

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Sumter County

S.C. SUPREME COURT

Honorable Clifton Newman, Circuit Court Judge

GENE D. EVANS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001590

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2017-GS-43-1104
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Gene David Evans, Jr.	)	)
DEFENDANT	)	February 20-22, 2018
		Sumter, South Carolina

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE; and a jury.

A P P E A R A N C E S:

JOHN P. MEADORS, ASSISTANT SOLICITOR
Attorney for the State

TIMOTHY L. GRIFFITH, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

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Certificate of Reporter 386

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1 THE COURT: All right, Solicitor. You may call
2 your first case.

3 MR. MEADORS: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. MEADORS: Your Honor, at this time the State
6 does call the State of South Carolina vs. Gene David
7 Evans, Jr. The defendant sits at counsel table with his
8 Attorney Mr. Timothy L. Griffith, Esquire. This is Sumter
9 County true bill indictment 2017-GS-43-1104. This is an
10 indictment for felony driving under the influence with
11 death resulting.

12 THE COURT: All right. Ladies and gentlemen of
13 the jury panel, if you would give me your attention
14 please. You have heard the Solicitor announce or the
15 Assistant Solicitor announce that the case for trial this
16 morning is the State of South Carolina vs. Gene David
17 Evans, Jr. I would tell you that what I'm getting ready
18 to tell you is not evidence in this case and you must not
19 consider it as evidence, but I'm going to give you a brief
20 summary of the charges against the defendant solely for
21 the purpose of your being able to determine if you know
22 anything about the case or anything that would prevent you
23 from serving as a juror in this case. But the State
24 charges that the defendant did on or about February the
25 12th of 2017, while driving a vehicle under the influence

1 of alcohol, drugs or both alcohol and drugs, which is
2 forbidden by law. That he did violate the laws of this
3 state by driving left of center and off the right side of
4 the road striking a tree and that at the time of driving
5 he was under the influence of those intoxicants and that
6 this caused the death to Robert Skidmore. So the charges
7 one of driving under the influence, felony driving under
8 the influence with a death involved. As I say, that is
9 not evidence in this case, but is simply the allegations
10 of the indictment. And I tell you this so you can
11 determine if you know anything about the case or anything
12 that would prevent you from serving as a juror in this
13 case. The defendant, Mr. Evans, is represented by
14 Mr. Griffith would you stand, introduce yourself to the
15 jury and have your client stand and introduce him to the
16 jury as well.

17 MR. GRIFFITH: I'm Attorney Timothy L. Griffith
18 attorney at law. My office is here in Sumter, South
19 Carolina. Mr. Evans.

20 THE DEFENDANT: My name is David Evans, Jr. and
21 I charged with ---

22 THE COURT: That's fine. Thank you, sir. All
23 right. Ladies and gentlemen, before we select the jury, I
24 need to ask you some questions and please give your
25 attention to these questions. And if any of them apply to

1 you, then respond accordingly. Is any member of the jury
2 panel related by blood or connected by marriage to the
3 Defendant Gene David Evans, Jr, if so please stand?

4 (WHEREUPON, there are none.)

5 THE COURT: The State of South Carolina is
6 represented by Solicitor Ernest A. Chip Finney and
7 Assistant Solicitor John Meadors. Mr. Meadors, Mr.
8 Finney, if you would stand and introduce yourself to the
9 jury please.

10 MR. FINNEY: Good afternoon, ladies and
11 gentlemen, this is a Sumter true bill indictment that we
12 will present to you over the next few days. Mr. John
13 Meadors is in charge of the case.

14 MR. MEADORS: In addition to Mr. Miller, Trooper
15 Boland and Trooper Trotter with the South Carolina Highway
16 Patrol will be assisting me, Your Honor.

17 THE COURT: All right. The defendant as you
18 know is represented by Mr. Timothy Griffith. Mr.
19 Griffith has already introduced himself to the jury to
20 you so you know who he is and he is the defense counsel in
21 this case. Now, the following individuals may appear as
22 witnesses in this case. I would ask that if any of the
23 witnesses are present if they stand when their name is
24 called: Trooper Kevin H. Boland of the South Carolina
25 Highway Patrol, Lance Corporal B.N. Trotter of the South

1 Carolina Highway Patrol, Sergeant Joseph Ham of the South
2 Carolina Highway Patrol, Special Agent Kevin J. Selinsky
3 of South Carolina Law Enforcement Division, John -- this
4 is going to cause me a little bit of a problem
5 Bechtelheimer B-E-C-H-T-E-L-H-E-I-M-E-R emergency medical
6 technician, Gerald Ham from EMS, Shirlene Skipper the
7 9-1-1 dispatcher, Jennifer Marchese M-A-R-C-H-E-S-E RN,
8 Dr. Janice Ross pathologist, Shonda Brown, Andrew Moye,
9 Melissa Flowers, Trooper Rodney Frick, Melissa Flavors is
10 it, Mr. Griffith?

11 MR. GRIFFITH: Flowers.

12 THE COURT: Flowers and Joseph Vippermay
13 V-I-P-P-E-R-M-A-Y. Is any member of the jury panel
14 related by blood or connected by marriage to any of the
15 proposed witnesses, if so please stand?

16 (WHEREUPON, there are none.)

17 THE COURT: Is any member of the jury panel
18 close personal friends of any of the parties, their
19 lawyers or any of the witnesses whom I may have read off
20 to you, if so please stand?

21 (WHEREUPON, there are none.)

22 THE COURT: As you know the State is represented
23 by the Third Circuit Solicitor's office. Is any member
24 the jury panel represented now in a matter that the Third
25 Circuit Solicitor's office is handling? In other words,

1 are you represented by the Third Circuit Solicitor's
2 office or any of the lawyers in that office, if so please
3 stand?

4 (WHEREUPON, there are none.)

5 THE COURT: Is any member of the jury panel
6 represented now or been represented in the last ten years
7 by Mr. Timothy Griffith, if so please stand?

8 (WHEREUPON, there are none.)

9 THE COURT: Does any member jury panel know
10 anything about the facts of this case as I have briefly
11 resited them to you, if so please stand?

12 (WHEREUPON, there are none.)

13 THE COURT: Thank you. Is any member of the
14 jury panel or member of your immediate family and I define
15 immediate family as spouse, parent, brother, sister or
16 child. Any member of the jury panel or member of your
17 immediate family been the victim of a crime of violence, a
18 crime on your person, if so please stand?

19 (WHEREUPON, there are none.)

20 THE COURT: Is any member of the jury panel or
21 member of your immediate family been involved as a victim
22 or a defendant in a driving under the influence accident
23 case, if so please stand?

24 (WHEREUPON, there are none.)

25 THE COURT: Thank you. Has any member jury of

1 the jury panel formed or expressed an opinion as to the
2 guilt or innocence of the Defendant Gene David Evans, Jr.,
3 if so please stand?

4 (WHEREUPON, there are none.)

5 THE COURT: Does any member of the jury panel
6 know of any interest, any bias or any prejudice for or
7 against the Defendant Gene David Evans, Jr., if so please
8 stand?

9 (WHEREUPON, there are none.)

10 THE COURT: Can each member of the jury panel
11 give to the State and the Defendant Gene David Evans, Jr.
12 a fair and impartial trial, if not please stand?

13 (WHEREUPON, there are none.)

14 THE COURT: Thank you. Does any member of the
15 jury panel know of any reason whatsoever why he or she
16 should not serve as a juror in this case, if so please
17 stand?

18 (WHEREUPON, there are none.)

19 THE COURT: Are there additional questions on
20 behalf of the State, Mr. Meadors?

21 MR. MEADORS: May we approach? Just one, Your
22 Honor.

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was held in the
25 presence of the jury panel, but out of the hearing of

1 the jury panel.)

2 THE COURT: Anything else, Mr. Griffith?

3 MR. GRIFFITH: Nothing, Your Honor.

4 THE COURT: All right. One additional question
5 I ask you if anybody had been the victim of a crime of
6 violence or violent crime. Has any member of the jury
7 panel ever been charged with a violent crime, if so please
8 stand?

9 (WHEREUPON, there are none.)

10 THE COURT: Anything further, Mr. Meadors?

11 MR. MEADORS: No, sir.

12 THE COURT: Mr. Griffith?

13 MR. GRIFFITH: Nothing, Your Honor.

14 THE COURT: All right. Mr. Clerk, if you would
15 give us a jury please. Mr. Clerk, if you will give us a
16 jury. And while we're letting the computer make the
17 selection I told you when we were doing the qualifications
18 that the old timey days where to put the names of all the
19 qualified jurors in a drum and draw them out one by one.
20 Now, in this technology age we live, it's all done by the
21 computer and the computer randomly selects the names. And
22 they will put the names of all the qualified jurors into
23 the computer and the jury will -- the computers will give
24 us a jury panel from which the lawyers will strike the
25 jurors. When your name is called, please come to the

1 front of the courtroom up to the podium here, turn around
2 with your back toward me, face the back of the courtroom.
3 If you're acceptable to the State, Mr. Meadors
4 will indicate accept the juror or present the juror. And
5 if you'll acceptable to the defense, the defense will
6 state seat the juror. And you would have a seat in the
7 jury box to my left. If either side excuses, you would
8 have a seat back out with the remainder of the jury panel.
9 We will go through this process until we have selected 12
10 jurors and one alternate. One and two on the alternates
11 counsel for striking purposes, Mr. Griffith. One and two
12 alternates for striking purposes.

13 MR. GRIFFITH: Two alternates.

14 THE COURT: One alternate. One strike and two
15 strikes.

16 MR. GRIFFITH: Two strikes.

17 THE COURT: Yeah. All right. Whenever you
18 ready, Mr. Clerk.

19 THE CLERK: Yes, sir, Your Honor.

20 (WHEREUPON, a pause in the proceedings.)

21 THE COURT: Technology is a great invention when
22 it works.

23 (WHEREUPON, a pause in the proceedings.)

24 THE COURT: All right. Mr. Clerk, whenever you
25 ready?

1 THE CLERK: Thank you, Your Honor. Ladies and
2 gentlemen, if your name is called bring with you any
3 personal belongings you may have and come to the stand
4 about the podium.

5 Juror number 72 Bobby Hatchell.

6 (WHEREUPON, a white male, comes forward.)

7 THE CLERK: What say the State?

8 MR. MEADORS: Please excuse the juror.

9 THE CLERK: You may return to your seat, sir.

10 Juror number 51 John Fullmore.

11 (WHEREUPON, a white male, comes forward.)

12 THE CLERK: What says the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. GRIFFITH: Please seat the juror.

16 THE CLERK: Come have a seat in the jury box,
17 sir.

18 THE COURT: Counsel you may remain seated as we
19 go through this process.

20 THE CLERK: Juror number 110 Clyde McGee.

21 (WHEREUPON, a black male, comes forward.)

22 THE CLERK: What says the State?

23 MR. MEADORS: Please excuse the juror.

24 THE CLERK: You may return to your seat, sir.

25 You been excuse from this trial.

1 Juror number 153 Pattie Sinner.
2 (WHEREUPON, a white female, comes forward.)
3 THE CLERK: What says the State?
4 MR. MEADORS: Please present the juror.
5 THE CLERK: What says the defendant?
6 MR. GRIFFITH: Please excuse the juror.
7 THE CLERK: You may return to your seat please,
8 ma'am.
9 Juror number 108 Judy McElroy.
10 (WHEREUPON, a Hispanic female, comes forward.)
11 THE CLERK: What says the State?
12 MR. MEADORS: Please present the juror.
13 THE CLERK: What says the defendant?
14 MR. GRIFFITH: Please excuse juror.
15 THE CLERK: Please return to your seat please.
16 Juror number 14 Keyuana Boatwright.
17 (WHEREUPON, a black female, comes forward.)
18 THE CLERK: What says the State?
19 MR. MEADORS: Please present juror.
20 THE CLERK: What says the defendant?
21 MR. GRIFFITH: Please seat the juror.
22 THE CLERK: Please have a seat over here, ma'am,
23 to the jury box.
24 Juror number 176 Brian Witherspoon.
25 (WHEREUPON, a black male, comes forward.)

1 THE CLERK: What says the State?

2 MR. MEADORS: Please present the juror?

3 THE CLERK: What says the defendant?

4 MR. GRIFFITH: Please seat the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror number 135 Lee Prushan.

7 (WHEREUPON, a white male, comes forward.)

8 THE CLERK: What says the State?

9 MR. MEADORS: Please present the juror.

10 THE CLERK: What says the defendant?

11 MR. GRIFFITH: Please seat the juror.

12 THE CLERK: Please have a seat in the jury box.

13 Juror number 36 Hubert Crawford.

14 (WHEREUPON, a white male, comes forward.)

15 THE CLERK: What says the State?

16 MR. MEADORS: Please present the juror.

17 THE CLERK: What says the defendant?

18 MR. GRIFFITH: Please seat the juror.

19 THE CLERK: Please have a seat in the jury box.

20 Juror number 119 John Mooney.

21 (WHEREUPON, a white male, comes forward.)

22 THE CLERK: What says the State?

23 MR. MEADORS: Please present the juror.

24 THE CLERK: Says the defendant.

25 MR. GRIFFITH: Please seat the juror.

1 THE CLERK: Please have a seat in the jury box.
2 Juror number 41 Tina Davis.
3 (WHEREUPON, a black female, comes forward.)
4 THE CLERK: What says the State?
5 MR. MEADORS: Please present the juror.
6 THE CLERK: What says the defendant?
7 MR. GRIFFITH: Please excuse the juror.
8 THE CLERK: You may return to your seat please,
9 ma'am.
10 Juror number 58 Blanding Goines.
11 (WHEREUPON, a black male, comes forward.)
12 THE CLERK: What says the State?
13 MR. MEADORS: Please excuse the juror.
14 THE CLERK: Return to your seat please, sir.
15 Juror number 18 Amanda Broadway.
16 (WHEREUPON, a white female, comes forward.)
17 THE CLERK: What says the State?
18 MR. MEADORS: Please present the juror.
19 THE CLERK: What says the defendant?
20 MR. GRIFFITH: Please seat the juror.
21 THE CLERK: Please have a seat in the jury box.
22 Juror number 34 Daniel Coughlin.
23 (WHEREUPON, a white male, comes forward.)
24 THE CLERK: What says the State?
25 MR. MEADORS: Please present the juror.

1 THE CLERK: What says the defendant?
2 MR. GRIFFITH: Please seat the juror.
3 THE CLERK: Please have a seat in the jury box.
4 Juror number 90 Robin Keterson.
5 (WHEREUPON, a white male, comes forward.)
6 THE CLERK: What says the State?
7 MR. MEADORS: Please present the juror.
8 THE CLERK: What says the defendant?
9 MR. GRIFFITH: Please excuse the juror.
10 THE CLERK: You been excused from this trial.
11 Please return to your seat.
12 Juror number 62 Dylan Grate.
13 (WHEREUPON, an Asian male, comes forward.)
14 THE CLERK: What say the State?
15 MR. MEADORS: Please present the juror.
16 THE CLERK: What say the defendant?
17 MR. GRIFFITH: Please seat the juror.
18 THE CLERK: Please have a seat in the jury box.
19 Juror number 166 Annie Washington.
20 (WHEREUPON, a black female, comes forward.)
21 THE CLERK: What says the State?
22 MR. MEADORS: Please present the juror.
23 THE CLERK: What says defendant?
24 MR. GRIFFITH: Please excuse the juror.
25 THE CLERK: You been excuse from this trial at

1 this time. Please return to your seat.

2 Juror number 102 Joseph Martuscelli.

3 (WHEREUPON, a white male, comes forward.)

4 THE CLERK: What says the State?

5 MR. MEADORS: Please present the juror?

6 THE CLERK: What says the defendant?

7 MR. GRIFFITH: Please seat the juror.

8 THE CLERK: Please have a seat in the jury box.

9 Juror number 118 Tia Moody.

10 (WHEREUPON, a black female, comes forward.)

