were going to celebrate
15 their birthday that evening. So we had plans to do that.

16 Q And so, when you all celebrate what was your all's
17 intention? Where were you all going to eat that night?

18 A There wasn't a specific place yet, but they said that
19 they were just going to go up in town and eat. I was
20 assuming something like O'Charley's. Somewhere on that side
21 of town.

22 Q Outback?

23 A Somewhere like that.

24 Q Is that usually where you all have your little
25 celebrations?

1 A Yes, sir.

2 Q So it was your dad and your grandmother's birthday; is
3 that correct?

4 A That's correct.

5 Q Is your grandmother in the courtroom?

6 A Yes, sir. She is.

7 Q Is that the young lady back over there?

8 A Yes, sir. Oh, yes, sir. It is.

9 Q So this is supposed to be a celebration night?

10 A It was supposed to be.

11 Q Now, let's take it on from there. After your parents
12 left you said around -- what time did they leave?

13 A They probably left probably about 10:30, 11:00,
14 somewhere in there.

15 Q After you got up what did you do?

16 A We had a hunting trip planned. Well, before all that I
17 got up, showered, cleaned up. We had a hunting trip planned
18 for the following weekend at Santee. I started getting
19 stuff ready for that.

20 Q What kind of hunting trip?

21 A Waterfowl. Duck hunt.

22 Q Who was supposed to go on a trip the following weekend?

23 A Me and my father.

24 Q Was that customary that you and your father generally
25 go --

- 1 A Yes, sir.
- 2 Q -- duck hunting?
- 3 A Yes, sir.
- 4 Q It was part of your duties or responsibilities was to
- 5 get your equipment and whatnot ready?
- 6 A Yes, sir.
- 7 Q So just kind of take us through your day and tell us
- 8 what you did up and until we got you at the Walmart there.
- 9 Go ahead.
- 10 A Okay. Well, as I said, I got up. Got dressed and
- 11 everything. Got ready. Stared doing stuff -- in the safe.
- 12 We've got a safe at the house. So I was getting the guns
- 13 ready for that.
- 14 Q You all got a gun safe at your house?
- 15 A Yes, sir. We do.
- 16 Q Do you all have your important weapons locked up in the
- 17 safe?
- 18 A Yes, sir. We do.
- 19 Q And do you have a combination for the safe?
- 20 A Yes, sir. We do.
- 21 Q And so, you know the combination?
- 22 A Yes, sir.
- 23 Q Did you open the safe?
- 24 A Yes, sir. We did.
- 25 Q And what guns did you retrieve out of the safe?

1 A I had a Benelli at the time, and he had a Winchester
2 SBX.

3 Q Any other guns you retrieved at that time?

4 A Yeah. I had a hunting rifle I'd used earlier in the
5 week.

6 Q Were you successful earlier in the week hunting?

7 A Yes, sir. Me and my friend, Doug Hall, we went deer
8 hunting. We both got bucks that Wednesday.

9 Q You both bagged some bucks?

10 A Yes, sir. We did.

11 Q And so, these three weapons were in your safe?

12 A Yes, sir. They were.

13 Q You took them out. Now, did you take the time to sit
14 down and start cleaning them?

15 A Yes, sir. I did.

16 Q So that's what you were doing, say, after 11:00 or so?

17 A Yes, sir.

18 Q How long does it take you generally -- just kind of
19 walk through what you did with your weapons and what you did
20 with your duck gear and try to let the jury know what you
21 were doing that day.

22 A It was going to be a weekend trip. So I was getting
23 that stuff ready, broke down. Make sure everything's good
24 to go. Of course, clean the rifle. Make sure I had that
25 cleaned up, because I'd used it earlier in the week. Got my

1 waders ready. Had a leak in one of them --

2 Q What is a wader?

3 A Well, you go duck hunting you have -- and it's cold and
4 you're going to be in the water. So I had a pair of waders
5 kind of protect you from like getting water on your clothes
6 and getting wet.

7 Q Right.

8 A So you had a hole in your waders?

9 A Yes, sir.

10 Q How do you fix holes in your waders?

11 A You got to get like this little -- like silicone or
12 something like that and just put it on the seams.

13 Q Did you do that that day?

14 A Yes, sir. I did.

15 Q And how long did you work -- did you have decoys?

16 A Yes, sir. We had decoys in the attic.

17 Q Did you have to go up into the attic and get your
18 decoys?

19 A Yes, sir. I did.

20 Q How long would you say it took you to do -- to try to
21 get everything ready for this trip that was going to be the
22 following weekend?

23 A A few hours to get everything altogether ready.

24 Q At what point in time -- did you go -- did you leave
25 there to go anywhere from that point in time?

- 1 A After I got all that ready I went to Walmart.
- 2 Q Let me ask you this. After you got up that morning at
- 3 around 10:00, 10:30 did you have any alcoholic thing to
- 4 drink at all?
- 5 A No, sir.
- 6 Q Did you have -- do you take any diabetic medicine?
- 7 A No, sir. I don't.
- 8 Q Are you a diabetic?
- 9 A No, sir. I'm not.
- 10 Q Did you take any Benadryl?
- 11 A No, sir. I didn't.
- 12 Q Do you even use Benadryl?
- 13 A No, sir.
- 14 Q If you've got a nasal allergy or whatever, what do you
- 15 use?
- 16 A Something like Sudafed, or off brand Sudafed.
- 17 Q Now, let's move on -- let's move on from there. So
- 18 about around 2:00 you decided to go to Walmart?
- 19 A Yes, sir.
- 20 Q And what was your purpose in going to Walmart?
- 21 A I like music. I play guitar. So I was going to buy
- 22 some CDs at Walmart.
- 23 Q And why were you going to buy some CDs at Walmart?
- 24 A There's a few songs I want to learn how to play, so I
- 25 bought those CDs. That's the one I play.

1 Q When you all go on those trips do you usually take your
2 guitar and play?

3 A Yes, sir.

4 Q Do you try to learn new songs while you got downtime
5 where you can't hunt?

6 A Yes.

7 Q Around the campfire and that kind of thing?

8 A Yeah, that sort of thing.

9 Q And so, about what time did you get to Walmart?

10 A Probably 2:00, 2:30. Somewhere in there.

11 MR. GARRETT: Beg the Court's indulgence.

12 THE COURT: Sure.

13 Q I'll show you what has been marked and entered into
14 evidence as Defendant's 15. Do you recognize those
15 purchases and about what time you purchased those?

16 A Yes, sir. I do.

17 Q About what time does it say that you purchased those
18 CDs.

19 A 14:26.

20 Q So would that be 2:26?

21 A 2:26. Yes, sir.

22 Q And after purchasing those CDs what did you do?

23 A I went back home.

24 Q Is your normal -- how long is your normal drive from
25 Walmart to home?

- 1 A It varies. Probably -- probably 12, 14 minutes.
- 2 Q Which way do you normally go?
- 3 A Come down 225.
- 4 Q So if you left out of the front of Walmart you'd make a
- 5 right?
- 6 A Yes.
- 7 Q Go down to, what, County Bank?
- 8 A Yes, sir.
- 9 Q Did you get on 225 there?
- 10 A Yes, sir. I did.
- 11 Q And then drive it all the way out to Scotch Cross Road?
- 12 A Yes, sir. That's correct.
- 13 Q Is that the way you went?
- 14 A Yes, sir. It was.
- 15 Q About what time did you get home? If you got there at
- 16 about 2:36, about what time did you get home?
- 17 A Probably sometime close to 3:00.
- 18 Q Close to 3:00?
- 19 A Yes, sir.
- 20 Q And what did you do from 3:00 on?
- 21 A I had work clothes from earlier in the week, so I had
- 22 to wash those. Like I said, I work on the paint line and it
- 23 got some paint on it. I can't wash it with my normal
- 24 clothes, so I had to wash them separate.
- 25 Q Your momma don't let you wash those with all the good

- 1 clean clothes?
- 2 A No, not with the paint on it.
- 3 Q Go ahead.
- 4 A Just did cleaning up. Cleaning up my room. Made up my
- 5 bed, stuff like that.
- 6 Q Then what did you do?
- 7 A Sat down and had something to eat. Spaghetti and some
- 8 garlic bread, and I had the other Red Stripe beer.
- 9 Q You drank the other Red Stripe beer?
- 10 A Yes, sir. I did.
- 11 Q And it's a 24 ounce beer?
- 12 A Yes, sir.
- 13 Q Is it fair to say that's basically two 12 ounce beers
- 14 in one?
- 15 A That would be correct.
- 16 Q So around 3:00 you had a beer?
- 17 A Yes, sir.
- 18 Q Okay. 24 ounces?
- 19 A Yes.
- 20 Q Which is basically two beers?
- 21 A Yes, sir.
- 22 Q Now, up and until that time that day had you had
- 23 anything to drink?
- 24 A No, sir. I didn't.
- 25 Q Any diabetic medicine?

1. A No, sir. I didn't.
2. Q Any Benadryl?
3. A No, sir. I didn't.
4. Q When you drank that -- those -- that one beer, which is
- 5 basically two beers, did you take any medication or anything
- 6 like that?
7. A No, sir. I didn't.
8. Q Any Benadryl?
9. A No, sir.
10. Q Any diabetic medicine?
11. A No, sir.
12. Q And you say you ate spaghetti and then you had some
- 13 garlic toast?
14. A Yes, sir.
15. Q After eating what did you do?
16. A I was working on cleaning up. Cleaning my room and
- 17 stuff like that. I was making up my bed. Straightening up
- 18 around the house.
19. Q So then about 5:00 did you decide to go somewhere else?
20. A I did. Like I said, I'd been hunting with my friend
- 21 Doug Hall earlier in the week. So I went by his in-law's
- 22 land where we hunt to see if he was out there.
23. Q And was he out there?
24. A No, sir. He was on a trip.
25. Q About how long does it take you to drive out to your

1 in-law's land?