11 THE CLERK: What says the State?

12 MR. MEADORS: Please present the juror.

13 THE CLERK: What says the defendant?

14 MR. GRIFFITH: Please seat the juror.

15 THE CLERK: Please have a seat in the jury box.

16 Juror number nine Suzette Avins.

17 (WHEREUPON, a white female, comes forward.)

18 THE CLERK: What says the State?

19 MR. MEADORS: Please present the juror.

20 THE CLERK: Says the defendant?

21 MR. GRIFFITH: Please seat the juror.

22 THE CLERK: Please have a seat in the jury box.

23 THE COURT: One alternate please counsel one and

24 two.

25 THE CLERK: Juror number 53 Kathaleen Galloway.

1 (WHEREUPON, a white female, comes forward.)

2 THE CLERK: What says the State?

3 MR. MEADORS: Please excuse the juror.

4 THE CLERK: You been excuse at this time.

5 Please return to your seat please, ma'am.

6 Juror number 180 Erin Boyd.

7 (WHEREUPON, a black female, comes forward.)

8 MR. MEADORS: Present the juror.

9 THE CLERK: Thank you. What says the defendant?

10 MR. GRIFFITH: Please seat the juror.

11 THE CLERK: Please have a seat in the jury box?

12 THE COURT: Anything with regard to the
13 selection of the jury on behalf of the State, Mr. Meadors?

14 MR. MEADORS: No, sir.

15 THE COURT: On behalf of the defendant?

16 MR. GRIFFITH: Nothing, Your Honor.

17 THE COURT: All right. Ladies and gentlemen,
18 I'm going to ask you to go to your jury room for a few
19 minutes while I discuss some scheduling matters with the
20 attorneys and then I'll bring you back in just a few
21 minutes. I will tell you I know you know nothing about
22 this case except what I told you basically the case is,
23 the allegations of the indictment. But it would be
24 improper for you to discuss this matter at all among
25 yourselves while you're there in the jury room either now

1 or any time until I tell you to begin your deliberations.
2 So I ask you go to the jury room for just a very few
3 minutes while we talk about scheduling matters and see
4 where we are. Relax and get to know one another, but
5 don't talk about this case and I'll send for you very
6 shortly. Please go with the bailiff to the jury room.

7 (WHEREUPON, the jury retire to the jury room.)

8 THE COURT: Ladies and gentlemen of the jury
9 panel not selected in the trial of this case, I'm going to
10 excuse you from this courtroom now and I ask you to go
11 down to courtroom A where you will meet Judge Hayes. And
12 he is prepared to select a jury in the second case that we
13 have. And so I'm going to excuse you now. Courtroom A is
14 right down the hall. If you'll go down the hall to
15 courtroom A. Judge Hayes will be right with you to select
16 a jury in the next case.

17 (WHEREUPON, the jury panel excused.)

18 THE COURT: All right. Counsel from the
19 standpoint of scheduling and we discussed it a little bit
20 in chambers. I want to confirm where we are. I
21 understand that there are some motions and things that
22 need to be resolved. And the -- counsel would prefer that
23 we go ahead and break for lunch at this time and start
24 back a little bit early and go into those motions this
25 afternoon; is that right, Mr. Meadors?

1 MR. MEADORS: Yes, sir, if it's all right with
2 you.

3 THE COURT: How long do you anticipate -- Mr.
4 Griffith, that suit you?

5 MR. GRIFFITH: Yes, Your Honor.

6 THE COURT: All right. How long do you
7 anticipate the motions will take so that I can kind of
8 give the jury an idea of when I want them back? My plan
9 would be to break now and come back at 1:30 and start on
10 the motions. That gives us an hour and 15 minutes to get
11 lunch and get your thoughts and organization together.
12 What time do you think we ought to have the jury come
13 back, Mr. Meadors?

14 MR. MEADORS: Two o'clock, Your Honor.

15 THE COURT: You think half an hour will take
16 care of it?

17 MR. MEADORS: That's what Mr. Griffith just told
18 me.

19 MR. GRIFFITH: I think so, Your Honor.

20 THE COURT: Half an hour, okay. Then I'll bring
21 the jury back in at two and we will reconvene at 1:30.

22 All right. Mr. Bailiff, if you'll bring the
23 jury back in please.

24 (WHEREUPON, the jury came into open court.)

25 THE COURT: All right. Ladies and gentlemen of

1 the jury, first of all let me identify -- just a moment.
2 Ms. Boyd, you should be -- you'll be the alternate in this
3 case. And if you'll go into the first seat on the back
4 row and substitute for the gentleman that's seated on the
5 first row back up there. If you all would change seats
6 please, if you come up forward.

7 All right. Ladies and gentlemen of the jury, we
8 have some things that we need to tend to before we begin
9 the trial of this case. So we going to break a little bit
10 early for lunch and we're going to take care of those
11 matters. And then have you come back this afternoon and
12 we're going to begin the actual trial of this case.
13 There's several things that I want to tell you. You are
14 now the jury in this case. And there's several things
15 that I want to tell you and some admonitions that I want
16 to give to you.

17 First of all, later on in this trial, I will
18 allow the principal jurors, that is 12 of you originally
19 selected to select from your group a person to be the
20 foreperson of the jury. That foreperson will always sit
21 in the first row on the front row down here. Not going to
22 ask you to do that now, but later on in this trial ask --
23 I will ask you to do that and select a person to be the
24 foreperson. The alternate should always sit where she is
25 seated and that is on the first seat on the second row.

1 The rest of the seats in the jury box are not reserved and
2 it does not matter what order you come and go from the
3 courtroom. I would simply ask that you go all the way
4 down, so it would be a situation of crawling over one
5 another, but you can sit in any of the seats in the jury
6 box reserving the first seat on the front row for the
7 foreperson when that foreperson is selected. And I'll
8 tell you when to do that. And the alternate always
9 sitting in the first seat on the second row. I will also
10 tell you that it would be improper for you to discuss this
11 case with anybody while you away from the courtroom. I
12 know that you do not know anything about the case except
13 what I told you basically the case was about according to
14 the allegations of the indictment. But it will be
15 improper for you to discuss the case with family, friends
16 or anyone else while you are away from the courtroom.

17 The reasons for this are pretty apparent. You
18 got to decide the case based upon what you hear in this
19 courtroom and not on the basis of what anyone else might
20 say. So as long as you're serving on this jury do not
21 discuss it with anyone. You can tell your family or your
22 friends that you're serving on the jury, but you can't
23 tell them anything about the case until you have been
24 discharged by me as jurors. Similarly do not discuss the
25 case among yourselves. It would be improper for you to

1 discuss the case among yourselves at any time prior to the
2 time that you've heard all the testimony, the closing
3 arguments of counsel and the instructions on the law by
4 the Court. You will be instructed when to begin your
5 deliberations. Any time prior to that would be premature
6 for you to discuss the case. So anytime that you're in
7 the jury room on a break or you're gathering after
8 overnight recess, do not discuss the case. You talk about
9 anything you want to sports, children, grandchildren
10 anything else, but don't talk about this case until I tell
11 you it is appropriate for you to do so.

12 Also, do not do any research about the case on
13 your own. It would be improper for you to do any research
14 at all about the case either in the old traditional ways
15 of doing research like encyclopedias and books or on the
16 internet or any kind of electronic means whatsoever. You
17 should not do any investigation into the case on your own.
18 You got to decide this case solely upon what you hear from
19 this witness stand and the way of evidence and what you
20 hear from me and the way of law. So any investigation
21 into the case or any -- trying to find out anything about
22 the case or get any information about the case on your own
23 would be improper and please do not do that, that will be
24 improper and could result in the matter of me having to
25 take certain steps in connection with that matter. Now,

1 we going to adjourn and allow you to be back in your jury
2 room please at two o'clock. We going to take care of
3 these other matters that we got to take care of. And I'm
4 going to ask you to be in the jury room at two o'clock.
5 The bailiffs will show you how to get out of here and get
6 back to the jury room, but do not come to the courtroom.
7 But be back in your jury room at two o'clock and we'll be
8 ready to go forward with the trial of this case. Have a
9 pleasant lunch and I'll see you this afternoon. Thank
10 you.

11 (WHEREUPON, the jury excused for a lunch break.)

12 THE COURT: All right. I want to wait one or
13 two minutes to give the jury a chance to get down the hall
14 and get on the elevators and get on the way out before we
15 adjourn.

16 (WHEREUPON, a pause in the proceedings.)

17 THE COURT: I think the jurors had a chance to
18 get on the elevator.

19 BAILIFF: They going out the side door now, Your
20 Honor.

21 THE COURT: Okay.

22 BAILIFF: A couple more minutes.

23 (WHEREUPON, a pause in the proceedings.)

24 THE COURT: All right. I think that's
25 sufficient time. We'll be in recess then until 1:30 as

1 far as court personnel is concerned, get your lunch get
2 back here. We'll take up the matter of the motions and
3 hopefully be ready to start with the jury at two o'clock.
4 We'll see you at 1:30.

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: All right. Back on the record with
7 regard to the matter of The State vs. Evans. Mr. Evans is
8 present with his counsel. The State's present and
9 represented by Third Circuit Solicitor's office. I
10 understand there is a motion on behalf of the defendant
11 that needs to be heard. Mr. Griffith, be glad to hear
12 from you.

13 MR. GRIFFITH: If it please the Court, Your
14 Honor, we would like to ask that the Court make motion
15 that the Court suppress blood samples and urine samples
16 taken after the accident. A note warning was given in
17 accordance with South Carolina Section 56-5-2950(b) which
18 requires that no test be administered or sample obtained
19 unless upon activation of the video recording equipment
20 prior to commencement of the testing procedure. The
21 person is being given a written copy and verbally informed
22 of certain things. And no video equipment was used, Your
23 Honor. There was no warrant and the -- he was not given
24 the warnings that he doesn't have to take the test or give
25 samples. And at the same time he had the right to ask

1 that another qualified person of the person's own choosing
2 conduct additional independent test. He was not told that
3 at all, Your Honor. We would ask that any blood sample or
4 urine sample taken and any of the results thereof be
5 suppressed and not allowed to be entered in as evidence.

6 THE COURT: All right. You have a copy of the
7 statute, Mr. Griffith?

8 MR. GRIFFITH: Yes, Your Honor.

9 THE COURT: Will you hand it up?

10 MR. GRIFFITH: I will. Here's a copy of the
11 motion. Your Honor, here I just printed out a section of
12 the...

13 THE COURT: All right. It's probably going to
14 require some testimony, Mr. Meadors, but I'll be glad to
15 hear from you first as to what the State's position is.

16 MR. MEADORS: First of all, I just got this
17 motion two seconds ago, but I was aware he was going to
18 make a motion to suppress that. I don't know the
19 particulars.

20 THE COURT: You weren't served with the motion
21 ahead of time?

22 MR. MEADORS: That's fine, Judge, I am ready.

23 THE COURT: Okay.

24 MR. MEADORS: State vs. Cribb is appropriate I
25 think 426 Southeastern 2nd 307. In that case, the Court

1 held that a trial judge was correct in ruling that section
2 56-5-2950 is inapplicable to a pre-arrest DUI
3 investigation, that is what this case is about, Judge. In
4 addition to that, this is a felony DUI case and I don't
5 know if I'm taking this position at this point, but
6 56-5-2946 controls the taking of blood in a felony DUI
7 situation. So I don't think 56-5-2950 applies in this
8 case.

9 First and foremost, Judge, we had a terrible
10 wreck who we believe the passenger died. The defendant,
11 who would be the driver, was taken to Richland Memorial
12 hospital. Trooper Boland with the South Carolina Highway
13 Patrol had talk to two witnesses at the scene who said
14 they had seen the defendant's vehicle in their lane coming
15 at them. They had to get out of the way. The vehicle
16 then swerved the other way and ran into a tree. One of
17 these witnesses ran to the motor vehicle and actually
18 pulled the defendant out of the driver seat, that's what
19 his testimony was going to be.

20 The defendant was then taken to Richland
21 Memorial hospital. Trooper Boland did not have a chance
22 to talk to him. The passenger -- the witness tried to
23 save the passenger. This vehicle was a RV. It caught on
24 fire. He was not able to save the passenger. The
25 passenger ended up -- may have died as a result of the

1 wreck, but then burned up in the wreck. Trooper Boland
2 goes to the hospital, that's the information he had ---

3 THE COURT: That day?

4 MR. MEADORS: Yes, sir.

5 THE COURT: Okay.

6 MR. MEADORS: Goes to the hospital, introduces
7 himself to the defendant and asked the defendant if he'll
8 will give a voluntary blood draw. His testimony is gone
9 be that the defendant nodded that he would, that he would
10 give a blood draw. We have the nurse who is here who
11 actually ---

12 THE COURT: I'm sorry his testimony is what now?
13 Going to be what?

14 MR. MEADORS: They went in and ask do you want
15 to give a voluntary blood draw and the defendant indicated
16 he would.

17 THE COURT: Okay.

18 MR. MEADORS: And, Judge, that's what this case
19 is. I don't think -- he didn't know what he had yet. He
20 didn't know what type of influence he may or may not have
21 been under. So at that point it's a voluntary blood draw
22 will you give us some blood. His testimony would be --
23 Trooper Boland says the defendant indicated he would. The
24 nurse then draw the blood, gave it to the trooper, and
25 then it went down the chain until it got analyzed. For

1 that reason, number one we don't think 2950 is applicable
2 at all.

3 THE COURT: Why?

4 MR. MEADORS: Because, Judge, it's a pre-arrest.
5 Nobody was under arrest for DUI. This is an investigative
6 case at this point ---

7 THE COURT: All right. So your first reason is
8 that the -- section 56-5-2950 is not applicable because
9 this is a pre-arrest ---

10 MR. MEADORS: Investigation.

11 THE COURT: --- investigation.

12 MR. MEADORS: State vs. Cribb if I had more time
13 I would hand you that case, Judge, for the day.

14 THE COURT: All right. What's the other reason?

15 MR. MEADORS: The other reason, Judge ---

16 THE COURT: It's consent.

17 MR. MEADORS: It's consent. And he didn't cite
18 this, but just take it, Judge, to it if you went to 20 --
19 56-5-2946, which I think's applicable ---

20 THE COURT: 59-5-2946?

21 MR. MEADORS: Yes, sir.

22 THE COURT: You have a copy of that?

23 MR. MEADORS: Well, it's the statute -- again,
24 Judge, I didn't know this was coming particularly I would
25 have had it, but I have the statute. And, Judge, that's a

1 felony DUI death great bodily injury is 56-5-2945.
2 Beneath that is the separate section 56-5-2946 which deals
3 with submission to testing for alcohol or drugs if there's
4 a death of great bodily injury. It's just different from
5 the other scenario.

6 THE COURT: Okay. Understand. Let me see it.

7 MR. MEADORS: In that scenario an officer can
8 either -- it basically says an officer can get a test or
9 can get blood from the defendant either by consent or they
10 can get a search warrant. In this case, Judge, they got
11 consent. He didn't argue this but I think, Your Honor,
12 know part of that section does say that he should be
13 informed he has a right to additional test. That was not
14 done in this case because we weren't -- he wasn't under
15 arrest for felony DUI at this point. It was still a
16 pre-arrest investigation and we think State vs. Cribb
17 controls. And we think that's all the State has to do.

18 THE COURT: All right.

19 MR. GRIFFITH: If it please the Court, Your
20 Honor.

21 THE COURT: Wait just a moment. Anything else,
22 Mr. Meadors?

23 MR. MEADORS: I don't think so.

24 THE COURT: All right. Yes, Mr. Griffith.

25 MR. GRIFFITH: Your Honor, there was no

1 recording. There was no warrant. There was nothing to
2 show that my client did give consent. My client denies
3 giving his consent.

4 THE COURT: Well, I understand that. We going
5 to get into a factual dispute here and for me to decide it
6 on the basis of factual dispute, I'm going to have to take
7 testimony, but we'll see about this in just a moment. Let
8 me read the statutes.

9 (WHEREUPON, a pause in the proceedings.)

10 THE COURT: Why do you think, Mr. Griffith, this
11 section 56-5-2946 is not applicable since it follows
12 56-5-2945 which is the offense -- which defines the
13 offense of driving -- felony driving under the influence
14 and sets forth the penalties and right after that section
15 56-5-2946 talks about submission of the testing for
16 alcohol or drugs, why do you think that's not the
17 controlling section over 56-5-2950?

18 MR. GRIFFITH: Your Honor, I don't have that
19 copy of that statute in front of me, but going through the
20 statute, I think that 5950(b) is the guiding statute here
21 ---

22 THE COURT: Why?

23 MR. GRIFFITH: --- it's inclusive. And, Your
24 Honor, I have no evidence that -- the deputy -- how long
25 it was before ---

1 THE COURT: Well, we gone take the testimony.
2 I'm just trying to get the law right now. I'm trying to
3 figure which is a controlling statute and why you think
4 that -- the one that you contend that your case falls
5 within the facts of 56-5-2950. Mr. Meadors claims that
6 56-5-2946 controls and I want to know from you why you
7 think yours is controlling over 56-5-2946?

8 MR. GRIFFITH: As I said, I don't have that
9 statute in front of me, Your Honor.

10 THE COURT: It's kind of hard to argue it.

11 MR. GRIFFITH: But in the meantime, I still
12 would hold that 2950(b) would be the controlling in this
13 case.

14 THE COURT: All right. Counsel, I guess I'm
15 going to have to have some evidence on the matter. I
16 can't make a determination based upon the lawyers
17 statements this is what the evidence is going to be.
18 Motion's been made to suppress the evidence based upon the
19 failure to comply with the applicable statutes.
20 Mr. Meadors the State will put up any evidence that they
21 wish to present to show that you and he'll have the right
22 to present any evidence to show that you have not.

23 MR. MEADORS: Trooper Kevin H. Boland.

24 BAILIFF: Put your left hand on the Bible.
25 State your name.

1 THE WITNESS: Kevin H. Boland.

2 BAILIFF: Do you solemnly swear or affirm that
3 your testimony shall be the truth, the whole truth, and
4 nothing but the truth so help you God?

5 THE WITNESS: I do.

6 BAILIFF: Thank you much. Sir, state your name
7 for the record and spell your last name please.

8 THE WITNESS: Kevin H. Boland B-O-L-A-N-D.

9 WHEREUPON,

10 Kevin Boland,

11 after first having been duly sworn, testified as follows:

12 DIRECT EXAMINATION IN-CAMERA

13 BY MR. MEADORS:

14 Q Good afternoon, Trooper Boland.

15 A Yes, sir.

16 Q Trooper, were you the lead trooper on a collision
17 that occurred on February 12th of last year on Saint Paul
18 Church Road?

19 A Yes, sir, I was.

20 Q After you arrived on the scene, can you tell us --
21 did you have an occasion to talk to the defendant on the
22 scene of the collision?

23 A No, sir, I was not. I was advised that the defendant
24 who was pointed out by the witnesses as the driver of the
25 vehicle was in the care of EMS ---

1 THE COURT: Okay, it's all right before me to
2 say that, but go ahead.

3 MR. MEADORS: Your Honor, for these purposes, I
4 was trying to ---

5 THE COURT: Okay, go ahead, yeah.

6 A He was actually already in the care of EMS in their
7 unit and with them tending to the patient's care. I was
8 unable to actually speak with him because of how much they
9 had going on in the EMS unit already.

10 Q And did you learn from witnesses that the defendant
11 might have been the driver of this vehicle?

12 A Yes, sir.

13 Q And specifically at one of the witnesses said they
14 pulled him from the driver side of the vehicle?

15 A Yes, sir, that's correct.

16 Q As a result of that, did you have an occasion -- what
17 happened to the passenger?

18 A The passenger deceased on scene.

19 Q Did you go see the Defendant Gene Evans, on February
20 12th of 2017?

21 A Yes, sir, I did.

22 Q And how he gotten from the crash site to the
23 hospital?

24 A EMS unit that was on scene transferred care from
25 their unit to a helicopter at which time the helicopter

1 transported him to Richland ER.

2 Q So the defendant was transported to Richland?

3 A That is correct, yes, sir.

4 Q And did you at some point that day go to Richland?

5 A Yes, sir. I actually left -- once we were able to
6 kind of get the scene under control, I left directly from
7 the scene and drove to Richland ER.

8 THE COURT: Which Richland hospital?

9 THE WITNESS: Palmetto Richland in Columbia.

10 BY MR. MEADORS:

11 Q Right off 277?

12 A Yes, sir.

13 Q And did you then go see the Defendant Gene Evans?

14 A Yes, sir, I did.

15 Q Tell the judge when you went to see him where was he
16 and how was he in the room?

17 A Your Honor, when I went to the ER, I obviously asked
18 where Mr. Evans' room was. I was directed to the room.
19 When I walked into the room, Mr. Evans was conscious.
20 He -- his eyes followed me as I walked into the room. He
21 was still laying on the hospital bed. I spoke with Mr.
22 Evans, confirmed who he was at which time he did. I asked
23 him a question if he was Mr. Gene Evans. He would kind of
24 mumble but -- and nod his head with the indication yes.

25 Q So after you ask him who he was, was he able to

1 communicate with you that I am Gene Evans?

2 A Yes, sir. Through head nods was majority of the
3 conversation. Like I said, he would mumble, but he was
4 very very hard to understand. I did ask the ER if there
5 was any reason, obvious signs of why his speech would be
6 impaired. At which time they told me there was no obvious
7 signs of a speech impairment. However, the whole time I
8 was there, his eyes would track me as I walked around the
9 room indicating he was conscious. He had -- he was
10 acknowledging my present. Through several other
11 questions, he would either nod his head yes or no to
12 several different questions that I'd asked him.

13 Q So he acknowledged to you that I am Gene Evans?

14 A Yes, sir.

15 Q Gene David Evans, Jr.?

16 A Yes, sir.

17 Q Okay. And did he know or did you tell him why you
18 were there?

19 A Yes, sir, I addressed who I was. The fact that I was
20 a trooper with the South Carolina Highway Patrol. I asked
21 him -- I advised him, you know, he was in a very bad car
22 accident. I asked him if he knew what happened at which
23 time he would shake his head no. He didn't know what
24 happened. I asked him if he realized he was in the
25 hospital. He would again nod his head, yes, realizing he

1 was in the hospital. Again acknowledging different yes or
2 no questions.

3 Q When you ask him like that would you know you're in a
4 hospital, would his response be timely?

5 A Yes, sir.

6 Q Okay. What happened after that?

7 A After that, like again, I did advise him, you know,
8 he was involved in a very serious accident. And part of
9 the investigation into the collision as far as what could
10 have caused the collision I was requesting a blood sample
11 be drawn from him, a voluntary blood sample be drawn from
12 him at that time.

13 Q And did you phrase it that way?

14 A Yes, sir, I clearly stated that it would be a
15 voluntary blood sample.

16 Q And after you asked him if he would give you
17 voluntary blood sample, what did he tell you?

18 A Again, I got the head nod for, yes, sir, which a
19 clear up and down.

20 Q And based on your training and experience in being
21 there that day, did he voluntarily tell you Trooper Boland
22 I'll give you blood sample?

23 A Yes, sir.

24 Q Now, was there a nurse there?

25 A Yes, sir, I did get one of the ER nurses to perform

1 the blood draw for me.

2 Q And were you present during that blood draw?

3 A Yes, sir, the whole time.

4 Q And at any time during that blood draw after your
5 testimony is Mr. Evans has consented. Did he ever say,
6 no, don't draw it or anything or try to stop her?

7 A No, sir. There was never a time that he shook his
8 head no. There was never a time that he draw the arm back
9 or anything like that to indicate that that was -- he did
10 not want that to happen.

11 Q And you ended up taking that blood down the chain
12 which we'll get into later hopefully?

13 A Yes, sir.

14 (WHEREUPON, State's Exhibit No. 1 was marked for
15 identification only.)

16 BY MR. MEADORS:

17 Q Okay. I show you what is marked State's Exhibit 1
18 for ID, Trooper. Do you recognize this?

19 A Yes, sir, I do.

20 Q What is that?

21 A This is a copy of the blood consent order, blood draw
22 form. It clearly states on it the -- who it's being drawn
23 from, the time of the draw, where it was actually drawn
24 at. It also has check marks for the medical personnel to
25 fill out as far as that it was done properly, initialed by

1 the nurse. It also has a spot where it states that it was
2 a voluntary blood sample being given.

3 Q Did you mark an X by a box?

4 A Yes, sir.

5 Q Would you read the sentence that you put an X in by?

6 A Yes, sir. What I have X is the subject has not
7 completed a valid breath test and a voluntary blood sample
8 has been requested for testing for the purposes of alcohol
9 or excuse me -- it cuts off, but it says and or drugs.
10 There should be alcohol at the end of that I believe.

11 Q Did you mark that he was giving you a voluntary blood
12 draw?

13 A Yes, sir.

14 Q Did you sign that?

15 A Yes, sir.

16 Q Did the nurse sign that?

17 A Yes, sir.

18 Q And again that was February 12th at what time 2017?

19 A 2017 at 1500.

20 Q Which is three o'clock?

21 A Yes, sir.

22 Q And down there when it's got whether or not the
23 defendant signed what does it say?

24 A It says he was unable to sign.

25 Q But again tell the judge did he give you consent to

1 get his blood?

2 A Yes, sir.

3 Q Now, Trooper, at this point was he under arrest?

4 A No, sir, he was not under arrest at this time.

5 Q And you did not place him under arrest?

6 A No, sir, I did not.

7 Q Subsequently was the analysis sent via the chain to
8 SLED to toxicology?

9 A Yes, sir, it was. It was.

10 Q And did that come back .18 excuse me strike that.
11 That was my case last week. Did it come back with a
12 methamphetamine and amphetamine that been in the
13 defendant's system?

14 A Yes, sir, it did.

15 Q And shortly after that or when was the defendant
16 arrested?

17 A It was April -- I apologize I don't have the exact
18 date. We did obtain a warrant from the magistrate office
19 and a warrant was served on it was April 9th if I recall
20 correct.

21 Q 2017?

22 A 2017, yes, sir.

23 Q And tell the judge were you waiting on the analysis
24 from the blood?

25 A Yes, sir. If you look, there should be just a few

1 days time frame in the time that the analysis was done on
2 the blood to us obtaining the actual warrant.

3 Q Okay.

4 MR. MEADORS: Beg the Court's indulgence.

5 (WHEREUPON, a pause in the proceedings.)

6 BY MR. MEADORS:

7 Q As to this issue is this the person that you got the
8 voluntary blood consent from?

9 A Yes, sir, that's Mr. Evans sitting in the courtroom.

10 MR. MEADORS: We ask the record reflect that's
11 all we have.

12 THE COURT: Cross-examination, Mr. Griffith.

13 MR. GRIFFITH: Please the Court, Your Honor.

14 THE COURT: Cross-examination, Mr. Griffith.

15 MR. GRIFFITH: May it please the Court, Your
16 Honor.

17 CROSS-EXAMINATION IN-CAMERA

18 BY MR. GRIFFITH:

19 Q So, Trooper Boland, you said that you process the
20 scene?

21 A Yes, sir.

22 Q How long did it take to process the scene?

23 A Again, I left my first sergeant all them were still
24 out there because the actual scene control took several
25 hours because there was a very large fire involved and

1 everything. For my purposes of identifying the wreck on
2 doing a very short investigation as far as taking my
3 pictures, marking the evidence, marking the scenes, I'm
4 not really certain a time frame that I was there. It was
5 enough -- I think I arrived on scene right around 12
6 o'clock, 1200 hours and I was in Richland able to do the
7 blood draw at 1500. So I was on scene approximately an
8 hour give or take some. The in-car camera would show the
9 full time I was on scene.

10 Q So you arrived on the scene at 1200 hours?

11 A Approximately.

12 Q And then you were up at the hospital at 1300?

13 A Yes, sir.

14 Q So three hours elapsed?

15 A Yes, sir.

16 Q So three hours elapsed, you know, the -- just
17 talking, of course, about that statute. It does say that
18 it be done within two hours?

19 A That's from time of arrest, sir.

20 Q So how long after the wreck had occurred before it
21 took you to get to the site at 1200 hours?

22 A I was notified of the wreck at approximately I think
23 it's 11:50 that morning. Again, I arrived on scene
24 approximately I think nine minutes later.

25 Q So three hours and ten minutes from the time that you

1 heard about the wreck to the time you got to the hospital
2 and ---

3 A And the blood draw was taken and everything else.
4 Again, that was the time the blood was actually taken. So
5 I arrived at the hospital prior to the 1500.

6 Q And isn't it true that Mr. Evans while he was in the
7 hospital was in a neck brace and strapped to a board?

8 A He was still strap to the board, yes, sir.

9 Q He was in a neck brace too, wasn't he?

10 A I believe he was.

11 Q So he was in a neck brace and strap to a board and so
12 he was confined into that spot. And so he wouldn't have
13 been able to really move his head, would he?

14 A No, sir, he was still able to move his head. The
15 head restraint he did have a neck brace on, but the straps
16 were removed from the head brace because once you put them
17 in a C-collar, you can still turn your head. You can
18 still look around in a C-collar, what's the whole purpose
19 of why they add two extra traps to a head brace.

20 Q Were you aware that on the way in the helicopter that
21 he was given Fentanyl Citrate, so he was most likely under
22 the influence of an opiate when you arrived?

23 A I asked if there was any reason for him to be
24 mumbling or anything at which time they stated, no. I was
25 not given a drug list of what he was or was not provided.

1 Q So you didn't talk to the people that transport him,
2 you were talking to the nurse who was there?

3 A The nurse -- I spoke with several nurses that
4 received care of him that's correct.

5 Q So they didn't know what he had, did they?

6 A I believe that would have been a HIPPA violation if
7 they shared it with me.

8 Q And did you have a warrant when you arrived there?

9 A No, sir, I did not have a warrant. He was not under
10 arrest.

11 Q Did you give him a warning that he had a right not to
12 take that test?

13 A Again, I asked him for a voluntary blood sample.

14 Q Did you tell him that he had a right not to take the
15 test?

16 A No, sir, because again I clearly asked that I was
17 requesting a sample. At any time if you're requesting
18 something, you could be told no.

19 Q So at no time did you give him warnings saying that
20 he had a right to get an independent examination of the
21 blood. He had a right to refuse and he had several other
22 rights you didn't enumerate any of those to him, did you?

23 A Those fall under the implied consent rights if you're
24 arrested. He was not being arrested and it was classified
25 and stated a voluntary blood sample.

1 Q So he's in a restraint. He is on Fentanyl and you're
2 saying that he mumbled the whole time; is that right?

3 A He would mumble, yes, sir, and he was hard to
4 understand.

5 Q He never said anything you understood, did he?

6 A Sir, he acknowledged who he was with a clear yes. I
7 asked him what he -- if understood or if he knew what had
8 happened. He indicated with a head shake side to side a
9 clear no. I asked him for a voluntary blood sample that
10 we were requesting that he indicated and if he would
11 provide it for me. He indicated again with a clear head
12 nod up and down yes.

13 Q He was doped up and couldn't remember what had
14 happened and he couldn't speak to you. And you never
15 really had a conversation with him, but you believe that
16 he shook his head yes or no; is that correct?