2 A His in-law's?

3 Q His in-law's?

4 A It's down like going towards Ninety Six, so like 15
5 minutes, maybe a little bit more.

6 Q Did you stop anywhere on your way back to town?

7 A Yes, sir. I stopped by an ATM.

8 Q And what did you get at the ATM?

9 A I got \$20 out.

10 Q I'll show you what has been marked Defendant's Exhibit
11 20. Do you recognize that?

12 A Yes, sir. That's the receipt for the ATM.

13 Q It's a receipt from an ATM?

14 A Yes, sir. It's a little blurry.

15 Q Hold on just a moment. Hold on just a minute. Let me
16 see it first. I want to go back to one point. When you
17 were at Walmart before you went home and had your meal, did
18 you see anybody there?

19 A I did.

20 Q Who did you see there?

21 A Samantha Byrd.

22 Q And could you just tell us about that briefly.

23 A It was just a quick meeting. She was up there with her
24 son, and we knew her from church from years back. I saw her
25 and said hey.

1 Q She had her son with her?

2 A Yeah, she kind of tended to him.

3 Q You all just spoke?

4 A Yes.

5 Q You all didn't sit and have a conversation or anything
6 like that?

7 A Nothing long. Just hey, how's it going. And she asked
8 me how my grandpa was doing.

9 Q So let's move on from there. Let's get back to this
10 20. You were trying to look at it. Does it show what time
11 you got -- approximately what time you got the \$20 out of
12 the ATM?

13 A It's a little blurry, but I think it says like 17:45,
14 17:55. Something like that.

15 Q 17 something like that?

16 A Yes, 17.

17 Q So that would be 5:35, 50 -- 5:45, 5:55?

18 A 5:50. Somewhere in there.

19 MR. GARRETT: I'm going to introduce 20 into evidence.

20 MR. BLACK: No objection.

21 THE COURT: Without objection, No. 20 for the Defense
22 into evidence.

23 (Whereupon, Defendant's Exhibit No. 20 was admitted
24 into evidence.)

25 Q Now, let's move on from there. Did you -- the time you

1 were there at the ATM you got \$20; is that correct?

2 A Yes, sir. That's correct.

3 Q And why did you get \$20?

4 A Because it was my grandmother and father's birthday, so
5 I got it out. I didn't know if I was going to get a card or
6 a gift for them. So I just had it just to have it on hand
7 for something like that.

8 Q And then what did you do?

9 A I went back to Walmart.

10 Q Drove to Walmart?

11 A Yes, sir.

12 Q And about what time did you get to Walmart?

13 A 6:30. Somewhere in there.

14 Q And we've seen some videos. Is that you driving?

15 A Yes, sir. It is.

16 Q Did you have any difficulty driving from the Ninety Six
17 -- and that would -- that would be at, what, the Shell
18 station there?

19 A Yes, sir.

20 Q The ATM at the Shell station?

21 A Yes.

22 Q About how far is it from there to Walmart? The one you
23 went to?

24 A Maybe about 15, 20 minute drive.

25 Q And so, you got there. Did you have any difficulty

1 driving?

2 A No, sir. I didn't.

3 Q Did you have any open containers in the vehicle with
4 you?

5 A No, sir. I didn't.

6 Q The containers of beer, tell us about those. You had
7 drank a Red Stripe the night before and you had drank --
8 that day around 3:00 you drank the other one?

9 A Yes, sir.

10 Q Where were the bottles?

11 A They were in the HP computer bag.

12 Q HP computer bag. I'm going to let you see Defendant's
13 8 for ID. Do you recognize that bag?

14 A Yes, sir.

15 Q Is that the bag you say you put the beer bottles in?

16 A Yes, sir. That's correct.

17 Q Were they empty?

18 A Yes, sir.

19 Q Did you have anything left in them?

20 A No, sir.

21 MR. GARRETT: I move at this time to introduce Defendant
22 No. 8.

23 THE COURT: Without objection from the State, No. 8 for
24 the Defense into evidence.

25 (Whereupon, Defendant's Exhibit No. 8 admitted into

1 evidence.)

2 Q Now, help me understand what you -- what you did with
3 those beer bottles.

4 A I just put it in the bag to move it out of the house
5 because my mother's religion I didn't want to have them out
6 in front of her.

7 Q So it's customary not to have bottles of beer in the
8 house?

9 A I just didn't want to have them in front of her. She
10 doesn't like it.

11 Q And so, what do you normally do? And so, if you want
12 to take a drink of beer or whatever and she's not there, or
13 not up, what do you do with them?

14 A That's how I -- I just bring it in that bag, or a bag
15 like that.

16 Q And how do you get rid of them once you bring them --
17 you know, put them back in that bag?

18 A Put them back in the bag and put them in the toolbox or
19 the back of the truck.

20 Q The last time you saw that bag was -- where was your
21 last remembrance of where you put that bag?

22 A In the cab -- in the back of the back of the truck.
23 Like in the very bag.

24 Q In the -- not -- is it in the cab or --

25 A No, not the cab. It's in the -- like in the very back

1 end of it. In the bed somewhere.

2 Q In the bed?

3 A Yeah.

4 Q Not in the --

5 A Not in the cab. No, sir.

6 Q Do you know how your bag got from one place to another?

7 A No, sir. I don't.

8 Q When you got to Walmart there did you have any

9 difficulty driving?

10 A No, sir. I didn't.

11 Q So that would have been about 6:30?

12 A Yes, sir. There about.

13 Q You had had that other beer at around three o'clock?

14 A Yes, sir. That's correct.

15 Q And did you have any difficulty driving whatsoever?

16 A No, sir.

17 Q After you were there tell us what you did. Why were

18 you in Walmart and what were you trying to do?

19 A As I said, I got a choke tube for my Benelli the night

20 before.

21 Q Help -- let's help the jury understand what a choke

22 tube is.

23 A When you go duck hunting you have to have a choke tube

24 for the gun to go duck hunting. It screws in the top.

25 Q It makes the bullet shoot out a different way?

- 1 A It changes the pattern.
- 2 Q Changes the pattern to duck?
- 3 A Yes.
- 4 Q And so, you were trying to find one for your father?
- 5 A That's correct.
- 6 Q Did you find one for your father there at Walmart?
- 7 A Not the one I wanted. So I didn't --
- 8 Q So you didn't buy it?
- 9 A No, sir.
- 10 Q And what did you do then?
- 11 A So I left the store.
- 12 Q We don't have any pictures of you leaving the store.
- 13 About what time would you say you left the store?
- 14 A Probably a little before 7:00. Seven o'clock.
- 15 Q Right at 7:00?
- 16 A Yes, sir.
- 17 Q And tell us which way you took to go out.
- 18 A The same way I did the first time. Just left out the
- 19 front, went towards the County Bank, and down 225.
- 20 Q And did you go all the way home?
- 21 A I did.
- 22 Q And what happened at home?
- 23 A I didn't get the choke tube that I wanted for him, so I
- 24 grabbed the gift certificate I had for Hunter's
- 25 Headquarters.

1 Q You had a gift certificate from Hunter's Headquarters?

2 A Yes.

3 Q For how much money?

4 A It was like 40 bucks, I think.

5 Q And so, then where were you going?

6 A I was going to go ahead by that time just meet them and
7 be on time to meet them.

8 Q And now I want to take you to the scene. Which way did
9 you travel from -- let's take it from the place -- you said
10 Seabrook? Is Seabrook a subdivision?

11 A It's Sherbrook.

12 Q Sherbrook. Is Sherbrook a subdivision?

13 A Yes, sir. It is.

14 Q South Greenwood?

15 A Yes, sir. It is.

16 Q You would come out there to Scotch Cross Road?

17 A That's correct.

18 Q And went up to the -- why don't you just take us
19 through there and just tell us what happened.

20 A Okay. Went up like going past the Hot Spot. That's
21 when I was there. The other vehicle in my lane.

22 Q Let's slow down -- let's slow down a minute. I'm
23 assuming you had to stop at the stop sign there? There's a
24 stop sign or is it a red light?

25 A It's a red light.

- 1 Q You had to cross 25?
- 2 A Yes, sir. That's correct.
- 3 Q Did you cross 25?
- 4 A I did.
- 5 Q And let's just take -- take our time. Was it dark?
- 6 A It was very dark.
- 7 Q And you had just -- you had just been right down that
- 8 road; is that correct?
- 9 A That's correct.
- 10 Q and how long would you say you had been at the house to
- 11 get the Hunter's Headquarters gift certificate?
- 12 A Not long at all. Maybe just a couple minutes to stop
- 13 in and come back out.
- 14 Q Were you in any kind of major hurry or anything like
- 15 that?
- 16 A Not a real big hurry, no.
- 17 Q And you were heading to meet, what? Your folks, or who
- 18 were you going to meet?
- 19 A Yeah. I was going to be on time, because we were going
- 20 to meet about that time to go eat.
- 21 Q Was that customary? You all were going to meet around
- 22 7:30, 8:00?
- 23 A Yeah, because they had the birthdays. Yeah.
- 24 Q So let's take you -- as soon as you -- let's take you
- 25 to the point in time that you got to Scotch Cross Road. Did

1 you see any cars to your left as you got to Scotch Cross
2 Road?

3 A I did.

4 Q And did you have any problems with any kind of bright
5 lights or anything like that?

6 A No, sir.

7 Q And did you have your bright lights on?

8 A Not that I recall, no.

9 Q Just tell the jury what you saw as you came -- as you
10 came up to that point?

11 A It was dark. I saw headlights in my lane. So I come
12 -- drive up towards the median and just kind of let up the
13 gas a little bit.

14 Q And then what happened?

15 A The light was continuing on in my lane, and I go over
16 in his lane trying to miss him. So speed up, try to drive
17 past him, but -- I mean, it's not now it worked out.