17 A I know he shook his head yes or no, yes, sir.

18 Q Okay. So do you know Jennifer Rabon?

19 A Yes, sir.

20 Q How did you know her?

21 A We went to school together.

22 Q You guys dated?

23 A No, sir.

24 Q But was she there at the hospital?

25 A No, sir. She was in the EMS unit and she was the one

1 that gave me the name. It states in my report that a
2 female gave me the name of who the driver was. She was
3 the one that identified him by his name and everything.
4 She was not in the ER when I was there.

5 Q Okay. But she told you he was her girlfriend or she
6 was his girlfriend?

7 A I don't recall that being on the scene. Again she
8 was in the EMS unit and she gave me his name. And that
9 was pretty much the extent of our conversation.

10 Q So in sum you waited more than three hours from the
11 accident because you were notified at 11:50, that's what
12 you're saying?

13 A Approximately 11:50, 11:53, I'm not sure the exact
14 numeric, but it was 11:50 approximately.

15 Q Do you know how long it was from the time the
16 accident occurred until you were notified to go to the
17 scene?

18 A No, sir.

19 Q Okay. So there could have been sometime couldn't
20 there?

21 A There's typically about a five minute window between
22 the two dispatches notifying each other.

23 Q So it could have three hours and 15 minutes or so,
24 couldn't it, before -- from the time that it happened to
25 the time you got to the hospital and took the blood test?

1 A It could have been, but that time window you referred
2 to only takes effect if they're arrested and again he was
3 not arrested.

4 Q And again he was in a neck brace couldn't move his
5 head, strap to a board; is that correct?

6 A That's incorrect he could move his head up and down
7 side to side.

8 Q And you do not have a video; is that correct?

9 A No, sir, again we're in a hospital setting. And I'm
10 pretty certain they have HIPPA violations and laws that
11 will cover that.

12 Q And you did not give him any warnings as to whether
13 he had a right not to take it?

14 A No, sir, again it was strictly a voluntary sample is
15 what I asked for.

16 Q But the answer is, no, you did not give him a
17 warning; is that correct?

18 A No, sir, it didn't apply.

19 MR. GRIFFITH: I have nothing further, Your
20 Honor.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION IN-CAMERA

23 BY MR. MEADORS:

24 Q Trooper, the defendant had told you, no, I don't want
25 to give a voluntary sample, would you have taken it

1 against his will?

2 A No, sir, I would not have taken it against his will.

3 Q At that point would you have attempted to get a
4 search warrant?

5 A Yes, sir, I would have contacted the magistrate
6 office advised them of the situation and the details of
7 the collision. What I found in my initial investigation
8 and advise them I was requesting a search warrant for
9 blood.

10 Q Since according to your testimony in your eyes that
11 he consented to giving you a blood test, that's when you
12 asked the nurse to take it?

13 A Yes, sir.

14 Q Again, he was not placed under arrest then until
15 April 9th of 2017?

16 A I believe it was April 9th, yes, sir. I know it was
17 in April. I'm pretty certain it was the 9th.

18 MR. MEADORS: Thank you.

19 THE COURT: Recross.

20 MR. GRIFFITH: Just a couple more questions, I'm
21 sorry.

22 RECROSS-EXAMINATION IN-CAMERA

23 BY MR. GRIFFITH:

24 Q Did the nurses there inform you that he had a
25 concussion, was suffering from a concussion?

1 A No, sir, again I did ask and they stated they didn't
2 see any obvious reasons at that time for him not to be
3 talking.

4 Q How long had it been since he arrived at the
5 hospital?

6 A I'm unsure how long that helicopter ride takes, sir.

7 Q Did you notice like a four-inch laceration above his
8 eye?

9 A He did have a small laceration on his eye, yes, sir.

10 MR. GRIFFITH: I have no further questions.

11 THE COURT: All right. Thank you. You may step
12 down.

13 (WHEREUPON, the witness leaves the witness
14 stand.)

15 THE COURT: You may call your next witness, Mr.
16 Meadors.

17 MR. MEADORS: Judge, on this issue that's all we
18 have.

19 THE COURT: All right. Mr. Griffith, on this
20 issue your client has the right to take the stand without
21 waiving his Fifth Amendment rights before the jury if he
22 would like to testify regarding the circumstances
23 surrounding the blood test. Doesn't have to, but you may
24 present anything you want to present in that regard.

25 MR. GRIFFITH: Your Honor, he doesn't remember

1 anything that happened.

2 THE COURT: Sir?

3 MR. GRIFFITH: He doesn't remember anything that
4 happened there.

5 THE COURT: So you're saying your client does
6 not wish to testify in this regard?

7 MR. GRIFFITH: He does not wish to testify.

8 THE COURT: Okay. Any other evidence that you
9 wish to present on this subject?

10 MR. GRIFFITH: No further evidence, Your Honor,
11 on this subject?

12 THE COURT: Okay. I'll hear from you briefly,
13 Mr. Griffith, with regard to your position as to why it
14 should be suppressed.

15 MR. GRIFFITH: Your Honor, in this case the
16 statute requires that a person be administered a test
17 have an opportunity to refuse to take the test ---

18 THE COURT: When you refer to the statute you
19 referring to 56-5-2950?

20 MR. GRIFFITH: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. GRIFFITH: Also that he must be given
23 warnings as to his opportunity to have another test, an
24 independent test done.

25 THE COURT: I can read the statute. I know what

1 the statute provides.

2 MR. GRIFFITH: I believe -- I don't have that
3 other statute in front of me. I recall they both allow
4 him to get independent check, but those were not offered
5 to him. And in this case it was so much time between the
6 accident and the drawing of the blood anything could have
7 happened.

8 THE COURT: Well, that's a factual question.
9 There's no statutory requirement that it be done within
10 any certain period of time, is it? In fact, that works to
11 the defendant's advantage because the longer he goes
12 before he's had the test, the less he's gone register on a
13 blood alcohol test.

14 MR. GRIFFITH: Well, that may be true in most
15 cases, Your Honor, but -- from the time that he was taken
16 until the test was given if he consumed some alcohol or
17 was given as in this case Fentanyl Citrate which may alter
18 the test.

19 THE COURT: Well, where there's anything in the
20 statute that says anything about that or about the time
21 lapse or that the statements prove that he was -- that he
22 didn't drink anything in between or anything like that.
23 There's no violation of the statute for time requirement,
24 is it?

25 MR. GRIFFITH: I believe, Your Honor, right at

1 the top of that statute on 2950 it says shall be taken
2 within, I believe, it says two hours, doesn't it?

3 THE COURT: Yes, it says two hours, that's
4 correct. That's 2950.

5 MR. GRIFFITH: This is three hours and 15
6 minutes, Your Honor.

7 THE COURT: All right. Well, the State's
8 relying on 56-5-2946. Let me hear from you. Well, let me
9 ask you this, Mr. Meadors, if 29 -- if 56-2950 is
10 applicable, if it is, and I know you contend that it's
11 not, but if it is applicable, would you concede that the
12 State did not comply with that statute?

13 MR. MEADORS: Judge, I haven't -- again, I'm not
14 prepared for this total until just a minute ago. No, sir,
15 because I do think they're exceptions in there if -- you
16 know, if there's a wreck, you don't have to be video
17 taped.

18 THE COURT: Where is that?

19 MR. MEADORS: That's all in the statute, Judge,
20 in some of the case law.

21 THE COURT: Well, here's the problem that I got
22 with this, Mr. Meadors, looking -- and I'll tell you very
23 frankly, that's why I ask you if you would concede to
24 56-5-2950 if it's applicable that the State didn't comply.
25 And you're not willing to concede that at that time, but

1 I'll give you the statute back that you handed up to me.
2 But 56-5-2946(c) says the provisions of section 56-5-2950
3 relating to the administration of test to determine a
4 person's alcohol concentration are applicable to this
5 section.

6 MR. MEADORS: Yes, sir. And, Judge, he wasn't
7 under arrest.

8 THE COURT: It doesn't matter. Where does it
9 say he's got to be under arrest?

10 MR. MEADORS: State vs. Cribb, Judge.

11 MR. GRIFFITH: If it please the Court, Your
12 Honor.

13 THE COURT: Wait just a minute. I'll get to you
14 in a minute.

15 MR. GRIFFITH: Okay.

16 MR. MEADORS: State vs. Cribb.

17 THE COURT: All right, they hadn't cited that.

18 MR. MEADORS: 56-5-2950 is inapplicable to
19 pre-arrest DUI investigation.

20 THE COURT: All right, hand me the case.

21 MR. MEADORS: Judge, I did not know about this
22 until right beforehand, so you can't blame me on that.

23 THE COURT: Well, I knew about it this morning
24 when you all told me about it.

25 MR. MEADORS: Can I have my statute book back?

1 THE COURT: Yeah. 56-5-2946(b) says that
2 56-5-2950 is applicable, that's pretty clear?

3 MR. MEADORS: Yes, sir. And I'm saying 56-2950
4 is not applicable to this situation, which means neither
5 one of them are. That's what I'm trying to say because
6 it's a pre-arrest DUI. That's why I brought it to the
7 Court's attention the other section and I don't think
8 either one of them are applicable.

9 THE COURT: Okay. I understand your position
10 then, but so just to clarify where we are you don't think
11 either section is applicable?

12 MR. MEADORS: No, sir, not in this situation.

13 THE COURT: But if 56-5-2950 were applicable, it
14 is incorporated into 56-5-2946 by C section C. So it's
15 not a question of whether or not 56-5-2946 it does apply.
16 I mean, it is applicable as is 2950. What you're saying
17 is that neither statute is applicable because the whole
18 thing was pre-arrest and it's got to be an arrest
19 situation before either one kicks in.

20 MR. MEADORS: That's fine. Sorry, I wasn't
21 clear that was my position.

22 THE COURT: All right. What say you to that,
23 Mr. Griffith?

24 MR. GRIFFITH: Well, Your Honor, 56 -- I mean,
25 2946 does say that if there's probable cause to believe

1 the person violated or is under arrest for a violation, he
2 may or may not have had probable cause to believe he was
3 under arrest, Your Honor.

4 THE COURT: Well, that's a fact -- he didn't say
5 probable cause to believe he's under arrest. Probable
6 cause to believe he was driving under the influence.

7 MR. GRIFFITH: To believe ---

8 THE COURT: It doesn't say anything about
9 arrest.

10 MR. GRIFFITH: I understand, Your Honor.

11 THE COURT: Okay.

12 MR. GRIFFITH: Well, what I'm saying is that he
13 was not under arrest and so because he was not under
14 arrest 2950 applies and so he has to be given those ---

15 THE COURT: You think he's got to be under
16 arrest under 26-5...

17 MR. GRIFFITH: 46.

18 THE COURT: 450.

19 MR. GRIFFITH: Not under 2950, but under 2946 it
20 says he has to be -- there has to be probable cause that
21 he has violated or is under arrest in order for it to be
22 -- he could just take it any time he wants to.

23 THE COURT: But it's says or though. It says
24 probable cause to believe he was under the influence or
25 arrest. It doesn't require him to be under arrest; isn't

1 that right?

2 MR. GRIFFITH: Yes, there's probable cause to
3 believe that he violated.

4 THE COURT: Okay.

5 MR. GRIFFITH: And so at that time he had no
6 probable cause other than there was an accident. And so
7 that does not apply. If it did, it cites 56-5-2950.

8 THE COURT: I understand that.

9 MR. GRIFFITH: And so the rules apply in that he
10 number one ---

11 THE COURT: Well, my question, Mr. Griffith, is
12 where is it a requirement that he be under arrest?

13 MR. GRIFFITH: Well, there is no requirement
14 that he be under arrest.

15 THE COURT: Okay.

16 MR. GRIFFITH: And I'm just saying that before
17 he could give his blood he has to be told that he doesn't
18 have to, that he can seek alternative doctor, has to be
19 within two hours.

20 THE COURT: All right. Do you have State vs.
21 Greer, Mr. Meadors?

22 MR. MEADORS: It's Cribb. It's on its way up.

23 THE COURT: Okay. I realize what section
24 56-5-2950 requires. And I also understand that 56-5-2946
25 requires that 2950 be complied with, but the question is

1 does either statute kick in because he was not under
2 arrest. And I don't see -- I haven't yet seen the
3 requirement that he have to be under arrest before these
4 things have to be given to him.

5 MR. GRIFFITH: I agree, Your Honor. He did not
6 have to be under arrest and because he doesn't have to be
7 under arrest, the officer stated that he was not under
8 arrest at that time. Therefore, these would apply and he
9 would have to be given warning.

10 THE COURT: Mr. Meadors position is that if he's
11 not under arrest they don't apply. Where is the
12 requirement that the statute apply if he's not under
13 arrest?

14 MR. GRIFFITH: Your Honor, because 2950 makes no
15 statement that he must be under arrest. It makes no
16 statement.

17 THE COURT: That's correct, it does not and
18 that's the one you're relying on.

19 MR. GRIFFITH: Exactly. And he was not under
20 arrest, but even though he's not under arrest, the State
21 is required to ask him certain things which they did not
22 ask him.

23 THE COURT: Where does it say that he has -- is
24 entitled to that if he was not under arrest?

25 MR. GRIFFITH: It doesn't say he has to be under

1 arrest for that.

2 THE COURT: So the converse has got to be true
3 if he's not under arrest, then he don't have to do it.

4 MR. GRIFFITH: Absolutely false, Your Honor.

5 THE COURT: Why?

6 MR. GRIFFITH: 2950 does not specify that he
7 must be under arrest at all.

8 THE COURT: Right.

9 MR. GRIFFITH: It just says he has these rights.
10 I have a right to counsel. I don't have to be under
11 arrest. I have a right to drive my car. I don't have to
12 be under arrest. He has a right that these people -- that
13 the State must give him these warnings ---

14 THE COURT: All right, counsel, I want copies of
15 both statutes in full and I want a copy of State vs. Greer
16 that you're relying on. And I've got to go back and study
17 them a little bit. I understand both of your positions,
18 but Mr. Meadors' position is that neither statute applies.
19 Yours is saying that 2950 applies. And he hasn't been
20 given those warnings. I think it's pretty clear from the
21 evidence that's been presented to the Court that 2950 has
22 not been complied with. The question is whether or not
23 the State has to comply with 2950 and that's the whole
24 issue here.

25 MR. MEADORS: I agree with that.

1 THE COURT: I think it's pretty clear that they
2 did not comply with 2950 and the issue before the Court is
3 did they have to. And I need to see State vs. Greer.

4 MR. MEADORS: It's Cribb, Your Honor.

5 THE COURT: Cribb.

6 MR. MEADORS: Cribb.

7 THE COURT: Okay. And I need to see State vs.
8 Cribb and copies of the two statutes.

9 MR. GRIFFITH: Your Honor, I believe I have
10 provided a copy of, I think, the whole statute there.

11 THE COURT: Well, no, you just gave me B.

12 MR. MEADORS: Judge, you want to just take this
13 back?

14 THE COURT: Yeah, that be all right. I'll just
15 take that and if you give me a copy of the code -- I mean,
16 of the Cribb case and then we'll go from there.

17 MR. MEADORS: Well, this is both of them. He
18 got them both in here.

19 THE COURT: This is the entire statute.

20 MR. GRIFFITH: Okay, but I believe I gave you --
21 I thought that what I printed out was like two and half
22 pages ---

23 THE COURT: No, you gave me one page 29 --
24 56-5-29(b) -- 2950(b). You gave me 2950(b) that's all you
25 gave me, that was in your motion.

1 MR. GRIFFITH: Yes.

2 MR. MEADORS: Judge, may I go down and check on
3 that case?

4 THE COURT: Yes, sir.

5 (WHEREUPON, a pause in the proceedings.)

6 THE COURT: All right. I'm going to chambers to
7 study this a little bit. Mr. Bailiff, if you'll tell the
8 jury, we still tied up on some pretrial matters. I hate
9 to keep them waiting, but this is important enough that I
10 need to -- I stand corrected, Mr. Griffith, you did give
11 me the other statute. It was not in your motion, but it
12 was separately handed up. But I have the complete
13 statutes -- the two statutes and I want to read the case
14 that Mr. Meadors is relying on. If you tell the jury, we
15 got some important non-jury -- I mean, important matters
16 that have to be considered before we can go forward.
17 We'll be with them in about 15 minutes.

18 BAILIFF: All right, sir.

19 (WHEREUPON, a break was taken.)

20 THE COURT: All right. We're back on the record
21 with regard to the matter of The State vs. Gene David
22 Evans, Jr. Mr. Evans is present with his counsel. The
23 State is present represented by Mr. Meadors. And the
24 issue before the Court is the applicability of section
25 56-5-2950 to the facts of this case as they have been sent

1 forth by counsel to the court as well as by the State's
2 witness.

3 Mr. Griffith, it seems -- it looks to me that
4 the section 59 -- 56-5-2950 upon which you are relying is
5 very specifically says if arrested and then goes on to say
6 by the law enforcement officer who has arrested and then
7 goes on to say by the arresting officer. Doesn't that
8 statute clearly require that he be arrested?

9 MR. GRIFFITH: Looking at that with Mr. Meadors
10 at the top it talks about being arrested but -- and
11 looking at Cribb, State vs. Cribb, of course, I understand
12 his position ---

13 THE COURT: That wasn't my question now. I'm
14 going to get to Cribb in a minute, but my question to you
15 is doesn't 56-5-2950 the implied consent law clearly state
16 that the defendant has to be arrested?

17 MR. GRIFFITH: I would hope that the implication
18 is that he has rights whether he was arrested or not.

19 THE COURT: You said the implication is against
20 the clear language of the statute then.

21 MR. GRIFFITH: He would have rights whether he
22 was arrested or not, would he not, Your Honor?

23 THE COURT: Does he have the right under
24 56-5-2950 to the protections granted by that section and
25 section B upon which you're relying if he is not arrested?

1 MR. GRIFFITH: I believe that he has a right not
2 to incriminate himself at any time.

3 THE COURT: You're not going to concede that the
4 statute requires that he be arrested? Is that right?

5 MR. GRIFFITH: I'm not going to concede that,
6 Your Honor.

7 THE COURT: All right. How do you distinguish
8 Cribb?

9 MR. GRIFFITH: Your Honor, I haven't had an
10 opportunity to do an analysis of what has been kept in
11 Cribb and what has been changed in that -- but based on my
12 reading of Cribb, I understand the State's position. And
13 using my own judge, Judge Cottingham against me.

14 THE COURT: All right. Well, do you contend
15 that Cribb is not the law?

16 MR. GRIFFITH: Your Honor, I'm not sure that
17 it's exactly applicable. This person was arrested. He
18 was arrested right away. Mr. Evans was not arrested. The
19 difference is that the person Cribb ---

20 THE COURT: No, no, look at Cribb. The troopers
21 met with Cribb to discuss the accident, but did not arrest
22 -- did not charge him with a crime.

23 MR. GRIFFITH: I was thinking where I saw it
24 says he was arrested. Was not arrested until sometime
25 later, okay, I see that, Your Honor.

1 THE COURT: All right. The ruling of the Court
2 is that very clearly section 56-5-2950, which is
3 incorporated into 56-5-2946 by section C of the 56-5-2946
4 clearly requires that a defendant be arrested because the
5 statute says as I have just quoted to Mr. Griffith if
6 arrested in the first line of 56-5-2950(a). If arrested
7 for an offense arising out of alleged to have committed
8 while the person was driving a motor vehicle under the
9 influence of alcohol, drugs or a combination of both. It
10 goes on to say a breath test must be administered at the
11 direction of the law enforcement officer who has arrested
12 a person for driving a motor vehicle in this state while
13 under the influence of alcohol, drugs or a combination.
14 And goes on to say that the direction of the arresting
15 officer, the person must first be offered a breath test
16 and so forth. And that's when the requirement comes in of
17 two hours for a breath test, three hours for a blood test
18 and the protections of section B kick in as well, which is
19 what Mr. Griffith is relying on.

20 It seems very clear to me that 56-5-2950 does
21 require an arrest and by implication 56-5-2946 would also
22 require an arrest. But even so the case of State vs.
23 Cribb 310 South Carolina 518, 426 Southeastern 2nd 306
24 clearly states in its holding in our view the reference to
25 arrest and apprehension when given the plain and ordinary

1 meaning indicate that the legislature intended to limit
2 the operation of section 56-5-29(a) to testing for
3 evidence of driving under influence after an arrest has
4 been effected. Accordingly, we find the sections of
5 56-5-29(a) is inapplicable to this case because Cribb was
6 not arrested until sometime after the blood alcohol test.
7 I think the case is very clear that the implied consent
8 law does not apply unless there has been an arrest.
9 Accordingly, the Court will overrule the motion to
10 suppress and allow the results of the blood alcohol test.
11 All right.

12 MR. MEADORS: Judge, the other issue which I
13 know, Your Honor, wants to get the jury out. There was an
14 issue about the defendant's statements. The day after
15 this incident Lance Corporal Trotter who is in the
16 courtroom went to the hospital read him his Miranda
17 rights, got a statement from him at that point, an oral
18 statement.

19 On April 9th 2017, Trooper Boland goes back and
20 arrest the defendant at his house. There's a video tape
21 of that arrest. At that time Miranda was not read to the
22 defendant, but the defendant gives another version of what
23 happened. I think the defense counsel I was talking with
24 Mr. Griffith would like both of those statements to come
25 in.

1 THE COURT: Do you plan to offer them?

2 MR. MEADORS: Well, if I did, Mr. Boland was
3 going to be the first witness and that would be the second
4 statement would actually come in first just so I wouldn't
5 have to call him twice. He be the first witness. That's
6 something I'm going to have to decide in the next 20
7 minutes. He's not objecting, so I don't -- and there was
8 no Miranda, so it won't be an issue about that. I still
9 think we'll have to have a Miranda hearing tomorrow, but
10 we can do that tomorrow with Corporal Trotter. But I want
11 the record to be clear that he is not objecting to that
12 statement on April 9th 2017, when the defendant was
13 arrested if I decide to put it in.

14 THE COURT: Statement on April 9th 2017 to
15 Officer Boland.

16 MR. MEADORS: Yes, sir. And it's on video tape.

17 THE COURT: Well, I thought you said the first
18 one was not. Was the first one on video tape too?

19 MR. MEADORS: No, sir, the first one is on audio
20 tape. Second one's on video tape. We're doing them in
21 reverse order because Trooper Boland may have to leave
22 tomorrow and will be on standby the rest of the week.

23 THE COURT: Well, what's your position to the
24 statement made to Officer Boland that is on video tape as
25 far as voluntariness is concern in Jackson vs. Denno, Mr.

1 Griffith?

2 MR. GRIFFITH: Your Honor, the statement that he
3 makes is consistent with the statement he made all along
4 that he was not driving.

5 THE COURT: So you don't object to it?

6 MR. GRIFFITH: I do not object.

7 THE COURT: Okay, that takes care of that.

8 MR. MEADORS: Your Honor, one final matter that
9 I think we need to put on the record. His Honor Judge
10 Ferrell Cothran ordered the defendant to undergo a
11 competency evaluation on May 17th 2017, Dr. Donna -- I
12 think her last name is Maddox now.

13 THE COURT: It is.

14 MR. MEADORS: Yes, sir, married the Honorable
15 Cordell Maddox from Anderson, South Carolina. Judge, she
16 did evaluate the defendant. I'd like to make this a
17 Court's Exhibit if I can Court's Exhibit 1. She did find
18 that the defendant was competent, that he has a rational
19 and factual understanding of the proceedings and the
20 capacity to assist in his defense. If I can make that a
21 Court's Exhibit.

22 THE COURT: Make it a Court's Exhibit and hand
23 it up or I'll make it a Court's Exhibit. Ms. Reed, if
24 you'll go ahead and make it a court's exhibit.

25

1 (WHEREUPON, Court's Exhibit No. 1 was admitted
2 into evidence.) /

3 THE COURT: You've seen this report?

4 MR. GRIFFITH: Yes, Your Honor, without
5 objection.

6 THE COURT: Okay.

7 MR. MEADORS: Judge, I also like to put on the
8 record that I think it's appropriate this case unbeknownst
9 to me until last Thursday, the defendant had been taken
10 from the Sumter Lee Regional Detention Center and sent to
11 Just Care our medical facility in Columbia to be evaluated
12 a week or so ago perhaps through probate court.
13 Apparently last Friday he was sent back from Sumter Lee
14 Regional Detention Center maybe through probate court I'm
15 not sure. I want the record to reflect that.
16 Mr. Griffith has talk to his client over the weekend and
17 today. And he's informed me that as of today he has no
18 issue regarding his competency during that. That I just
19 found out the end of last week because of that I wanted to
20 put that on the record. And I think Mr. Griffith will
21 stipulate that he has no issue as to the defendant's
22 competency as of today's date.

23 THE COURT: All right. Let me address first the
24 evaluation by the South Carolina Department of Mental
25 Health. The Court does have a copy of Court's Exhibit

1 Number 1. Let me review it please.

2 (WHEREUPON, a pause in the proceedings.)

3 THE COURT: All right. The Court has reviewed
4 the report of Dr. Donna Swartz-Maddox dated July the 12th
5 of 2017 in which she has found a diagnosis of stimulant
6 use disorder in a controlled environment, but does have an
7 opinion that he is competent to stand trial and further
8 that he can aid his attorney in the defense. He has a
9 rational and factual understanding of the proceedings and
10 the capacity to assist in his defense is her exact
11 language. This is Court's Exhibit 1. The Court will make
12 this apart of the record concerning the competency of
13 Mr. Evans. Now, in addition to that, Mr. Griffith, I
14 understand that he has had an additional test. Was that
15 at your request or his request or what was the situation
16 on the most recent situation?

17 MR. GRIFFITH: Well, Your Honor, while at the
18 detention center certain things came up that they thought
19 that they needed to just send him out and get some help
20 with. And it was not at my request. The detention center
21 determined that he is suppose to be taking some medication
22 and he wasn't at the time, so they sent him up there to
23 get him taken care of.

24 THE COURT: Was any report rendered on that
25 regarding his competency?

1 MR. GRIFFITH: I have seen no report, Your
2 Honor.

3 THE COURT: All right. Do you have any question
4 in your mind about his competency to stand trial?

5 MR. GRIFFITH: Your Honor, every time I talk to
6 him he's coherent. He's able to help me. He's able to
7 discuss his case. I cannot disagree that he is competent.

8 THE COURT: All right. The Court would then
9 find based upon the evidence in the record as well as the
10 statement of his counsel that Mr. Evans has been evaluated
11 and has been found to be competent to stand trial and to
12 assist his attorney in his defense and the Court would so
13 find. All right, Mr. Meadors, anything else before we
14 bring the jury in?

15 MR. MEADORS: Beg the Court's indulgence.

16 (WHEREUPON, a pause in the proceedings.)

17 MR. MEADORS: No, sir.

18 THE COURT: Mr. Griffith.

19 MR. GRIFFITH: Nothing, Your Honor.

20 MR. MEADORS: Judge, without objection -- we
21 just handed her these, so it's not her fault.

22 THE COURT: All right. Keshia, you want to take
23 a minute and pre-mark them? Go ahead and tell us -- put
24 on the record -- those are all agreed by counsel without
25 further authentication, Mr. Griffith?

1 MR. GRIFFITH: Without objection, Your Honor.

2 THE COURT: Okay. Then they'll be admitted into
3 evidence without further authentication. Go ahead and put
4 the markings on them, Ms. Reed.

5 (WHEREUPON, a pause in the proceedings.)

6 THE COURT: We're back again on the record now.
7 Ms. Reed, I believe certain exhibits have been admitted.
8 What are the numbers?

9 COURT REPORTER: Two through 30.

10 THE COURT: State's Number 2 through 30 all
11 photographs have been admitted into evidence without
12 objection, correct, Mr. Griffith?

13 MR. GRIFFITH: No objection.

14 THE COURT: All right. The further
15 authentication will be not necessary. Counsel may be able
16 to refer to those exhibits.

17 (WHEREUPON, State's Exhibits Nos. 2-30 were
18 admitted into evidence.)

19 MR. MEADORS: Only other matter through Trooper
20 Boland will be the tape if I decide to play it and we'll
21 just need a little bit to bring it up. We both looked at
22 it. I think we'll be offering the first part. I think we
23 can agree to that without any problems.

24 THE COURT: Okay. All right.

25 MR. MEADORS: Thank you, that's all.

1 THE COURT: Anything before we bring the jury
2 in, Mr. Meadors?

3 MR. MEADORS: No, sir. Thank you.

4 THE COURT: Mr. Griffith, anything before we
5 bring the jury in?

6 MR. GRIFFITH: We ready, Your Honor.

7 THE COURT: All right. Bring the jury in
8 please.

9 (WHEREUPON, the jury came into open court.)

10 THE COURT: Thank you very much, ladies and
11 gentlemen. And I certainly apologize to you for keeping
12 you -- getting you back here before I needed you or
13 keeping you waiting in the jury room. I had thought that
14 the pretrial matters that we had to attend to we would be
15 able to take care more expeditiously, but unfortunately
16 took longer than I had expected it. And I do apologize
17 for keeping you waiting in the jury room. I try to make
18 it a policy never to or to not keep jurors waiting more
19 than is absolutely necessary, but it was necessary in this
20 case. But we have concluded and we are now ready to go
21 forward with this matter.

22 Mr. Bailiff, you may swear the jury.

23 (WHEREUPON, the jury is sworn.)

24 THE COURT: Is there any juror who did not take
25 the oath if so please indicate by raising your hand? All

1 right. Thank you very much. Before we begin the actual
2 trial of this case, I thought it might be helpful if I
3 explain to you basically how a trial proceeds. I know all
4 of you have seen trials on television, but I think that
5 you will find that it's a great deal different in real
6 life than it is on television. First of all, the State
7 will make an opening statement. An opening statement is
8 not evidence. It is simply an outline to help you
9 understand what the state expects the evidence will show.
10 The defendant may if you wishes to present an opening
11 statement, but he doesn't have to for reasons that I will
12 explain to you later.

13 Following the opening statements, you will hear
14 the testimony and evidence in this case. This will
15 consist of testimony from the State's witnesses as well
16 as any physical exhibits which may be entered or will be
17 introduced into evidence.

18 Following the completion of the testimony, the
19 attorneys will again have an opportunity to make what is
20 called a closing statement or a summation to you. This is
21 an opportunity for the attorneys to summarize the case
22 from their respective points of view. Again, these
23 arguments are not evidence.

24 Following the closing statements by the
25 attorneys, I will instruct on the law of South Carolina as

1 it pertains to the issues that have arisen in this case.
2 And when I have completed my instructions to you, you will
3 be permitted to begin your deliberation in order to reach
4 a verdict.

5 Now, ladies and gentlemen, you are now the jury
6 in this case. And I want to take a few minutes to tell
7 you something about your duty as jurors and to give you
8 some basic instructions. At the end of this trial, I will
9 give you more detailed instructions and those instructions
10 will control your deliberations. It will be your duty to
11 decide from the evidence what the facts are. You and you
12 alone are the judges of the facts. You will hear the
13 evidence, decide what the facts are and then apply those
14 facts to the law which I will give to you, that is how you
15 reach a verdict. In doing so, you must follow the law
16 whether you agree with it or not. The evidence will
17 consistent of the testimony of witnesses, documents and
18 other things received into evidence as exhibits and any
19 facts on which the lawyers agree or which I may instruct
20 you to accept.