18 Q Was he in your lane of traffic?

19 A Yes, sir.

20 Q Did you try to get in his lane of traffic to avoid
21 hitting him in your lane?

22 A Yes, sir. I tried to get in his lane to get out of the
23 way.

24 Q And how many times would you say you saw him up ahead
25 of you and as he got close to you, how many times, if any,

- 1 did he cross the center line in front of you?
- 2 A Maybe twice.
- 3 Q And after that there was an explosion. Do you recall
- 4 the impact or anything like that?
- 5 A Huh-uh.
- 6 Q Is that a no?
- 7 THE COURT: You need to verbally answer, sir.
- 8 A No, sir.
- 9 Q After the impact what happened to you?
- 10 A I woke up in the hospital. That's it.
- 11 Q And were you out for quite some time?
- 12 A Yes, sir.
- 13 Q How long was it before you reached consciousness?
- 14 A Two weeks.
- 15 Q Did you incur very large medical bills?
- 16 A I did.
- 17 Q Was your body shattered?
- 18 A It was pretty bad.
- 19 Q Were you almost killed?
- 20 A Yes, sir.
- 21 Q And did you do everything you felt like you could have
- 22 done to try to avoid this accident?
- 23 A I feel like I did.
- 24 Q After the -- after you got put into the hospital, you
- 25 know, do you know anything about these tests?

1 A No, sir.

2 Q Do you know anything about anybody reading any implied
3 consent laws to you --

4 A No, sir.

5 Q -- or any Miranda warnings to you or anything like
6 that?

7 A No, sir.

8 Q You just don't know anything about it?

9 A No, sir.

10 Q And then after you got out -- you got out in February;
11 is that correct? Around February the 16th? Do you remember
12 when you got out of the rehab hospital? It might have been
13 December. I'm sorry.

14 A It was close --

15 Q How long were you in the hospital altogether?

16 A It was close to Christmas before I got out.

17 Q Like December the 16th?

18 A Something like that.

19 Q And were you -- were you served these warrants at that
20 time?

21 A Yeah. When they went to take me out. They had the
22 patrol come and pick me up.

23 Q As soon as you got out -- as soon as you got out then
24 you were served with these warrants?

25 A Yes, sir.

- 1 Q Are you guilty of felony DUI?
- 2 A No, sir. I'm not.
- 3 Q Did you take any type of Benadryl?
- 4 A No, sir. I didn't.
- 5 Q Did you drink any more alcohol than what you've told
- 6 this jury here today?
- 7 A I did not.
- 8 Q Did the alcohol that you had at three o'clock that day
- 9 cause you any difficulty in your driving?
- 10 A No, sir. It didn't.
- 11 Q Did you take any diabetic medicine?
- 12 A No, sir. I didn't.
- 13 Q Are you a diabetic?
- 14 A No, sir.
- 15 Q Is that the best recollection that you have about what
- 16 happened just before this accident?
- 17 A Yes, sir.
- 18 Q And the last thing you remember is what? Who was in
- 19 your lane?
- 20 A He was and I was trying to steer out of it.
- 21 MR. GARRETT: Thank you.
- 22 THE COURT: Are you finished with direct, Mr. Garrett?
- 23 MR. GARRETT: I am. I'm sorry.
- 24 THE COURT: That's okay. Cross-examination, Solicitor?
- 25 MR. BLACK: Yes, sir. Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. BLACK:

3 Q Mr. Rowell, the first time you had an alcoholic
4 beverage the day of the wreck was about three o'clock in the
5 afternoon, you said?

6 A Yes. I had one prior to that, like still kind of the
7 same day. It was like midnight when I got off.

8 Q When you woke up the day before?

9 A Yes, sir.

10 Q You're saying you had one Red Stripe?

11 A That morning. Yes, sir.

12 Q Which is 24 ounces?

13 A Yes.

14 Q I can't hear you.

15 A Yes.

16 Q And you said you had a plate of spaghetti, too, right?

17 A That's correct.

18 Q I guess that would have been your lunch?

19 A Yes, sir. It was.

20 Q And you had some bread with that as well?

21 A (Nonverbal response.)

22 Q Is that a yes?

23 A Yes, that's correct.

24 Q And then once you got done with the Red Stripe you said
25 you took it and put it in your car.

- 1 A I had it in a bag. The HP bag. Well, I had the HP bag
2 at the house at the time of the other one. I put them all
3 in there.
- 4 Q That's a bookbag?
- 5 A Yeah. It's like an HP book bag.
- 6 Q So you just put empty bottles in a book bag?
- 7 A Yeah, to carry them out of the house.
- 8 Q You said but you don't -- you all have trash bags at
9 your house?
- 10 A I don't leave the bottles at the house.
- 11 Q Right. I understand that.
- 12 A Yeah.
- 13 Q But you have trash bags at your house, right?
- 14 A That's correct.
- 15 Q So you could have put an empty bottle in a trash bag,
16 right?
- 17 A Yes.
- 18 Q And thrown it away that way?
- 19 A I suppose.
- 20 Q You could have taken it to the dump and put it in the
21 recycle or something like that, right?
- 22 A I suppose.
- 23 Q So whenever you drink at the house you always put them
24 in this book bag?
- 25 A That's correct.

- 1 Q Every time you have any alcohol?
- 2 A That's correct.
- 3 Q So you never throw them in the trash can?
- 4 A That's correct.
- 5 Q And you said because your mom's religious, right?
- 6 A That's correct.
- 7 Q What about putting them in the bottom of the trash bag
- 8 and kind of under some trash? You don't do that?
- 9 A They'd still clank and she's know.
- 10 Q So you've never -- you've never do this?
- 11 A No, not in front of her.
- 12 Q You always put it in a book bag, put it in your truck
- 13 and then take it somewhere else?
- 14 A Put it in the back of the truck and take it.
- 15 Q Put it in the back of the truck?
- 16 A The cab -- not the cab, but like the bed of the truck
- 17 in the back.
- 18 Q In the bed of the truck?
- 19 A That's correct.
- 20 Q And in this particular case I guess it was different
- 21 because the pictures that the jury has seen, in this
- 22 particular case there was a bottle in the back of the truck?
- 23 A That's not correct.
- 24 Q Now, you've been here the whole time, correct?
- 25 A Yes.

- 1 Q And you've seen the evidence that's come in, correct?
- 2 A Yes.
- 3 Q You've seen this picture before, right?
- 4 A I have.
- 5 Q And it looks like that's the box of Blue Moon.
- 6 A Yes.
- 7 Q That's your toolbox, right?
- 8 A Yeah.
- 9 Q And so, you're saying typically you put them in the
- 10 toolbox or in the bed of the truck, right?
- 11 A That's correct.
- 12 Q The empty bottles?
- 13 A That's correct.
- 14 Q Now, this picture -- this looks like the back of your
- 15 truck, right?
- 16 A Yes.
- 17 Q You had -- is it leather seats? It doesn't look like
- 18 they're leather seats, are they?
- 19 A No, they're cloth seats.
- 20 Q And you would agree with me that that looks like --
- 21 that's a Red Stripe bottle?
- 22 A It's -- yeah, that's what it looks like.
- 23 Q And your book bag, was it in the back -- it was in the
- 24 back of the -- backseat of your truck, right?
- 25 A That's what that picture shows.

- 1 Q And this can was sitting in the seat, right?
- 2 A That's what the picture shows.
- 3 Q And that's Red Stripe, correct?
- 4 A That's what the picture shows.
- 5 Q Okay. Is this the -- is this the bottle that you drank
- 6 at lunchtime?
- 7 A I couldn't be sure.
- 8 Q But didn't you just testify that you put it in the --
- 9 in the -- in your book bag, right?
- 10 A It was in the book bag.
- 11 Q But this one is outside the book bag, right?
- 12 A It appears to be, yes.
- 13 Q Now, this was a Saturday afternoon, right?
- 14 A Yes.
- 15 Q And it sounds like you were running around town trying
- 16 to get a bunch of stuff; is that correct?
- 17 A That's correct.
- 18 Q And you play a little bit of guitar. I think you
- 19 testified to that.
- 20 A Yeah.
- 21 Q And you went to Walmart about 2:30 to grab some CDs?
- 22 A That's correct.
- 23 Q And those -- what kind of CDs were they? I know they
- 24 were Foo Fighters --
- 25 A It's still up here.

- 1 Q Yes, sir.
- 2 A It was Foo Fighters, Zac Brown, Stevie Ray Vaughan,
3 Jimi Hendrix and Bruce Springsteen.
- 4 Q Okay. And these particular CDs, you said you got them
5 so that you could learn to play some of the songs; is that
6 right?
- 7 A That's correct.
- 8 Q So is this CD like a teachable CD or is it just a CD
9 with all the songs on it?
- 10 A No, it's just one with all the songs on it.
- 11 Q So how would you learn to play these different songs
12 from this particular CD?
- 13 A Well, I had books on most of those. But I will listen
14 to an original song as well.
- 15 Q So you've got books on how to play the guitar?
- 16 A Well, I have the -- I have the books, but I don't have
17 like the audio part with the books. It's just sheet music
18 books.
- 19 Q And you can go on the Internet and look at cords and
20 stuff and --
- 21 A Yeah, absolutely.
- 22 Q Okay. And these songs are also -- you can get them --
23 you can look them up on Youtube, right and listen to them?
- 24 A You could, but it'll be handy to have all the ones you
25 want right there with you.

1 Q I understand. And you probably wanted to listen to
2 them on your trip as well, right?

3 A Yeah, absolutely.

4 Q Mr. Rowell, we talked a little bit about the empty Red
5 Stripe bottle that you had in your truck; is that right?

6 A Right.

7 Q The one you drank at lunch?

8 A Yes.

9 Q You had -- you also had other beer in the truck as well
10 that were not opened?

11 A Not that I remember, other than what's in the picture.

12 Q Not that you remember?

13 THE COURT: Mr. Rowell, you need to speak up a little
14 bit. Get a little closer to the microphone would help.
15 Thank you.

16 (Whereupon, State's Exhibit Nos. 74 and 75 were marked
17 for identification.)