21 Now, I know already that there will be some
22 physical exhibits in this case and the lawyers will likely
23 ask me for permission to publish those exhibits to you,
24 that's simply a legalistic term meaning to show you those
25 exhibits. And they will do it either by passing the

1 exhibits around you while you're sitting there in a jury
2 box or by using the electronic equipment. Do not be
3 concerned if you do not have as long to look at those
4 exhibits as you would like to while you were in the
5 courtroom. They will go with you to your jury room when
6 you retire to reach a verdict and so you will have ample
7 opportunity to examine any exhibits that have been
8 introduced into evidence for as long as you might like to.

9 Now, you should not take anything that I may say
10 or do during this trial as indicating what I think of the
11 evidence or what your verdict should be. The law does not
12 permit me to have an opinion about the facts. The same
13 law that make you the judge of the facts makes me the
14 judge of the law. You must take the law as I give it to
15 you regardless of what you think the law is or what the
16 law ought to be. If I'm wrong on the law, there's another
17 time and place for that error to be corrected. But for
18 this case, you must accept the law as I charge it to you.

19 Now, this is a criminal case brought by the
20 State of South Carolina. The State charges the defendant
21 with the crime known in the law as felony DUI with death
22 resulting. The charge against the defendant is contained
23 in the indictment which I have in my hand. The indictment
24 is not evidence of anything. It is simply of the
25 description of the charge made by the State against the

1 defendant. The defendant has pled not guilty to the
2 charge and is presumed innocent until proven guilty beyond
3 a reasonable doubt.

4 A reasonable doubt is the kind of doubt that
5 would cause a reasonable person to hesitate to act. A
6 defendant has the right not to testify and never has to
7 prove innocence or present any evidence. The burden of
8 proof is always upon the State of South Carolina.

9 Now, there certain things that are not evidence
10 and you must not consider them as evidence in deciding the
11 facts of this case. Statements and arguments of the
12 attorneys are not evidence. Questions and objections to
13 the attorneys are not evidence. And testimony that I
14 instruct you to disregard is not evidence.

15 Evidence may be direct or circumstantial.
16 Direct evidence is testimony by a witness about what that
17 witness personally saw or heard or did. Circumstantial
18 evidence is indirect evidence. The law permits you to
19 give equal weight to both, but it is for you to decide how
20 much weight to give to any of the evidence.

21 There are rules of evidence which control and
22 can be received into court. When a lawyer ask a question
23 or offers an exhibit into evidence and a lawyer on the
24 other side thinks that it is not permitted by the rules of
25 evidence, that lawyer may object. If I overrule the

1 objection, the question may be answered or the exhibit may
2 be received. If I sustain the objection, the question
3 cannot be answered or the exhibit cannot be received.

4 Whenever I sustain an objection to a question or
5 deny a motion to admit an exhibit into evidence, you must
6 ignore the question or the existence of the exhibit and
7 you must not guess what the answer would have been or what
8 the exhibit would have shown. Sometimes it may be
9 necessary for me to request that you leave the courtroom
10 while I discuss with the attorney's legal questions that
11 come up during the trial. If this occurs, you should not
12 speculate about our discussions or the reasons that you
13 were asked to leave the room. This is simply a procedure
14 that the law requires when certain legal issues arise.

15 There also may be occasions when I ask the
16 attorneys to approach the bench so that I can discuss a
17 legal issue with them in private. I will do this as often
18 as possible so that you will not be required to leave the
19 courtroom more than is absolutely necessary. Again, if I
20 ask you -- if I ask the attorneys to step up to the bench
21 or if I ask you to leave the courtroom, please don't think
22 that anybody's trying to hide anything from you or keep
23 any evidence from you. This is simply a procedure used by
24 all lawyers and by all courts to determine and decide
25 legal questions.

1 Now, in deciding the facts of this case, you may
2 have to decide which witnesses to believe and which
3 witnesses not to believe. This is called credibility.
4 You may believe everything a witness says or only part of
5 it or none of it. In deciding what to believe, you may
6 consider a number of factors including the witnesses
7 ability to see or hear or know the things the witness
8 testified to. The quality of the witnesses memory. The
9 witnesses manner or demeanor while testifying, whether the
10 witness has an interest in the outcome of the case or any
11 motive, bias or prejudice, whether the witness was
12 contradicted by anything the witness said or wrote before
13 the trial or by any other evidence. And how reasonable
14 was the witness' testimony when considered in the light of
15 other evidence which you do believe.

16 Now, just a few words to you about your conduct
17 as jurors, some of which I may have already mention to
18 you, but there important enough that I go over them again.
19 Please do not talk with each other about this case when
20 you are assembling in the juror room or at any time until
21 the end of the case when you go to your jury room to
22 decide on your verdict. Any discussion about the case
23 among yourselves prior to the time that I tell you to
24 begin your deliberations is premature. Do not talk with
25 anyone else about the case until the trial is ended

1 following your verdict and you have been discharged as
2 jurors. This means do not discuss the case with members
3 of your family or friends or with anyone else. You may
4 tell them that you are a juror, but don't tell them
5 anything about the case until you have been discharged by
6 me.

7 Do not let anyone talk to you about the case.
8 If anyone should try to talk to you, get their name or
9 their description and report it to the bailiffs. They
10 will report it to me and I will deal with them. Do not
11 read any news stories or articles or listen to any radio
12 or television reports about the case. You are not to
13 consider as evidence anything that you may see or hear
14 when court is not in session. Do not do any research such
15 as consulting dictionaries or other reference materials or
16 the internet. And do not do anything on social media
17 regarding this case until have been discharged by me.

18 And finally do not make up your mind about what
19 your verdict should be until you have heard all of the
20 evidence in the case, the arguments of counsel and the
21 instructions on the law by the Court. You will be
22 instructed when to begin your deliberations by either me
23 or the bailiff. Any objections to my opening remarks to
24 the jury on behalf of the State, Mr. Meadors?

25 MR. MEADORS: No, sir.

1 THE COURT: Mr. Griffith.

2 MR. GRIFFITH: None, Your Honor.

3 THE COURT: All right. First order then, ladies
4 and gentlemen, will be the matter of opening statements
5 and for that purpose the Court will recognize the
6 Solicitor.

7 MR. MEADORS: May it please the Court.

8 THE COURT: Yes, sir.

9 MR. MEADORS: Robert Bob Skidmore is dead.
10 Robert Bob Skidmore is dead. On February 12th of last
11 year 2017, Gene David Evans, chose to consume drugs
12 methamphetamine. He chose to drive a motor vehicle. He
13 chose to drive that vehicle in Sumter County.

14 THE COURT: All right, no comments please,
15 maintain, be quiet.

16 MR. MEADORS: Evidence will show that he chose
17 to drive that vehicle on Saint Paul Church Road. He drove
18 in the wrong lane heading toward Shonda Brown and Andrew
19 Moye. He then pulled back corrected it and ran into a
20 tree and killed Robert Bob Skidmore, his passenger.
21 That's what this case is about. The death of Robert Bob
22 Skidmore at the hands of the Defendant Gene David Evans.
23 Good afternoon, ladies and gentlemen. Good afternoon.
24 Thank you all for being here. And I'm going to thank you
25 in advance for the attention you're going to give this

1 case. Being a juror is not an easy job, but as Your Honor
2 told you in his most eloquent remarks this morning quoting
3 Winston Churchill short of serving in the military during
4 time of war, I, too believe it's one of the most honorable
5 services you can provide your country. So thank you for
6 answering the mail, the call if you will in being here and
7 being willing to serve.

8 Your clerk, Mr. Campbell, doesn't have a school
9 to put you through to how to be a juror. He didn't give
10 you little cliff notes, hey, here's what you got to do to
11 be a juror, but you've been studying for that role,
12 preparing for that role, preparing for today your whole
13 life and that's called life. It is living. It's
14 interacting with people. It's listening to people,
15 communicating with people and determining what the truth
16 is because that's what jurors do. You're gone listen to
17 the evidence that comes in through this witness stand and
18 the other evidence that his honor allows because that's
19 the only evidence you'll be able to consider. Evidence
20 that comes through this stand and or documents or other
21 items that maybe agreed upon. You'll take that evidence
22 and you'll decide what's credible, what's believable and
23 you'll do that with the attributes you have obtained
24 through your whole life and that's what the trial is about
25 and it's a pure system. And you decide what the truth is.

1 His honor is the judge of the law, knows it better than
2 any judge on the record reflect in this state. He'll
3 tell you what the law is. He'll tell us how the law is.
4 He'll take the law and you'll decide what the facts are.
5 You're the judges of the facts. You'll decide what the
6 truth is. You'll apply it to the law the judge gives you
7 and you'll come up with a verdict and that's our system.
8 Use your common sense in evaluating what the truth is,
9 what's credible, what's believable because every case,
10 every case comes down to that. And you'll know it when
11 it's there. We submit when you heard all the evidence
12 you'll know what the truth is.

13 The defendant is represented by Mr. Griffith.
14 He's been charged as you heard with felony driving under
15 the influence with death resulting. His honor will tell
16 you those elements later. I'm allowed in my opening to
17 briefly tell you what it is. What we must prove. What
18 the State must prove for you to find the defendant guilty.

19 First of all, we must prove that the defendant
20 was driving a motor vehicle on the roads of Sumter County
21 while he's under the influence of alcohol and or drugs.
22 We submit to you in this case it's going to be drugs. We
23 submit to you through the toxicologists of SLED you'll see
24 it's methamphetamine. That's one thing we have to show
25 you. And then we have to show you that the defendant did

1 an act forbidden by law or neglected a duty impose by law
2 and it's technical, but it's not difficult. And in this
3 case he was in the wrong lane going in the wrong
4 direction. He then overcorrected, turned back ran into a
5 tree. We've got to show you that. We'll show you that
6 through two witnesses that he was traveling the wrong way.

7 And then finally the State must prove to you
8 that there's proximate cause of the defendant's duty or
9 neglect of a duty that it was resulted in the death of Bob
10 Skidmore. We'll have to show you that Bob Skidmore died
11 as a result of this wreck. We're going to do that through
12 the testimony of our pathologist Dr. Janice Ross. I
13 usually save Dr. Ross for the end of the trial. This is
14 the week where we have a holiday yesterday. Dr. Ross
15 unfortunately is doing autopsies around the o'clock.
16 She's going to be our first witness. You're actually
17 going to hear the cause of death of Bob Skidmore right off
18 the bat. And she'll tell you in her expert opinion what
19 she believes the cause of death of Robert Skidmore.

20 Now, ladies and gentlemen, what do we have to
21 prove, we, the State have to prove to you what's our
22 burden. Well, you've all heard it. His honor mentioned
23 it. We have to prove to you that Gene David Evans was
24 driving his vehicle on February 12th 2017, under the
25 influence of drugs, violated a duty imposed by law cause

1 the proximate death of Bob Skidmore beyond a reasonable
2 doubt. You all heard it on TV. We've got to prove him
3 guilty beyond a reasonable doubt, not beyond all doubt.
4 There's nothing that can be proven beyond all doubt. His
5 honor will tell you that in this charge later, but we must
6 prove the defendant beyond a reasonable doubt. Beyond a
7 doubt that will make reasonable folks hesitate to act
8 common sense. We submit we'll be able to do that through
9 the testimony of our witnesses, but it's your decision.
10 It's your decision.

11 Very briefly and his honor has already said it.
12 You'll hear evidence called direct evidence. Evidence
13 that an individual perceives with one of their senses.
14 They see something. They hear something. They smell
15 something. They touch it and they come in here put their
16 hand on the Bible and take the stand and tell you jurors,
17 hey, this is what I heard, when I felt, what I smelt, what
18 I touched. And then you have to decide if that's true by
19 watching their body language, are they telling the truth.
20 Did they have an opportunity to observe it. All those
21 things you'll decide.

22 Direct evidence you going to hear from two
23 witnesses. It saw the motor vehicle coming toward them in
24 their lane. You'll be able to evaluate them, hear what
25 they say, and decide if what they say is the truth.

1 In direct evidence you'll also hear which is
2 proof of a chain of facts and circumstances which
3 indicates the existence of another fact, documentary
4 evidence. You may or may not see some videos in this
5 case. There will be numerous pictures. There are going
6 to be some bad pictures, not very bad, but you're going to
7 see bodies of pictures Robert Skidmore's burned body. We
8 have to show you those and show you where he was in this
9 motor vehicle, but you're going to see those. They been
10 stipulated to. You're going to see them in just a little
11 bit.

12 Ladies and gentlemen, what happened it's
13 February 12th of last year, a little over a year ago, we
14 believe that the evidence will show that Gene David Evans
15 was driving a recreational vehicle. I'll give you the
16 make and model. I just can't remember right now. I think
17 it's a 2000 -- I'm not sure, but we'll get that through
18 one of the witnesses. He was driving this vehicle and his
19 passenger was Robert Bob Skidmore. They were on Saint
20 Paul Church Road coming in the opposite direction some
21 lady Shonda Brown and Andre Moye M-O-Y-E. We believe
22 their testimony will be if they're coming on Saint Paul
23 Church Road, they look and see this van, this mobile RV we
24 believe the evidence will show coming at them in their
25 lane, coming at them. They then kind of go off the side

1 of the road. The RV then goes the other way. The RV rams
2 into a tree. Ms. Brown and Mr. Moye stopped. Mr. Moye
3 jumps out and heads to the RV. He jumps out, heads to the
4 RV. And we believe his testimony will be he goes to the
5 driver side and he pulls Gene David Evans out. He pulls
6 him out of the van, pulls him to safety. He then goes
7 back and tries to get Bob Skidmore, who his testimony we
8 believe we'll say was in the passenger side. He tries to
9 pull him out. The RV started to catch on fire. It's
10 getting hot. Mr. Moye going to tell you -- watch him as
11 he explains how he tried to get the second person out. He
12 couldn't get him out. I don't know we'll hear from the
13 pathologist whether Mr. Skidmore may have died as a result
14 of the wreck or afterwards, but he burned up in the RV.
15 Mr. Moye wasn't able to save him. But listen to him as he
16 describes what he did.

17 Several other witnesses are there and law
18 enforcement comes. Trooper Boland comes with the Highway
19 Patrol. He's the head trooper in charge. The defendant
20 is taken by ambulance and then airlifted Richland Memorial
21 hospital over there off 277. Y'all know where that is
22 coming into Columbia that way. After securing the scene
23 and making sure things were in order, Trooper Boland heads
24 to Richland Memorial hospital. You gone hear from him
25 today Trooper Boland. He's gone testify he came in

1 contact with the defendant, identified himself, made sure
2 it was the defendant he was talking to. And he ask the
3 defendant if he be willing to give a voluntary blood draw.
4 Would you be willing to give me your blood. And he said
5 the defendant motion to him that he would. You gone hear
6 Trooper Boland testify to that.

7 A nurse then draws the defendant's blood in
8 Trooper Boland's presence. Trooper Boland then takes that
9 blood to their evidence locker it transported it to an
10 evidence locker with the MAIT team. You may or may not
11 have not heard the MAIT. MAIT got called in
12 Multidisciplinary Accident Investigation Team handled in
13 this case Lance Corporal Trotter. Lance Corporal raise
14 your hand. That blood is then taken from there to SLED
15 where Toxicologist Kevin Selinsky will be in here probably
16 tomorrow afternoon whenever the judge tells me to get him
17 here. And Kevin Selinsky's gone tell you the results of
18 the blood draw from Gene Evans. And also from Robert
19 Skidmore. We're going to present what was in his blood
20 also.

21 The case is under investigation at this point.
22 Nobody was arrested. Voluntary blood draw according to
23 the trooper, blood's taken back. It's February 12th 2017,
24 becomes April 9th of 2017, shortly after SLED contacted
25 trooper -- contacted Trooper Boland with the results of

1 the blood test from Gene David Evans. Trooper Boland went
2 to the residence -- where he thought Mr. Evans maybe and
3 arrested him for felony driving under the influence with
4 death. I'm trying to summarize this the best I can.
5 That's basically it.