18 Q Mr. Rowell, I'm showing you what's been marked as 74
19 and 75. Do you know what that is?

20 MR. GARRETT: Can I see those?

21 MR. BLACK: I apologize, Mr. Garrett.

22 MR. GARRETT: No problem. Without objection.

23 Q Do you know what that is, those two pictures are, Mr.
24 Rowell?

25 A They look like a bottle.

1 Q It looks like a bottle. Do you know what it is?

2 A No. I can't really see the label.

3 Q You can't see the label?

4 A No.

5 Q Now, you've been here the whole time this week, haven't
6 you?

7 A I have.

8 Q And you've seen everything that's been shown in Court?

9 A I have.

10 Q And you saw that Kelly Anderson -- she works for MAIT.
11 You saw that she testified earlier this week.

12 A I did.

13 Q And you saw that she -- she showed up the day of the
14 wreck, probably about an hour and a half after. Do you
15 remember her testifying to that?

16 A Yes, sir. Something like that.

17 Q And do you remember her showing a video?

18 A I do.

19 Q And that video is essentially the wreck scene right
20 when she arrived. Do you remember seeing that?

21 A Yes, sir.

22 Q And the jury saw it, too, correct?

23 A That's correct.

24 Q And why she was -- while she was going through this
25 video she went through the red truck; is that right?

1 A That's right.

2 Q And she showed video of your truck as well, correct?

3 A That's correct.

4 Q And that was played in front of the jury, correct?

5 A That's correct.

6 Q It looks like she was rummaging through the stuff in
7 your truck; is that right?

8 A It would appear so, yes.

9 Q And at this point you had already been taken out of the
10 truck; is that right?

11 A That's correct.

12 Q I direct your attention to the screen. Can you see the
13 screen where you're sitting, Mr. Rowell?

14 A I can.

15 MR. BLACK: I'm going to start this video again. And
16 of course technology doesn't want to cooperate with me.

17 THE COURT: Solicitor, do you need a couple minutes to
18 get things going? We can take a short little break if you
19 need it.

20 MR. BLACK: I think I'm -- I think I'm good while Mr.
21 Downtin can get it going.

22 Q But you have those pictures in front of you, correct?

23 A That's correct.

24 Q Would you agree that they're still photos of the video?

25 A They appear so, yes.

1 Q And the bottle on those particular -- it's closed,
2 right?

3 A It would appear so, yes.

4 Q Now, in those pictures it looks like there's some beads
5 of sweat coming off of them; is that right? Maybe you can
6 tell and maybe you can't tell?

7 A You can't really tell from these photos.

8 Q But your testimony today is that that beer wasn't in
9 your car?

10 A I wouldn't think so.

11 Q You wouldn't think so?

12 A No.

13 (Whereupon, video was published for the jury.)

14 Q Did you get a chance to see that, Mr. Rowell?

15 A I did.

16 Q And that picture is the same picture as the still frame
17 that you have, correct?

18 A It appears so, yes.

19 Q And I've got it stopped on the screen. That bottle is
20 clearly closed, right?

21 A It appears so, yes.

22 Q And you don't know -- but you don't know what that is?
23 That's your testimony today?

24 A Yeah, I can't tell what it is.

25 Q But it does look like there are beads of sweat on the

1 screen; is that right?

2 A I can't really make it out. If you say so.

3 Q Maybe you need to step down and take a better look at
4 it.

5 (Whereupon, the witness stepped down from the witness
6 stand.)

7 A I still can't see it.

8 Q Okay. But this -- it appears --

9 THE COURT: Wait a minute. What was that last
10 response, since you're away from the microphone, Mr. Rowell?

11 (Whereupon, the witness returns to the witness stand.)

12 THE WITNESS: I still couldn't tell if that was sweat
13 -- beads of sweat or not.

14 Q And this appears to be in some kind of bag or
15 compartment, correct?

16 A It appears so, yes.

17 Q But you only put empties in your vehicle?

18 A I put it on the back of the vehicle. In the back.

19 Q Empties in the back?

20 A Not the cab but in the bed. The back of the truck.

21 Q In the bed?

22 A Yes.

23 Q In the toolbox and the bed, both of them?

24 A In the toolbox or the bed, yes.

25 Q But you carry other containers in the car?

1 A Not necessarily.

2 Q Okay. Now, let's talk a little bit about the crash.

3 You had gone to Walmart to try to find something for your
4 gun, like a choke or a plug?

5 A Yeah. A plug for my dad's gun, yes.

6 Q Walmart didn't have it?

7 A It did not.

8 Q So you went to Hunter's Headquarters -- well, you had
9 to go back home?

10 A Yes.

11 Q Then go to Hunter's Headquarters?

12 A No, I didn't go to Hunter's Headquarters. I had a gift
13 certificate for Hunter's Headquarters I was going to give to
14 him.

15 Q Just give him a gift certificate so your dad could go
16 buy it?

17 A Yes.

18 Q So you were -- at this point you went home to get the
19 gift certificate and then you were heading back to
20 Greenwood, back to town; is that right?

21 A That's correct.

22 Q And you were -- at this point you were trying to head
23 to the restaurant?

24 A That's correct.

25 Q And you were headed back on 225 kind of the way that

1 you usually go, right?

2 A That's correct.

3 Q And you were sitting at the red light probably on 25
4 and crossed 25, kept on going on 225 past Scotch Cross Ferry
5 Road, and then headed up kind of towards the fairgrounds?

6 A Yes, sir. That's correct.

7 Q That's the way to go?

8 A Yes.

9 Q Okay. Now, you'll agree with me that the speed limit
10 on that road is 55 miles an hour?

11 A That's correct.

12 Q And you'll agree with me that coming from the Hot Spot
13 that road kind of curves; is that right?

14 A That's correct.

15 Q And it curves back from the way you're headed back
16 across kind of towards the right?

17 A It does.

18 Q So you would agree with that? If you're headed from
19 the Hot Spot back to Greenwood it curves back towards the
20 right?

21 A Yeah, it's got a slight curve all the way throughout
22 that turn.

23 Q And I'm sure you've traveled this road a ton in your
24 life, right?

25 A All my life.

1 Q Heading from Ninety Six to Greenwood, back to and fro,
2 you probably travel it a couple times a day, don't you?

3 A That's correct.

4 Q Okay. Now, at a certain point while you were traveling
5 on this road you said you saw the red truck essentially in
6 your lane of travel; is that right?

7 A That's correct.

8 Q And at that point you're saying that you had to make a
9 decision?

10 A That's correct.

11 Q And your decision in this particular case was to get in
12 the red truck's lane, correct?

13 A So I could try to pass him around the --

14 Q Pass him on the red truck's side?

15 A Yes.

16 Q When you saw the red truck coming down it was kind of
17 on the top of that hill?

18 A It was dark. All I know, it was up around, you know,
19 where those guardrails were. That's --

20 Q Now, you talk about guardrails. Now, on the red
21 truck's side of the road there were guardrails on his side,
22 correct?

23 A That's correct.

24 Q On your side of the road there were not guardrails,
25 right? Not yet?

1 A Not yet, no.

2 Q There are guardrails a little bit further up?

3 A Yes. All the way around that turn there's guardrails
4 on both sides.

5 Q So you're here telling this jury that your first
6 instinct when you saw this red truck come was to get in the
7 red truck's lane and try to pass it on his side of the road?

8 A Around it.

9 Q But you agree that there are guardrails on the red
10 truck's side of the road?

11 A There's guardrails on both sides of the road.

12 Q Right. But you hadn't gotten to the guardrails yet.
13 Not on your side, correct?

14 A Well, they're a little staggered, but they're still
15 pretty close together.

16 Q They're pretty close together. But at the rate -- when
17 you saw the red truck allegedly in your lane, right, there
18 were no guardrails?

19 A No, but I knew they were coming up pretty close.

20 Q So you did have time to turn off, or to pull over onto
21 your side of the road, because you weren't inhibited by any
22 guardrails, were you?

23 A Not by a guardrail. But there's -- it's really boggy
24 on that side of the road.

25 Q Right. And it kind of slopes off, doesn't it?

1 A It slopes off. And you've got a pond and a bunch of
2 trees on that other side.

3 Q And the pond -- the pond doesn't directly back up into
4 the road though, does it?

5 A Not directly, but it's just -- when it's raining or
6 when it's cold it'll just -- if you ever seen it this time
7 of year it's up pretty bad on this end.

8 Q Right. But if there's a pond there there would be
9 guardrails, correct? You would agree with me?

10 A Not necessarily. There would be -- it's around this
11 side.

12 Q I'm showing you what's been marked as No. 10. It's the
13 red truck. You would agree with me on that?

14 A Yes.

15 Q And you can see the end of the guardrail, correct?

16 A Yes.

17 Q The guardrail ends right here?

18 A Yes.

19 Q And this guardrail runs up the road a good ways,
20 correct?

21 A That's correct.

22 Q So your testimony to the jury is that you were going to
23 try to pass the red truck on this side of the road even
24 though there's a guardrail literally three feet off the
25 road?

1 A when he was in the lane it looked like I had a little
2 room to go around him on that side.

3 Q A little bit of room to go around him --

4 A Yes, sir.

5 Q -- on that side?

6 A That's correct.

7 Q What if the red truck overcorrects and gets back in his
8 lane?

9 A That's what would happen.

10 Q Now I'm showing you what's been marked as State's 45.
11 You've seen this picture, right, Mr. Rowell?

12 A I have.

13 Q And this is that road where the wreck happened?

14 A That's correct.

15 Q And your truck ended up coming to rest right here; is
16 that right? Where this kind of indention is?

17 A No. It was probably back closer to the guardrail.

18 Q Closer to the guardrail, so just a little bit up here?

19 A Yeah, it's right about where your finger is where I
20 came to rest.

21 Q So at this point the guardrail kind of goes up towards
22 the fairgrounds; is that right?

23 A That's right.

24 Q But there's no guardrails down here; is that right?

25 A That's right.

1 Q And your testimony is that there's a -- it's boggy and
2 it's kind of muddy and it's not a good spot to pull off; is
3 that right?

4 A That's correct.

5 Q I'm showing you what's been marked as State's 48. Do
6 you now which way this is going?

7 A It's going back towards the Hot Spot.

8 Q So this is looking back towards the Hot Spot?

9 A (Nonverbal response.)

10 Q Yes?

11 A That's correct.

12 Q And you were coming from this direction up top of the
13 road up here and coming this way? Traveling this way?

14 A That's correct.

15 Q And your testimony is that there's no spot to turn off.
16 No spot to pull off to the right-hand side. But the best
17 course of action in this case was to go around in the red
18 truck's lane and try to pass him on this side? That's your
19 testimony?

20 A Yes. You have to understand it's like seconds.

21 Q Seconds.

22 A Seconds.

23 Q And you didn't think about hitting your brakes at all?

24 A I let off the gas, but it was just -- I was trying to
25 maneuver around him.

1 Q You were trying to maneuver around him?

2 A Yes.

3 Q What about this spot where this little machine is set
4 up? There's a turnoff right here. Do you see that?

5 A I do now.

6 Q Way up here the side of the road. It slopes off a
7 little bit, but you can get a truck right there, can't you?

8 A It would be possible, yes.

9 Q Let's talk about your course of action. Your truck is
10 a 2005 Chevrolet.

11 A That's correct.

12 Q and you have a -- you have a CAT ACM. Do you know what
13 that is?

14 A I do now.

15 Q It's basically a black box, isn't it?

16 A I guess so.

17 Q Kind of like what you hear about an airplane. It
18 records all the data?

19 A Apparently so, yes.

20 Q And so, your 2004 -- or 2005 Chevrolet, it had one of
21 these black boxes, didn't it?

22 A It did.

23 Q And it records data that's going through your truck?

24 A I assume so. That's what I've been told.

25 Q That's what you've been told. And you've had a chance

- 1 to review this, haven't you?
- 2 A Yes, I have.
- 3 Q Does this look like the information that you've
- 4 reviewed?
- 5 A Not that I remember, no.
- 6 Q Let me show it to you.
- 7 A Okay.
- 8 Q This has been marked as State's 63 into evidence. Take
- 9 a look at that page right there, sir.
- 10 A Okay.
- 11 Q That might mean something to you, it might not.
- 12 A I don't know what I'm looking for.
- 13 Q But you're not a crash data analysis -- you don't know
- 14 how to analyze any of this data; is that right?
- 15 A No, I do not.
- 16 Q You're not an accident reconstructionist?
- 17 A No.
- 18 Q But the black box, it records different speeds and
- 19 other different things going on; is that right? That's what
- 20 you've been told?
- 21 A That's what I've been told, yes.
- 22 Q And five seconds out it's got information. You would
- 23 agree with that? You heard testimony about it?
- 24 A Yeah, that's what I've heard. Yes.
- 25 Q Sixty-six -

1 MR. GARRETT: Your Honor, he doesn't -- understand that
2 he's not an analyst, and I just want to make sure. He's
3 asking him about things that he's already said he doesn't
4 know about. He's seen what's gone on in the courtroom but
5 he's not an analyst.

6 THE COURT: Well, he can -- I guess he can agree or
7 disagree with something that the Solicitor asks that comes
8 off the report. So I'm going to overrule at this point in
9 time. We'll see how it goes.

10 MR. GARRETT: Thank you, Your Honor.

11 Q Five seconds before the wreck it looks like you're
12 going 66 miles an hour, according to the black box. Percent
13 throttle zero. Four, 65. Three seconds before the wreck,
14 66. Two seconds before the wreck 67. One second before the
15 wreck 66 miles an hour. Do you see that?

16 A Yeah, I see that. Yeah.

17 Q And below that it looks like we've got some more
18 information. Brake switch circuit state. Eight seconds
19 before the wreck the brakes aren't on. Seven seconds before
20 the wreck they're on. Do you see that?

21 A Yes.

22 Q So when did you see the red truck in your lane? Was it
23 seven seconds?

24 A That's probably when I saw him swerve the first time.

25 Q Probably?

- 1 A I told you it was a matter of seconds.
- 2 Q So you hit your brakes, and then six seconds you're off
- 3 your brakes.
- 4 A It appears so, yes.
- 5 Q Five seconds it looks like you're off your brakes.
- 6 Four seconds it looks like you're off your brakes. Three
- 7 seconds off your brakes. Two seconds off your brakes. One
- 8 second before the wreck, off your brakes. Impact. When did
- 9 you make the decision to try to pass him on his side of the
- 10 lane?
- 11 A I would assume somewhere in between that timeframe.
- 12 Q Even though you had all this room to pull over off to
- 13 the right-hand side of the road?
- 14 A Like I said, it was only a matter of seconds.
- 15 Q You lost consciousness out at the scene?
- 16 A That's what they've told me, yes.
- 17 Q You don't really remember much after that, do you?
- 18 A I was -- I was in and out.
- 19 Q And then you went to the hospital, right?
- 20 A That's correct.
- 21 Q You were in a comma for a while?
- 22 A That's correct.
- 23 Q And then you woke up?
- 24 A Yes.
- 25 Q And then you remembered all the details?

1 A No. It took me a while to piece together details.

2 Q It took you awhile to piece together the details?

3 A Yes.

4 MR. BLACK: That's all the questions I have.

5 THE COURT: Anything in redirect in response to
6 cross-examination?

7 MR. GARRETT: None, Your Honor.

8 THE COURT: All right. You can step down, sir.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Mr. Garrett, do you have any other
11 witnesses?

12 MR. GARRETT: That's the case, Your Honor.

13 THE COURT: All right. The Defense rests. Does the
14 State have any rebuttal case?

15 MR. BLACK: No, sir, Your Honor.

16 THE COURT: All right. The evidentiary record in this
17 case is now closed. Mr. Foreman, ladies and gentlemen of
18 the jury, I'm going to send you back to the jury room. I
19 want to talk with the lawyers and just kind of finalize
20 plans for the remainder of this case, which will consist of
21 the lawyers making closing arguments to you. I will
22 instruct you on the law in this case and then I will give
23 you an instruction sometime after that to begin your
24 deliberations. But I want to talk with the lawyers and just
25 kind of get a good game plan, so to speak, on when we do

1 that. So if you'll go back to the jury room. Do not begin
2 any discussion yet, and we'll get you back out shortly.

3 (Whereupon, the jury exited the courtroom at 3:19 p.m.)

4 THE COURT: Lawyers come back in chambers for a second,
5 please.

6 (Whereupon, there was a pause in the proceedings from
7 3:19 p.m. to 3:27 p.m.)

8 THE COURT: Let's bring the jury out for purposes of
9 dismissing them for the day.

10 (Whereupon, the jury entered the courtroom at 3:27
11 p.m.)

12 THE COURT: Let the record reflect the jury is back in
13 the courtroom. Ladies and gentlemen, here's the plan.
14 We're going to go ahead and we're going to send you all on
15 now and have you back at 9:30 Monday morning. And let me
16 just kind of tell you my reason behind doing what we're
17 doing. Yeah, we could very well keep going. There's some
18 work that the lawyers and I need to do related to some
19 issues, so we'll have to leave you back here. Probably we
20 would not be ready to argue and charge until probably about
21 4:30, and the closing arguments. I don't know how long they
22 will be, but certainly some cases, especially cases that
23 have gone on this long, closing arguments could be very well
24 lengthy, and then I charge you on the law. You know, you
25 may very well not get this case to begin your deliberations

1 until suppertime or after. And so, I think it would be
2 better to come back on Monday. I realize that's a holiday
3 for at least some of you. I've already taken your Saturday
4 away from you. Now I'm taking a holiday away from you. But
5 I think looking at everything, I think that's going to be
6 the best way of going. So start back at 9:30. Hit the
7 ground running, having the closing arguments, charge you on
8 the law, and then you'll get this case to begin your
9 deliberations. Okay? So that's the reasoning behind my
10 decision. So at least you get to leave the courthouse at
11 3:30. You've been leaving around six o'clock every evening,
12 I think. So have a good afternoon and evening. Have a good
13 restful Sunday. We'll see you back Monday at 9:30. And
14 again, I'll remind you no discussion about this case with
15 anyone. Don't get on the Internet, social media to do any
16 research, and we'll see you back 9:30 on Monday. Have a
17 good rest of the day and a good Sunday.

18 (Whereupon, the jury was released at 3:27 p.m.)

19 THE COURT: Let's go ahead and take a short recess.
20 We'll get a copy of the draft charge to you. I think you
21 all need to do a little work on Matt Sims' report, and then
22 we can talk about Dr. Valentine's report and kind of do
23 everything at one time.

24 MR. HENDERSON: And we want to renew all our motions
25 again when the appropriate time comes, Your Honor.

1 THE COURT: Right. We can just -- we'll put that on
2 the record when we go -- come back. Okay?

3 MR. HENDERSON: Sounds good.

4 THE COURT: Everybody be at ease for a little bit.

5 (Whereupon, a recess was held from 3:27 p.m. to 4:46
6 p.m.)

7 THE COURT: Mr. Henderson, you have something to put on
8 the record?

9 MR. HENDERSON: I do, Your Honor. I want to go ahead
10 and renew all our directed verdict motions and all the prior
11 motions that we had made. And, Your Honor, taken in the
12 light of after the Defense put up its case, I think the --
13 regardless of looking at the hospital blood draw, regardless
14 of the chain of custody, it's undisputed from the State's
15 standpoint that the test was taken at 8:54. And I think
16 what's also in evidence is undisputed that Mr. Rowell did
17 not arrive to the hospital trauma bay until 8:59 to nine
18 o'clock. Your Honor, it's out belief that it would be --
19 forget about the chain of custody. It would be rank
20 speculation for the jury to be able to try to determine
21 whether or not this sample associated with the chain of
22 custody is Mr. Rowell's, when the undisputed evidence in the
23 record is that Mr. Rowell was not even at Greenville
24 Hospital when this blood draw was taken. And again, you're
25 -- that's truly speculative. And again, I just don't think

1 the jury should -- that doesn't mean -- that's not even more
2 likely than not. I think the government has to show at
3 least more likely than not before they can try to prove it
4 beyond a reasonable doubt. And on the hospital draw, we
5 believe that the Court, based upon that, ought to direct a
6 verdict of not guilty.