6 There was a wreck, driving in the wrong lane.
7 We going to present witnesses that shows you the driving,
8 go to get blood from him who we believe and were told was
9 the driver. That blood comes back. A warrant is then
10 taken out for the arrest of the Defendant Gene Evans.

11 Fast forward, today February 20th and y'all are
12 here. And here's the rest of the story. And we're going
13 to present it to you taken back to that day today,
14 tomorrow, maybe Thursday morning. Maybe we finish
15 tomorrow. Again, whatever he says, he's in charge. But
16 it's not gone be long, but you'll decide the rest of this
17 one. You'll decide what the truth is. What happened on
18 February 12th based on what you hear from the stand and
19 the evidence you are allowed today to consider and that's
20 all we can ask. Don't take away because this maybe
21 through tomorrow or Thursday, that doesn't mean it's not
22 important. That doesn't mean it's not important. It's
23 important to the defendant. It's important to the family
24 of Bob Skidmore. It's important. It's important to
25 everybody. Ladies and gentlemen, I want to thank you for

1 being here. Mr. Griffith is now going to do his opening
2 statement and then we'll start right into the trial. All
3 I can ask you is to pay attention, use your common sense.
4 And when we come back for our closing arguments, I will
5 respectfully be asking you for a verdict of guilty for
6 felony DUI with death resulting. Thank you.

7 THE COURT: Mr. Griffith, does the defendant
8 care to make an opening statement? You want to make an
9 opening statement?

10 MR. GRIFFITH: I do want to make an opening
11 statement.

12 THE COURT: All right. You may do so.

13 MR. GRIFFITH: Ladies and gentleman, thank you
14 very much for being here I agree it's a wonderful and
15 important job you do. We couldn't do it without you,
16 couldn't do it without you because only you can determine
17 what the truth is in this case. And only you can make the
18 decision as to whether there is guilty or not guilty.

19 Mr. Gene Evans the State has brought up several
20 things that happened. Mr. Robert Skidmore did perish in
21 an accident and it was an horrible accident. It was an
22 RV. It was one of those types that has -- I don't know if
23 you seen them, but it kind of squat down and then up above
24 the driver cab is a bed and so up there there's two chairs
25 in the front. It's an old RV, but it's old enough so that

1 the steering wheel is not like this. You don't sit like
2 this. You turn it like this, like a bus. So it's not
3 easy. And it was not in great condition. And we'll give
4 testimony showing that the two people that were occupying
5 the vehicle were moving a bunch of stuff for the person,
6 the lady that owned the vehicle. And that the passenger
7 seat was full of stuff and nobody was sitting in the
8 passenger seat. The only room was in the driver seat and
9 Mr. Evans, was standing behind the driver and remember
10 it's got that thing looking down like this leaning over
11 the seat. And, yes, people saw the truck, the RV was on
12 the wrong side of the road and come back over. It was a
13 messed up truck and so difficult to drive. And in fact
14 Mr. Evans started out driving and couldn't handle it and
15 got out and then Mr. Skidmore began driving. We'll have
16 evidence of that because Mr. Evans said it just isn't
17 safe, but he was standing behind and we'll show evidence
18 that it did go out of control. It went on the wrong side
19 of the road, came back, hit a tree. When you see pictures
20 of where it hit that tree, you'll see that the whole
21 right-hand side passenger side was crushed in totally. It
22 was mashed in. Anybody that been in that passenger seat
23 would not have been able to get out. They couldn't open
24 that passenger door. They had to open the driver side
25 door to pull people out. It was -- the seat was full of

1 stuff and the driver tried to correct this. It hit the
2 tree on this side, was thrown over and Mr. Evans was
3 thrown over the seat too. They both ended up in the front
4 of the vehicle in the cab, but Mr. Evans was taken out
5 first.

6 And there was a fire. Nobody could move
7 Mr. Skidmore and he perished in the fire. But, of course,
8 we'll show that from reading the report and the
9 pathologist will say that there was no soot in his lungs,
10 so he probably died on impact. But the State, of course,
11 wants to say that, well, somebody's got to be responsible.
12 And we got somebody and so you may be able to prove that
13 he was driving under the influence and the accident
14 occurred causing death. But if he was not driving, then
15 it was an accident. And so, yeah, he was pretty emotional
16 about it because the guy that he was with was his friend.
17 They were friends and they were trying to help somebody
18 move. The van didn't -- the RV didn't belong to them and
19 they had never driven it before, so neither one of them
20 were use to how it drove. But he did give statements
21 later and all the statements were consistent. He always
22 said the same thing. He didn't change his story. He
23 wasn't driving. The other guying was driving, he fell
24 over the seat. So at the end of the testimony you can
25 decide who you think is telling the truth and whether or

1 not there's a possibility that he was not driving. And if
2 you find that there's a possibility that he was not
3 driving, then that's reasonable doubt. And if there's
4 reasonable doubt that he was driving, then you cannot find
5 him guilty. We would ask you listen to all the evidence.
6 Listen to everything and make a decision that he is not
7 guilty.

8 THE COURT: All right, Mr. Meadors, you may call
9 your first witness.

10 MR. MEADORS: May it please the Court, the State
11 would call Dr. Janice Ross.

12 THE COURT: All right, counsel come up just a
13 moment while Dr. Ross is coming up, if you'll come up here
14 just a moment.

15 Come around Dr. Ross.

16 BAILIFF: State your name please?

17 THE WITNESS: Janice Edward Ross.

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

21 THE WITNESS: I do.

22 BAILIFF: Thank you. Step around please. State
23 your name and spell your last name for the record please.

24 THE WITNESS: Janice Edwards Ross R-O-S-S.

25 WHEREUPON,

1 Dr. Janice Ross,
2 after first having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MEADORS:

5 Q Good afternoon, Dr. Ross.

6 A Good afternoon.

7 Q And would you please tell -- and thank you for being
8 here too. Would you please tell the ladies and gentlemen
9 of this jury about your background, your education and
10 your training and in particular your training in the field
11 of expertise that I ask you to testify about today please?

12 A Yes, I am a physician. I have had four years of
13 college at the University of South Carolina and four years
14 of medical school. I graduated from Upstate Medical
15 Center in Syracuse, New York with my MD. I did further
16 training in the field of pathology, that field is oppose
17 to surgery or pediatrics where we learn how to do an
18 autopsy. We learn how to identify diseases by looking at
19 tissue under the microscope and using the laboratory in
20 the hospital and learning how to do an autopsy to find a
21 cause of death. I've done further training at the medical
22 examiner's offices in New York to become a forensic
23 pathologist. The word forensic means legal, so we use our
24 knowledge to identify for purposes of court, patterns of
25 injury and do a forensic autopsy to collect fluids for the

1 purpose of toxicology and to document evidence.

2 Q You're board certified in forensic pathology?

3 A Yes.

4 Q Where is your office?

5 A Newberry, South Carolina.

6 Q How many autopsies have you performed?

7 A 12,000.

8 Q And have you been offered as an expert in the field
9 of forensic pathology in courts of record of this state
10 prior to today?

11 A Yes, I have.

12 Q About approximately how many times?

13 A About 200.

14 MR. MEADORS: Your Honor, at this time we would
15 offer Dr. Janice Ross as an expert in the field of
16 forensic pathology.

17 THE COURT: Any objection, Mr. Griffith?

18 MR. GRIFFITH: Without objection.

19 THE COURT: All right. The State will qualify
20 Dr. Ross as an expert in the field forensic pathology.
21 Ladies and gentlemen of the jury, let me tell you what
22 that means. If a witness is not testifying as an expert,
23 the witness' testimony is normally limited to those
24 opinions or inferences which are rationally based upon the
25 perception of the witness or helpful to a clear

1 understanding of the witness' testimony and do not require
2 special knowledge, skill, experience or training.
3 However, if scientific, technical or other specialized
4 knowledge will assist the trier of fact and that's you in
5 this case to understand the evidence or to determine a
6 fact at issue, a witness qualified as an expert by
7 knowledge, skill, experience, training or education may
8 testify in the form of an opinion or otherwise. So
9 basically the difference between an expert witness and
10 non-expert witness is that an expert witness is allowed to
11 give an opinion. And I have qualified Dr. Ross as an
12 expert in the field of forensic pathology. All right, Mr.
13 Meadors.

14 BY MR. MEADORS:

15 Q In an ideal world, when would you like to see the
16 body of a individual that's been killed?

17 A At the scene of death, scene of the incident, yes?

18 Q And that's unfortunately. It's not reality, is it?

19 A Correct.

20 Q So when at the request of our corner Sumter County
21 coroner, did you have an occasion to conduct an autopsy on
22 Robert E. Skidmore?

23 A February 13th 2017.

24 Q And where did this take place, Doctor?

25 A In the morgue at Newberry County Memorial hospital.

1 Q And you have an office separate from the morgue, do
2 you not?

3 A Correct.

4 Q In Newberry?

5 A Yes.

6 Q Okay. But all your autopsies are in the morgue in
7 the hospital?

8 A Correct.

9 Q Doctor, will you please tell these ladies and
10 gentlemen what's the first thing you do when a body comes
11 in to be examined for an autopsy, what do you do first?

12 A Well, the patient is brought to us in a body bag. We
13 open the body bag, take photographs externally of the
14 body, do an inventory of the clothing if there is any and
15 take photographs of the body nude externally front and
16 back. In the case where there -- in this case, there was
17 a lot of charring, so we did x-rays just to make sure that
18 there was nothing like a bullet or a knife tip inside of
19 him which there was not.

20 Q And is that -- and I'm referring to you, you produce
21 a report too, don't you?

22 A Yes.

23 Q On page two is what you're referring to the external
24 examination?

25 A Yes.

1 Q And can you -- if you review the report, can you
2 describe the external examination of Mr. Skidmore?

3 A Yes, he had a little bit of charred clothing on him,
4 but he was involved with the -- the whole body was
5 involved with second and third degree thermal injury and
6 was soot covered.

7 Q What does that mean second and third degree to me, to
8 us?

9 A Second degree goes through the skin. Third degree
10 goes -- injuries underneath the skin subcutaneous tissue.

11 Q And you had in here he has fourth degree thermal
12 injury over the entire body with some second and third
13 degree of the upper chest?

14 A Yes, fourth degree goes through the whole thickness
15 of the skin and the underlying tissue and exposes
16 sometimes underlying organs.

17 Q Can you describe the elbows?

18 A Yeah, there was -- sometimes with heat you get
19 thermal injuries also -- especially in the joints they
20 fractured basically because you are -- the muscles that
21 extend your arms and legs are weaker than the muscles that
22 flex. They bring your arms and legs together, so the heat
23 causes what we call pugilistic attitude, the flexing of
24 the joints that will continue to actually fracture or
25 break open the joints. So that's different from the

1 fracturing that occurred from blunt force injury.

2 Q And the next part of your report the dissection. Do
3 you actually open up the body of the individual you're
4 doing an autopsy on?

5 A Yes.

6 Q And did you do that in this case?

7 A Yes.

8 Q Can you describe what you observed?

9 A Yes. We saw that in the individual organs there was
10 no -- the organs of the chest and abdomen there's no
11 specific injury. There was no -- could not see what was
12 left of the skin subcutaneous tissue. We could not see
13 any bruising. We didn't see any fractures of the chest or
14 abdomen. We did see fracture of the skull and we had a
15 fracture of the middle of the neck. It's called cervical
16 vertebra number four. You have -- your neck has seven
17 vertebra and cervical vertebra number four was fractured.

18 MR. MEADORS: Your Honor, if I could, Your Honor
19 may approach briefly?

20 THE COURT: Yes, sir.

21 BY MR. MEADORS:

22 Q If I could go back just prior to getting to the
23 vertebra and all. And I just can't pronounce this word
24 under dissection the remaining what is that?

25 A Panniculus means the fact underneath the skin of the

1 chest and abdomen.

2 Q That showed no?

3 A No bruising.

4 Q No bruising. So the chest and abdomen based on your
5 view of Mr. Skidmore had no contusion or bruising?

6 A That's correct. There was some surgical intervention
7 there. It look like he had had a repair of umbilical
8 hernia. There was some mesh present, surgical mesh.

9 MR. MEADORS: Your Honor, excuse me ---

10 BY MR. MEADORS:

11 Q I know we don't have your pictures and I don't know
12 if this is fair to show you something I hadn't showed you
13 and I know it's not, but State's 3 is in evidence. Does
14 that depict a burned body?

15 A Yes.

16 Q And was that generally the shape the defendant was
17 in?

18 A Yes, some areas still had a little bit of soot
19 covered skin very little though.

20 Q But you're still able to identify parts of the body
21 and what's what, correct?

22 A Yes, you can see the bones and the internal organs.

23 Q And in getting back to your specific findings about
24 the head and the vertebra what did you say?

25 A He had a fractured skull and he had some bleeding

1 around the brain, so he had a pretty good hit to the head.
2 And he had the broken neck.

3 Q Can you tell where on the head the hit was?

4 A Most on the left side and the back towards the left.

5 Q And is that the blunt force injury of the head you
6 described?

7 A Yes.

8 Q Okay. And you say subdural hemorrhage on the left
9 side, correct?

10 A Yes.

11 Q And tell me again what that is?

12 A That's blood kind of between the skull and the brain
13 it's from being hit on the head. It's part of blunt force
14 injury.

15 Q What other injuries did you observe to his head or
16 his vertebra or anything else?

17 A Mostly just those injuries and subarachnoid
18 hemorrhage which is between the membrane and it's like
19 Saran wrap in the brain and that's subarachnoid. So there
20 was bleeding right on top of the brain and there was
21 bleeding between the brain and the skull.

22 Q Is that 1B you're referring to?

23 A Correct.

24 Q And that's -- for the record say that please?

25 A Subarachnoid.

1 Q Hemorrhage of the left...

2 A Left parietal and occipital lobes. The parietal
3 lobes are the middle lobes of the brain and the occipital
4 lobes are in the back of the brain.

5 Q And C under the blunt force injury to the head was
6 what?

7 A Those are the occipito-parietal skull fracture. The
8 same skull fracture of the parietal bone and the occipital
9 bone.

10 Q And the fractured C-4 and everybody may know this,
11 but what is that?

12 A That's cervical vertebrae number four and when that
13 pinches the cord at that level it will injure -- it will
14 inhibit the diaphragm from moving and the chest from
15 moving, so that injury by itself would eventually cause
16 respiratory or breathing death within seconds or within a
17 minute or so.

18 Q Pulmonary congestion and edema?

19 A That's just fluid in the lungs.

20 Q Now, can you tell as a forensic pathologist, and you
21 been around a long time and I mean that in the nicest way,
22 whether or not this individual would have died as a result
23 through examining his body of the accident instantly or
24 did the fire also contribute, are you able to tell that?

25 A Well, the fire definitely injured his external body,

1 but there was no evidence that he inhale smoke or that he
2 inhaled heat, in an injury to the head like that would
3 cause to go unconscious immediately, so that he would not
4 feel thermal injury. There was no soot in the airway.
5 The toxicology shows no carbon dioxide, which is what you
6 get when you breath in smoke. So I can say that he died
7 of his blunt force injury to the head and did not know
8 about the fire.

9 Q And that is in your report the post-mortem thermal
10 injury, correct?

11 A Correct.

12 Q And I think you've already talked about the hernia
13 repair.

14 MR. MEADORS: Beg the Court's indulgence.

15 (WHEREUPON, a pause in the proceedings.)

16 BY MR. MEADORS:

17 Q Doctor, do you have an opinion to a reasonable degree
18 of medical certainty as the cause of death of Robert
19 Skidmore based on your examination of his body on February
20 of last year?