7 Then as it relates the SLED draw, Your Honor, the
8 State's own evidence is that a minimum 52 percent of the
9 blood was replaced from Mr. Rowell. Our expert, Dr.
10 Valentine, says it's 60 percent of the blood, as well as 123
11 percent of the blood -- of the fluid product. So it's --
12 and that's undisputed. Nobody has disputed that at all.
13 And again, Your Honor, as it relates to the SLED draw, we
14 believe it would be rank speculation for the jury to be able
15 to try to ascertain any reading allegedly coming from Mr. --
16 that did come from Mr. Rowell's body on its reliability.
17 They would be speculating about the reliability. Again, Your
18 Honor, that goes back to the motion that we made for not
19 contesting the validity of the machine. Not contesting the
20 machine at all. It's what got put into the machine. Again,
21 it's the reliability side of it. And again, if the -- if
22 the undisputed evidence is all this stuff got put through
23 his body, again, that would be rank speculation for a jury
24 to be able to try to attach that reading to Mr. Rowell's
25 blood. Basically he's being punished for something in a

1 sense is not his. Could not be his.

2 And again, Your Honor, just Ms. Merrill and I were
3 think about analogies. It's almost like a polygraph
4 analogy. That you're saying that if the polygraph machine
5 was working right, then anything that spits out has got to
6 be -- has got to be accurate. No. You might be putting
7 junk into it. And again, that's been our whole argument all
8 along that it's unreliable what gets put into it. So forget
9 what the result says. It doesn't matter what the result is
10 because it's based upon unreliable data being entered.

11 And again, based upon all that, we would renew our
12 motion for directed verdict now after the close of all
13 evidence.

14 THE COURT: Okay. Thank you Mr. Henderson. Does the
15 State want to put anything on the record?

16 MR. BLACK: In terms of the directed verdict motion?

17 THE COURT: Anything in response to what --

18 MR. HENDERSON: And incorporating all our prior motions
19 too as well.

20 THE COURT: Sure. Anything in response to what Mr.
21 Henderson has just moved the Court.

22 MR. BLACK: Just in looking at all the evidence in the
23 light most favorable to the State, we think there's enough
24 evidence that overcomes that, and we just ask that you deny
25 their motion.

1 Judge, just kind of briefly, specifically to mention
2 kind of what he was talking about in terms of the timing. I
3 think that's one of the main issues he harped on. Their
4 expert even testified -- Dr. Valentine testified that there
5 is clock shop. And in the trauma unit he admitted is chaos.
6 So if those times don't add up he said he had no really idea
7 what Ms. -- Nurse Amanda Baker's watch was -- what it was
8 set at. That he did say that that's a possibility. So I
9 think that the motion should be denied.

10 And also just briefly. The two pictures that we talked
11 about previously when talking to Mr. Rowell, I think that
12 those were consented to --

13 THE COURT: Right.

14 MR. BLACK: -- to come into evidence, and we're just
15 moving those into evidence at this point.

16 THE COURT: All right. Everything's noted for the
17 record and the motions are denied. Here are the two
18 pictures.

19 (Whereupon, State's Exhibit Nos. 74 and 75 were
20 admitted into evidence.)

21 THE COURT: Okay. We're off the record.

22 (Whereupon, the trial was in recess at 5:00 p.m.)

23 TRIAL DAY 7-02/20/17

24 (Whereupon, the trial resumed at 9:33 a.m.)

25 THE COURT: We are on the record this morning. It's my

1 understanding that you all are okay with Matt Sims' report.
2 It was cleaned up. Using the word cleaned up some. And so,
3 everybody's good with that.

4 MR. GARRETT: We understand, Your Honor.

5 MR. BLACK: Yes, sir.

6 THE COURT: And then I further understand that with
7 respect to Dr. Valentine's PowerPoint presentation that is
8 not coming into evidence but will be marked as a Court's
9 exhibit, correct?

10 MR. GARRETT: That's correct.

11 THE COURT: Very good. And would that be 17, Madam
12 Court Reporter?

13 COURT REPORTER: No, sir. It's 23.

14 THE COURT: Court's Exhibit?

15 COURT REPORTER: Valentine?

16 THE COURT: Dr. Valentine -- the paper copy of his
17 PowerPoint presentation will be Court's exhibit 23.

18 COURT REPORTER: 23.

19 THE COURT: Okay. Then I haven't been keeping track of
20 my Court's Exhibits then. I trust you. No, I stopped at
21 20. So I'm missing 21 and 22.

22 COURT REPORTER: Court's 21 is the Sims CD, and 22 is
23 the Defendant's proposed jury charge.

24 THE COURT: All right. Very good.

25 (Whereupon, Court's Exhibit No. 23 was marked for

1 identification.)

2 THE COURT: And with respect to the -- based upon our
3 charge conference on Saturday, and then, Mr. Henderson, we
4 received from you some request to charge via email yesterday
5 afternoon.

6 MR. HENDERSON: And also another email this morning,
7 Your Honor. It wasn't really a charge this morning. It was
8 an objection this morning.

9 THE COURT: Right, okay. Let me go over that now. And
10 what we'll do, we'll take a break between closing and
11 charge. I'll give you a final draft. You can make any
12 other comments you want to make, and certainly after I
13 charge you can make any objections you want to make. I am
14 going to charge the inference level under 56-5-2950, and I'm
15 primarily basing that on subsection H which says when a
16 person is unconscious rendering them unable to give a
17 refusal, they are considered informed under subsection A and
18 not to have withdrawn the consent. So I find that
19 subsection A would have been complied with, and therefore I
20 will charge that inference level of a .08 and greater.

21 Also, and I think I may have mentioned this to you back
22 in the office on Saturday. I am making a finding that there
23 was an arrest made at the time the trooper gave Miranda,
24 even though Mr. Rowell was unconscious. Miranda and the
25 implied consent act was read to -- or his implied consent

1 rights were read to him. I find that the arrest was
2 affected at that time. And that's all related to that three
3 hour restriction that's in the statute.

4 With respect to your request in your emails, Mr.
5 Henderson. The first one related to suspicion and
6 reasonable doubt, I mean, I think I've thoroughly covered
7 that in my charge, defining reasonable doubt for them. I
8 think in my -- in the intents section of the charge I
9 mention if you find that the behavior of the Defendant is
10 suspicious then, you know, the proof has failed and you must
11 find him not guilty. So I think I covered that. I've not
12 worded it as you have requested, but I think I cover that
13 sufficient. So I will not charge as you have requested.

14 Concerning your two open container -- unopen container
15 charge and the open container charge, I will charge that. I
16 have inserted completely empty. Where you have an open
17 container that is empty I have inserted the word completely
18 empty. But I will charge those two. And certainly once
19 I've gone through this if the State or the Defense has any
20 further comment I'll be glad to hear from you.

21 The chain of custody request I'm not going to charge.
22 That's a legal finding that I must make in order to
23 determine whether or not certain evidence is admissible or
24 not. So I'm not going to charge that. The necessity
25 charge, I'm not going to charge that. That -- the necessity

1 charge relates to a defense to the actual crime having been
2 committed. For example, self-defense. That is a defense to
3 an act of murder or manslaughter. In this situation the
4 necessity is not with respect to the crime being charged,
5 felony DUI. It's with respect to an element of the -- of
6 the offense, driving left of center. So necessity has to
7 apply to the actual crime being charged and not to an
8 element as in this case as I just said, driving left of
9 center. So necessity will not be charged.

10 And lastly the 56-5-6170, the enforcement statute.
11 Quite honestly, I'm just kind of really confused with how
12 that should come into play as far as -- I mean, law
13 enforcement investigates, juries have to make a
14 determination of guilt or innocence based upon the evidence,
15 and that is covered in my charge. So I'm just a little
16 uncertain why that statute would want to -- why the Defense
17 would want that to be charged. I'm not going to charge it
18 unless you can give me an explanation for that.

19 So, State, any comments related to my rulings related
20 to charge?

21 MR. BLACK: Yes, sir. Your Honor, just going back to
22 the open container that I think you said that you were going
23 to charge the language that Mr. Henderson put in his email.
24 The open container indictment hasn't gone to the jury.

25 THE COURT: Right.

1 MR. BLACK: So from our perspective, this just kind of
2 muddies the water about the evidence that's been portrayed
3 whether or not there was an open container or not. They
4 don't have that indictment. That's something that they're
5 not --

6 THE COURT: Right.

7 MR. BLACK: -- going to consider. I guess our position
8 is that we're concerned that the jury, after you give this
9 instruction, might take it that they can't consider all the
10 evidence of the beer cans and whatnot on scene that day.

11 THE COURT: Right.

12 MR. BLACK: So I guess I'm opposed to the instruction.
13 However, if you decide to keep the instruction we would ask
14 for some kind of language at the end of it to say, you know,
15 ladies and gentlemen of the jury, you still have -- you
16 still can consider all the evidence that's been admitted in
17 the trial of this case. So I guess we kind of disagree with
18 how it's going to -- how it's going to be put in as is. But
19 if Your Honor does deem it necessary to come in, just some
20 of the additional language so that they don't -- that they
21 can consider it.

22 THE COURT: I can -- I can fashion something. Do you
23 have any objection, Mr. Henderson at the end of the two
24 container charges just saying that this certainly does not
25 prohibit you from considering any evidence that has been

1 offered in this case. That's, you know, up to you. I'll
2 have to figure out the exact language, but some kind of
3 qualifying --

4 MR. HENDERSON: That's standard, Your Honor. Again,
5 the jury can weigh the evidence as they see fit. Right.

6 THE COURT: What I'll do is I'll think of some language
7 and then let you all take a look at it. Okay? Anything
8 else from the State?

9 MR. BLACK: Just briefly, Your Honor. I think Mr.
10 Downtin's going to handle this.

11 MR. DOWTIN: Your Honor, I guess just in further
12 support of your ruling as far as the inference levels. I
13 mean, again, the Defense keeps referring to it as the
14 implied consent statute, but -- I don't claim to be a
15 grammar expert. But implied consent testing for alcohol or
16 drugs, semicolon, procedure, semicolon, inference level of
17 DUI. Those alone -- they can stand on their own. I mean,
18 they're both independent clauses, independent things. And
19 if you look at the section G which talks about the inference
20 levels, not one time in that entire section does it say
21 implied consent.

22 THE COURT: Right.

23 MR. DOWTIN: The Legislature could have easily thrown
24 those words in there. It only applies to implied consent.
25 I know you've made your ruling. We just want to put that on

1 the record.

2 THE COURT: But is your argument just an affirmation of
3 my ruling that I am going to charge the inference level --

4 MR. DOWTIN: Yes, sir.

5 THE COURT: -- with respect to .08 and greater?

6 MR. DOWTIN: Yes, sir.

7 THE COURT: All right.

8 MR. DOWTIN: And that's just on the SLED draw or is
9 that also --

10 THE COURT: That's on the SLED draw.

11 MR. DOWTIN: And then, I guess, also, Your Honor, we
12 have an objection to them using their little chart over
13 there in their opening. I believe there's a couple
14 misstatements in the law as far as definitely beyond a
15 reasonable doubt. I'm not sure that's accurate and the
16 chart's beyond confusing.

17 THE COURT: They have a chart that they used in
18 opening?

19 MR. DOWTIN: I meant they're going to use in their
20 closing. I'm sorry.

21 THE COURT: What -- I mean, I'd have to look at it.

22 MR. DOWTIN: Yes, sir. We just wanted you to look at
23 it before we had to stand up and object when they're in the
24 middle of their closing.

25 THE COURT: What you got, Mr. Garrett?

1 MR. GARRETT: You're the instructor of the law. This
2 is our interpretation of the law.

3 THE COURT: Right.

4 MR. GARRETT: They have to defer to you.

5 THE COURT: Right.

6 MR. GARRETT: This is our view of guilty versus not
7 guilty.

8 MR. DOWTIN: I think that definitely guilty beyond a
9 reasonable doubt is not accurate. I mean, guilty beyond a
10 reasonable doubt, I don't --

11 THE COURT: Do you have any problems with their view of
12 what not guilty is?

13 MR. DOWTIN: I mean, it's a lot of information. I
14 mean, I feel like you've kind of covered all that in your
15 charge already. I feel like it's more confusing than
16 anything.

17 THE COURT: Well, here's what -- I mean, I'll allow it.
18 I will preface the closing arguments by saying that the
19 lawyers will more than likely argue what they believe the
20 law to be. However, what I tell you is the law. And if
21 what I tell you differs from what the lawyers say then you
22 disregard what the lawyers say and you follow what I say. I
23 think that would probably be the easiest thing to do.

24 Now, anything from the Defense related to the charge?

25 MR. HENDERSON: Yes, sir, Your Honor.

1 THE COURT: Don't -- I mean, really the only one I want
2 -- you're not going to convince me on the others. I'll
3 allow you to make argument to protect the record. The only
4 one that I was just more -- really more confused about was
5 this enforcement statute, why that would be necessary to
6 charge.

7 MR. HENDERSON: As it relates to the enforcement
8 section, Your Honor, and the specific part of it, no police
9 officer in investigating a traffic accident shall
10 necessarily deem the fact that an accident has occurred as
11 giving rise to the presumption that a violation of law has
12 occurred. Basically the legislature has basically said,
13 hey, just because there's a wreck --

14 THE COURT: Right.

15 MR. HENDERSON: -- the police can't come out here and
16 presume that a crime has been committed. In a sense it's a
17 reasonable doubt statute.

18 THE COURT: Right. Right. Well, in light of the fact
19 that I tell them the fact that Mr. Rowell has been, you
20 know, arrested and charged with these offenses is not proof
21 that he's guilty. I think that pretty much says the same
22 thing. The fact that there was an accident, that doesn't
23 mean he's guilty. I'm going to go ahead. You've submitted
24 all your requests to charge, I think, as a Court's Exhibit,
25 so...

1 MR. HENDERSON: And, Your Honor, I have some additional
2 argument on the inference that we have not -

3 THE COURT: Okay. Put that on the record.

4 MR. HENDERSON: -- in the email. Your Honor, of
5 course, you're not charging the inference on the hospital
6 blood draw --

7 THE COURT: Right.

8 MR. HENDERSON: -- medical blood draw. I think *State*
9 *v. Hunter* is very clear that you can't do that. And then on
10 the SLED side, on the SLED draw, now you're wanting to
11 charge the inference. Like our email addressed, that's
12 going to be confusing, number one.

13 THE COURT: Right.

14 MR. HENDERSON: It's going to be prejudicial, number
15 two. And again, the State could opt not to put in the
16 hospital draw if they're trying to keep their inferences.
17 And I believe that the Defendant, if you've got competing --
18 not really competing -- competing statutes, but statutes
19 versus cases, meaning that this Hunter says you can't put in
20 blood draw and you're trying -- they're trying to get in the
21 inference under the SLED blood draw by statute, I think the
22 Defendant ought to get the benefit of the doubt and there be
23 no inferences.

24 And again, as we discussed the other day, Your Honor,
25 the implied consent statute, especially in the light of

1 McNealy and subsequent US Supreme Court cases, that our
2 implied consent statute 2950 only applies now to expressed
3 consent or expressed refusal. And in that case -- in the
4 case here we've got now neither one of those apply. Again
5 the government had to go outside of the implied consent
6 statute, i.e., getting a judicial search warrant to try to
7 get Mr. Rowell's blood. And again, it's our position that
8 that's what takes it out of implied consent regardless of
9 what the reading is. Because keep in mind, you can't
10 legally refuse a search warrant. Say Mr. Rowell was
11 competent. Say he was conscious. He can't refuse that
12 search warrant. And the whole idea behind implied consent
13 is that any person can refuse, and then the government takes
14 it outside of your right to refuse, that takes it outside of
15 implied consent. And again, under 2950 all these inferences
16 have to do with implied consent draws. No other type of
17 draws. And again, another concern we've got, Your Honor,
18 it's undisputed that the great majority of the blood tested
19 was not Mr. Rowell's. And again, if you go back under the
20 implied consent statute it talks about the person's, the
21 Defendant's blood. I think it's undisputed that the blood
22 that was tested, the great majority of it is not Mr.
23 Rowell's. I think that's another reason why we believe it
24 ought to be outside of implied consent.

25 And also, Your Honor, I see what you're saying under

1 paragraph H, but I think paragraph H has basically been
2 taken out of our law by McNealy. McNealy overrode
3 subsection H, because now the Legislature can't judicially
4 by fiat say if you're unconscious we can use your blood
5 against you through implied consent. No. McNealy's made it
6 clear you've got to go outside implied consent. You've got
7 to go get a judicial search warrant. And again, I'm
8 thinking that subpart H as it's written and as His Honor is
9 applying it is unconstitutional. And again, that's why
10 we're arguing that none of this ought to be coming in under
11 implied consent.

12 THE COURT: Thank you.

13 MR. BLACK: Judge, just briefly just in response. I do
14 actually agree with Mr. Henderson that the title of this
15 subsection inference from result of the SLED test is
16 confusing. And it's kind of going back to what Mr. Downtin
17 was saying that the semicolon at the head of that particular
18 statute sets it apart as an inference level. The inference
19 level doesn't just apply to implied consent. It applies to
20 just standard DUI in general. So I guess the remedy that
21 we're asking for in this case is for you to change the title
22 and just put inference for DUI in South Carolina. I think
23 that would be more of the appropriate charge. Because I do
24 agree that the SLED test, if you just -- if the title stays
25 as is the jury might think that it just applies to the SLED

1 test. But that's not what the statute says. The statute
2 says that the inference level is the inference level. So I
3 --

4 MR. HENDERSON: That's really going to -- Hunter makes
5 clear of that --

6 THE COURT: Yeah, I have to -- I have to -- tend to
7 disagree with Solicitor Black's analysis. I think State v.
8 Hunter is clear that it only applies to, in this case, the
9 SLED draw.

10 I'm going to leave it as is. You know, I've read
11 McNealy several times, Mr. Henderson, and I'm not convinced
12 that it would be applicable here. I may be wrong.
13 Certainly if I'm wrong somebody can tell me that I'm wrong.
14 But I'm going to -- I'm going to charge the inference. I'm
15 going to keep the charge title of that section where it is.

16 Anything further? I'll work on a little language to go
17 with this container provision and let you all see that
18 before I actually charge it. Anything else before I bring
19 the jury out?

20 MR. HENDERSON: One moment. Nothing further, Your
21 Honor.

22 THE COURT: Let me ask you guys this, with respect to
23 the little sentence with the container. What about this.
24 Any evidence of containers may still be considered by the
25 jury in determining whether Defendant committed the crime

1 charged? Is that --

2 MR. BLACK: Yes, sir. I don't have a problem with
3 that.

4 MR. HENDERSON: That's going to be kind of the last
5 sentence after --

6 THE COURT: That will be after the two paragraphs where
7 unopen container, and then completely empty container, and
8 then any evidence of containers may still be considered by
9 the jury to determine whether the Defendant committed the
10 crime charged.

11 MR. HENDERSON: I don't have that.

12 THE COURT: Well, that's the addition. And we'll get
13 you a copy before we actually charge. Okay.

14 MR. HENDERSON: And, Your Honor, as it relates to chain
15 of custody. I know you've let the chain come in, but it's
16 still up to the jury to be able to give it what weight that
17 they want to give it, and that's why we were asking for a
18 specific chain of custody. And also about necessity, Your
19 Honor. And again, I recognize where the Court's coming
20 from, but according to the State's theory of the case
21 driving left of center is part of the proximate cause of the
22 felony DUI.

23 THE COURT: Yeah. I mean, it's an element. There has
24 to be -- there has to be some illegal act committed in order
25 for there to be felony DUI.

1 MR. HENDERSON: And the Defendant, Mr. Rowell, has a
2 legal excuse to cut off any one of those elements, a
3 necessity to cut off any one of those elements. He can't be
4 convicted of the underlying crime. And that's why we
5 believe necessity ought to be charged. That would make him
6 legally not guilty of felony DUI if the jury believes he had
7 a necessity to drive left of center.

8 THE COURT: I understand. Thank you. Let's bring the
9 -- bring the jury out. Is the State ready to proceed first?

10 MR. BLACK: Yes, sir.

11 (Whereupon, the jury entered the courtroom at 9:54
12 a.m.)

13 THE COURT: Let the record reflect the jury is back in
14 the courtroom. Good morning, ladies and gentlemen. Hope
15 you had a good day yesterday and ready to get back to work
16 today.

17 As I told you on Saturday what we have left to do, and
18 this is certainly -- every part of this case is extremely
19 important, but this is a very important part of the case.
20 It gives the lawyers an opportunity to make their closing
21 arguments to you. It's their attempt to really advocate for
22 their people that they represent and it's their statement of
23 what they believe you have heard these past six days of
24 evidence. They probably -- both sides will probably tell
25 you what they believe the law is in this case. And

1 certainly if they say something concerning the law that does
2 not agree with what I tell you then you are to completely
3 disregard what they tell you about the law and listen to
4 what I tell you. If they do misstate something I'm not
5 suggesting that they're doing it intentionally. But I just
6 want you to understand and make sure that you follow the law
7 that I tell you, what the law is and not what they may tell
8 you. Okay? Please give the lawyers your complete and
9 undivided attention during these closing arguments. The
10 State will go first, the Defendant will go second, and then
11 the Defense will have the right if they so choose to come
12 back in what we call rebuttal if there's anything new that
13 they need to address that the Defense argues.

14 So, Solicitor Black, are you ready, sir?

15 MR. BLACK: Yes, sir, Your Honor.

16 THE COURT: You may proceed.

17 MR. BLACK: May it please the Court.

18 CLOSING ARGUMENT

19 BY MR. BLACK: Choices and consequences. We make them
20 every day, folks. A lot of these choices are oftentimes
21 inconsequential. Am I going to have water or am I going to
22 have a sweet tea at lunch. Some of these choices mean life
23 and death. November the 15th, 2014 the Defendant in this
24 case made a choice. He made the choice to get behind the
25 wheel of a motor vehicle in the state of South Carolina

1 after drinking alcohol, and that choice ultimately caused
2 Jeremy Cockrell his life.

3 Now, folks, we've been here a long time. You guys came
4 here a week ago today and you've been here all week,
5 Saturday. It's now Monday. Monday morning. And you heard
6 a lot of evidence. You've seen a lot of testimony. And
7 over the course of the next several minutes I'm going to be
8 going over all of that because it has been a long week.

9 But folks, in every criminal case if you've watched
10 anything on TV, any kind of criminal show with lawyers and
11 defense attorneys, you know that in all criminal cases in
12 the United States of America the State has the burden to
13 prove its case beyond a reasonable doubt.

14 Now, in this particular case Adam Rowell is charged
15 with felony DUI, two counts; death and great bodily injury.
16 And we as a State have to prove those two crimes to you
17 beyond a reasonable doubt. So first, what's the law? The
18 Judge is going to read you the law -- the law here in a few
19 minutes, but this is essentially what the statute says.
20 Taken verbatim. 56-5-2945, the offense of felony driving
21 under the influence. "A person who while driving under the
22 influence of alcohol, drugs, or a combination of alcohol and
23 drugs, drives a motor vehicle, and when driving a motor
24 vehicle does any act forbidden by law," like crossing left
25 of center," or neglects any duty imposed by law in the

1 driving of the motor vehicle which act or neglect
2 proximately causes great bodily injury or death to another
3 person is guilty of the offense of felony driving under the
4 influence." That's what we've got to prove, folks. And it
5 further defines what great bodily injury is. I think
6 everybody knows what death is. But great bodily injury
7 means, "Bodily injury which creates a substantial risk of
8 death which causes serious permanent disfigurement or
9 protracted loss or impairment of the function of any bodily
10 member or organ." That's the law.

11 Folks, we have to prove this to you beyond a reasonable
12 doubt. And what's beyond a reasonable doubt? Now, the
13 Judge is going to talk to you about beyond a reasonable
14 doubt. It's very important. But when you think of what
15 beyond a reasonable doubt is think of being firmly convinced
16 of something. Firmly convinced. Firmly convinced. It's
17 not all doubt. It's not beyond a shadow of a doubt. It's
18 not beyond all possibly conceivable doubt. But it's beyond
19 a reasonable doubt. Being firmly convinced of something.

20 Now, folks, everybody in this courtroom has a role.
21 Mr. Downtin told you on Tuesday morning that everybody has a
22 role. The Defense, their role is to represent their client,
23 just like Mr. Downtin said on Tuesday. We're prosecutors for
24 the State. Our job is to prosecute the case. The Judge has
25 a role. He's the gatekeeper. He basically calls the balls

1 and strikes. The legal balls and strikes. And you've
2 noticed this. I mean, we've had 37 sidebars this week.
3 We're arguing legal issues and he's deciding different legal
4 things that we can argue. That's his job. And your job are
5 the finders of the facts of the case. Your job is to
6 determine what actually happened on November the 15th, 2014,
7 7:20 p.m. What happened.

8 Now, folks, you've heard a lot of evidence, like I
9 said. We put up 30 witnesses. They've put up several
10 witnesses, and it's been a long drawn out process. We've
11 been here all week. So what have we learned? What have you
12 guys heard?

13 Now, if you remember on Tuesday morning, first witness
14 was John Long. Everybody remember that? John Long, the
15 first -- first witness that got up here. Works for the
16 Sheriff's Department but he wasn't on duty that day. He was
17 driving back home. He was coming from town. I think he
18 said that he had been working at the Skate and Park or
19 something like that and he was on his way home traveling 225
20 and he rolled up on a horrible scene. And his instincts
21 took over, folks. He's a law enforcement officer. He works
22 at the Sheriff's Department. He immediately got out,
23 assessed the damage. Saw there was an individual in the
24 passenger seat of that red truck and began to take action.
25 A few minutes later Evan Fallaw showed up. He used to work

1 at the Sheriff's Department. Doesn't work there any longer.
2 The first law enforcement officer to show up. What's his
3 primary concern? Touch base with John Long. He's got a guy
4 in the red truck that's alive and we've got to get him out.
5 The truck's smoking. The thing could go up in flames.
6 We've got to act and we got to act now. So what did they
7 do? They did their job. They eventually got Matthew
8 Sanders out of the truck. He was complaining of some leg
9 damage. You heard about that. They put him on a stretcher,
10 got him in an ambulance and took him to Self Regional
11 Hospital. The next day he had surgery. So what happened
12 after that? The call went out. Everybody started showing
13 up. You saw the pictures. You saw the video. A lot of
14 people showed up. Firefighters, EMS, law enforcement
15 personnel, Highway Patrol. Everybody showed up. It was --
16 it was awful. And they did their job. They did their jobs.
17 There were three people involved in that wreck that day.
18 There was a dark truck. It looked like a black truck. It
19 turns out it's actually a blue truck. You can't see when
20 it's dark out there like that, and a 1990 red truck.
21 Chevrolet both of them. Head-on collision. Extensive
22 damage. One dead, one unconscious, one alive. Highway
23 patrol showed up. You heard from K.D. Smith, Brunson Smith,
24 who was the arresting officer in the case. You heard his
25 testimony. They were eating at a Mexican restaurant in

1 Ninety Six and they got a call. They immediately responded.
2 Showed up about 7:47, about 20 minutes -- 25 minutes after
3 the wreck happened. They started taking over and doing
4 their job. Cody Bishop with Highway Patrol showed up. He
5 did a job. He took pictures. But they couldn't really do
6 anything. They couldn't help anybody. Their job was to
7 secure the scene, call the MAIT team, the accident
8 reconstruction team, to come out there and take pictures,
9 take measurements and let them do their job. But the
10 Highway Patrol, they stayed out of the way, because at that
11 point EMS, medical personnel, were trying to save this man's
12 life. Jeremy Cockrell was already dead. Matthew Sanders
13 thankfully only had a broken leg. A broken femur. But they
14 were trying to save this man's life.

15 What did you hear? Who did you hear from EMS? You
16 heard from several EMS people. You heard from Derrick
17 Oliver, you heard from Larry Kidd. What did they tell you?
18 Derrick Oliver said that he was stationed at Medic 30.
19 Medic 30 was the first EMS ambulance to arrive, and they got
20 there about three to five minutes after the wreck. In fact,
21 Derrick Oliver told you that he was standing outside smoking
22 a cigarette and he heard what sounded like a bomb go off.
23 Does that make sense, folks? You've seen the map, and
24 you're going to have this back there with you. 225, the
25 scene of the wreck right here in the curve of the road where

1 the star is. What else is on this map? The Hot Spot right
2 here. Medic 30 is labeled up here at the top. The way the
3 crow flies probably a mile if that. Derrick Oliver outside
4 smoking a cigarette, hears a loud boom. Seconds later the
5 alarm system goes off. He and Larry Kidd jump in the EMS
6 van and they take off. Three or four minutes later they're
7 on scene. First emergency personnel responders to arrive.
8 You heard their testimony. You heard both Larry Kidd's
9 testimony and Derrick Oliver. Larry, shorter white guy.
10 His testimony was he got out and he triaged the situation.
11 What does that mean? Basically a quick assessment. What do
12 we got, because we got to figure out what to do and we got
13 to do it quick. Jeremy Cockrell. He's dead. Driver in the
14 red truck. Can't worry about him. Matthew Sanders is
15 alive. He seems to be doing all right. Go down to the blue
16 truck with this gentleman is trapped behind the steering
17 wheel. Feels a pulse. He's alive. We might be able to
18 save this man's life. So what does Derrick Oliver do? He
19 jumps in the car through the passenger side, gets in the
20 vehicle and is in the vehicle with that man for 20 to 30
21 minutes he said trying to hold his head up. Trying to make
22 sure that he stays alive. Doing whatever he can. Trying to
23 poke him for an IV. He can't get anything. Can't get
24 nothing. Nothing anything. But he's right there holding
25 his head while firefighters, EMS, John Long and company are