21 A Yes, I do.

22 Q Please tell the Court and these ladies and gentlemen
23 of the jury what it is?

24 A Blunt force injury of the head due to the motor
25 vehicle collision.

1 MR. MEADORS: That's all we have. Thank you.

2 THE COURT: All right, Mr. Griffith.

3 MR. GRIFFITH: Thank you. Please the Court,
4 Your Honor.

5 CROSS-EXAMINATION

6 BY MR. GRIFFITH:

7 Q Dr. Ross, thank you for coming. So as you just
8 testified, he died as a result of this accident?

9 A Correct.

10 Q Your statement was that he had trauma to the -- kind
11 of the left and back of his head?

12 A Yes.

13 Q Okay. That means something hit him in the back or
14 left of the head, doesn't it or he ran against something
15 with the back or left of his head. And he rammed into the
16 side of something, but he had to have hit there. You
17 can't get that by hitting here and then having that back
18 there, can you?

19 A No, he could have been turning his head.

20 Q Exactly. So he was either thrown and hit his head in
21 the back or he turned his head and his head hit so it
22 wasn't -- it didn't come from above in other words; is
23 that correct?

24 A Well, if he had his head -- you can tilt your head a
25 lot of different ways, so it depends -- the top of the

1 vehicle could have come down on him.

2 Q If the top of the vehicle came down on him, I might
3 expect he had trauma in the front of his head or the top
4 of his head?

5 A Again, it depends on how he had his head.

6 Q Well, I can only bend mine so far, but that's okay.

7 MR. GRIFFITH: I have no further questions.

8 MR. MEADORS: Just one final question.

9 REDIRECT EXAMINATION

10 BY MR. MEADORS:

11 Q So if his head was turned this way, he get the
12 effects of the injury you talked about, correct?

13 A Correct.

14 MR. MEADORS: Thank you.

15 THE COURT: Recross.

16 MR. GRIFFITH: Nothing further.

17 THE COURT: All right. Thank you, Doctor.

18 Thank you for coming. You are excused. You like to have
19 the witness excused?

20 MR. MEADORS: Please if you would.

21 THE COURT: Any objection, Mr. Griffith?

22 MR. GRIFFITH: No, Your Honor.

23 THE COURT: You are excused, Doctor. Thank you
24 for coming.

25 (WHEREUPON, the witness leaves the witness

1 stand.)

2 MR. MEADORS: Your Honor, since this will be our
3 final witness could we have about a seven minute break
4 just so I can kind of streamline this.

5 THE COURT: Yeah, that will be fine. Let's hold
6 it down to seven minutes so we can finish at a reasonable
7 time. We've had this jury waiting in the jury room for a
8 long time, so we'll take a very brief recess. Be ready to
9 go back at four o'clock.

10 MR. MEADORS: Thank you, Your Honor.

11 THE COURT: First of all, let's let the jury go
12 to the jury room. Be ready to start back at four o'clock.
13 Thank you. Please go and do not discuss the case among
14 yourselves. It's still premature for you to begin any
15 discussion of the case, just relax a few minutes and we'll
16 send for you very shortly.

17 (WHEREUPON, the jury retire to the jury room.)

18 THE COURT: We'll be in recess for seven
19 minutes. Let's be ready to start back at four o'clock.

20 (WHEREUPON, a break was taken.)

21 MR. MEADORS: One little matter, I think I
22 mention that the -- Mr. Griffith had mentioned that his
23 client made some statement. I had not made the decision
24 whether or not I was going to put that in. Of course, he
25 offered that to the jury. We're debating as we always do

1 in these cases whether to put self-serving statements in
2 right up to the end. I've just been told by Mr. Griffith.
3 I'm incline now not to put it in and I don't believe he
4 can ask the trooper if he gave a statement because it's
5 self-serving. He have to put his client on the stand. He
6 disagrees with me on that and I certainly think that's
7 that the law self-serving hearsay. If we don't offer it,
8 he can't go into either. He'd have to sign an affidavit
9 saying it.

10 THE COURT: All right. Mr. Griffith, what's
11 your position?

12 MR. GRIFFITH: Your Honor, if the trooper is on
13 the stand and I ask him did you get a statement from
14 Mr. Evans. He has the opportunity to say yes or no
15 whether he did or not.

16 THE COURT: And what would that answer be?

17 MR. GRIFFITH: That answer would be, yes, he did
18 get a statement from him.

19 THE COURT: All right. And then what? What's
20 your next question?

21 MR. GRIFFITH: My next question is did Mr.
22 Evans admit that he was driving.

23 MR. MEADORS: That be objection to hearsay.

24 THE COURT: Now, that's the objection he objects
25 to because what you trying to do is to get in the

1 self-serving statement of the defendant without him
2 testifying.

3 MR. GRIFFITH: That's correct, but my next
4 question then would be ---

5 THE COURT: That's not admissible the one you
6 just asked is not admissible, okay. Next question.

7 MR. GRIFFITH: Next question would be did you
8 video tape this conversation.

9 THE COURT: All right, and the answer to that
10 ---

11 MR. GRIFFITH: The answer is going to be yes.

12 THE COURT: All right and then what?

13 MR. GRIFFITH: And I would ask if we could admit
14 that conversation.

15 THE COURT: Why is not that the same objection?
16 Why is that not self-serving hearsay?

17 MR. GRIFFITH: I'm not arguing whether it is or
18 not, I'm just arguing that I like to get that in.

19 THE COURT: Not admissible. All right.

20 MR. MEADORS: Your Honor, with that being the
21 question, is he allowed to ask that question?

22 THE COURT: No, I'm not even going to allow him
23 to ask that question because the -- you're saving it up.
24 You can't ask a question that you know is leading to --
25 that involves evidence that is already been ruled to be

1 inadmissible just for the sake of allowing the jury to
2 hear the question, so I would not allow the question as
3 well.

4 MR. GRIFFITH: Evidence hasn't been rule
5 inadmissible.

6 THE COURT: Sir?

7 MR. GRIFFITH: The evidence has not been ruled
8 inadmissible.

9 THE COURT: Yes, it is, it's self-serving.

10 MR. GRIFFITH: Well, the tape itself could be
11 admitted by the State, could it not?

12 THE COURT: Cause he's going to have the witness
13 on the stand who could put it in if he wanted to go
14 through all the things, but you can't -- if the State does
15 not wish to do that, you can't admit evidence in that is
16 self-serving hearsay evidence to the defendant's benefit.
17 Now, if you want to -- when the defendant time comes if
18 the defendant wants to testify that he made a statement he
19 said so and so, then that's perfectly inadmissible.

20 MR. GRIFFITH: Well, wouldn't it admissible for
21 me to say to ask the trooper did you video tape and
22 interview with Mr. Evans?

23 THE COURT: What's the purpose of asking that
24 question if you cannot get the video tape into evidence?
25 The purpose is to try to show that the State's trying to

1 hide something.

2 MR. GRIFFITH: The purpose is to show is that
3 there was multiple statements made multiple occasions and
4 then when I bring Mr. Evans up on the stand if I were to,
5 I could ask him how many times did you give the statement.

6 THE COURT: Well, I'm not going to allow the
7 statements of the -- I'm not going to allow the questions
8 to be asked of this officer. If the defendant takes the
9 stand and decides to testify, he can state that. I'll
10 make the officers state on call so that you can come back
11 and call them in your case.

12 MR. GRIFFITH: Of course, I'll render an
13 objection at this time just on the record.

14 THE COURT: Okay. I'm not going to allow you to
15 go into that matter on the State's case. If the defendant
16 later takes the stand, and then it might be admissible
17 testimony from the officers, might be admissible
18 especially to either both to Mr. Evans' testimony or to
19 contradict Mr. Evans testimony whichever the case may be,
20 but until such time as the matter or the statements comes
21 in on direct examination or evidence from the State, then
22 I'm not going to allow a self-serving statements. And so
23 I understand your objection, but the objections are
24 sustained as to the questions and the answers.

25 MR. GRIFFITH: Thank you, Your Honor.

1 THE COURT: Ready to go, Mr. Meadors?

2 MR. MEADORS: Yes, sir. I can't tell you how
3 much that's going to shorten up this afternoon because
4 that tape was about 40 something minutes. It's going to
5 streamline this.

6 THE COURT: All right. Bring the jury in.

7 (WHEREUPON, the jury came into open court.)

8 THE COURT: All right. Thank you, ladies and
9 gentlemen and thank you for your patience and we now are
10 ready to resume.

11 Mr. Meadors, you call your first witness -- next
12 witness.

13 MR. MEADORS: Your Honor, state calls Trooper
14 Kevin Boland.

15 THE COURT: Trooper Boland, come around please.

16 BAILIFF: State your name?

17 THE WITNESS: Kevin H. Boland.

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

21 THE WITNESS: I do.

22 BAILIFF: Thank you much, sir. Step around
23 please.

24 THE COURT: All right, Mr. Meadors.

25 MR. MEADORS: Thank you, Your Honor.

1 BAILIFF: State your name for the record and
2 state your last name please.

3 THE WITNESS: Kevin H. Boland B-O-L-A-N-D.

4 WHEREUPON,

5 Kevin Boland,

6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MEADORS:

9 Q Good afternoon, Trooper Boland.

10 A Good afternoon, sir.

11 Q Trooper, please tell the ladies and gentlemen of this
12 jury about yourself where you from, your background, your
13 training and your training fire, EMS, law just your...

14 A Yes. I lived here in Sumter the majority of my life,
15 lived here when I was about 11. Since being in Sumter, I
16 was a full-time fireman for the City of Sumter for 14
17 years until I came to Highway Patrol. Along side of that,
18 I also held a certification as an intermediate EMT and
19 worked for the Sumter 9-1-1 service here in Sumter for
20 about eight years before giving it up for another side job
21 because we all have side jobs.

22 Q So how long have you been working with Highway
23 Patrol?

24 A With the Highway Patrol just over three years.

25 Q And what are your duties with the Highway Patrol?

1 A With the Highway Patrol, we do obvious speed
2 violation enforcements. On top of that, we also do
3 accident investigation which we're tasked with,
4 investigating a collision looking over the scene, looking
5 over all the details and then coming to the conclusion of
6 how the accident happen and the cause of the accident. I
7 went through 21 weeks of the academy at which time I
8 received all the training for that. Along top of Highway
9 Patrol also sends you to an accident investigation course
10 which is something your normal deputies, police officers
11 don't get directly out of the academy. However, we being
12 that's our primary job, we do obtain at scene collision
13 investigation while we're at the academy.

14 Q Trooper, on February 12th of 2017, what was your
15 position at the Highway Patrol?

16 A I was still a road trooper, which I am to this day.
17 I was out on patrol. I'm assigned to Sumter and Clarendon
18 Counties.

19 Q How many troopers do y'all have working in Sumter?

20 A Assign to the post or during the day?

21 Q During the day?

22 A During the day, we normally have at least two every
23 now and then we're actually down to one, but a normal
24 shift when we're fully staffed which we're not is
25 typically about five people. However, we are short hand.

1 Q Now, are there occasions when you will call in for
2 assistance and in this case did -- was the MAIT team
3 requested to become involved in this investigation?

4 A Yes, sir, it was.

5 Q And then what is the MAIT team?

6 A The MAIT team they've actually obtained a higher
7 level of the accident investigation than what I have.
8 They been through all three phases of at scene crash and
9 vehicle reconstruction. They're able to actually break
10 down numbers along with speed calculations, skid marks
11 left, angles of the impact things along that line.

12 Q Trooper, how did you become aware of this collision
13 on Saint Paul Church Road?

14 A I was advised through our dispatch -- through our
15 SCHP dispatch of the collision.

16 Q And I want to start ---

17 MR. MEADORS: Your Honor, this is State's 31,
18 which is an overview of the area we're talking about
19 without objection.

20 THE COURT: You've had a chance to review any
21 objection, Mr. Griffith?

22 MR. GRIFFITH: I have examined it no objection.

23 THE COURT: All right. Admitted without
24 objection. You may proceed.

25

1 (WHEREUPON, State's Exhibit No. 31 was admitted
2 into evidence.)

3 BY MR. MEADORS:

4 Q Trooper, just so we get an overview of where we are,
5 Judge, permission can you come down briefly and just show
6 us where we're talking about?

7 A Yes, sir.

8 THE COURT: Yes, sir, you may step down.
9 Remember to keep your voice up though because you'll be
10 away from the microphone.

11 THE WITNESS: Yes, sir.

12 BY MR. MEADORS:

13 Q If you'll get on this side so the court reporter can
14 see you. This is State's 10. Can you show the jury where
15 this collision happened approximately?

16 A Yes, sir. If you look, this is going to be Paul Road
17 that comes down here, Saint Paul Church Road runs from
18 Bells Mill. In this picture, it runs from Bells Mill to
19 where it actually widens into the intersection of Pine Wood
20 Road on fairly common big intersection where the collision
21 actually happened at. You'll see me I actually come down
22 Pine Road and turn around you'll see me come down on Saint
23 Paul Church Road. The collision there's a private drive
24 right here, which was used during the scene, but the
25 collision happened approximately right here in this

1 straight away well away from any curves. As you can see,
2 it happened approximately right about where my pen tip is
3 on Saint Paul Church Road here in Sumter County.

4 Q So this was in Sumter County?

5 A Yes, sir.

6 Q In what direction was the defendant's vehicle
7 traveling on based on your observation of the collision
8 scene?

9 A By looking at this so everybody can get an
10 orientation of it, north will be hidden towards Bell Mills
11 Road. South will be hidden from Bells Mill Road towards
12 Pine Wood Road. The defendant's vehicle was traveling
13 south towards Pine Wood Road in the northbound lane.

14 Q You can have a seat back please, sir. Once you
15 arrived on the scene, can you tell the jury what you
16 observed?

17 A Yes, sir. Once I arrived on scene, it was a very
18 large chaotic scene. It was actually several fire
19 departments fire trucks on scene. Sumter County EMS was
20 already on scene. The roadway was totally blocked through
21 the emergency vehicles. The collision actually sparked a
22 fire on both sides of the roadway in which the fire
23 department due to how large it was had to shut Saint Paul
24 Church Road down in order to be able to get their trucks
25 in and out, contain the fire. Forestry was also arriving

1 on scene or had arrived shortly after my arrival. I spoke
2 with the incident commander who advised me of the
3 collision, the magnitude of the fire and he also did
4 advise me that they were clearing room to actually land
5 the helicopter to fly out one of the occupants of the
6 vehicle.

7 Q And at this point did you as apart of the
8 investigation, did you learn how many vehicles had been
9 involved in this collision?

10 A I was advise it was a single car collision, only one
11 car involved.

12 Q And did you go and make that observation yourself?
13 Did you go and determine it was just one car?

14 A Yes, sir, I did. I went and looked over the scene.
15 I spoke with a couple witnesses that were on scene that
16 witnessed it. It was through the witnesses statements, my
17 physical findings that there was only one vehicle
18 involved. Photographs were also taken of the scene.

19 Q Okay. And your job there as a trooper there because,
20 I guess, this is y'all's case. I say y'all's Highway
21 Patrol?

22 A Yes, sir.

23 Q What is your job when you come up on a collision and
24 a death like this? I mean, what are you suppose to do?

25 A We're suppose to investigate it to the fullest

1 potential. And that goes everything to interviewing
2 witnesses, physically looking over the scene. If able to,
3 you need to get measurements, road width, how far the
4 vehicle's off the road. We have to also photograph the
5 scene through documentation that way at later dates were
6 actually able to review the photographs and determine or
7 help determine the cause of the collision in any aspects
8 of the case.

9 Q And without saying what they said obviously, were you
10 able to -- were you there appointed to or did you identify
11 some potential witnesses in this case?

12 A Yes, sir, there were several potential witnesses, two
13 that witness they actually witness the collision and
14 actually help remove one of the victims from the fire.
15 Another one that was able to tell me who they last saw
16 driving the vehicle and also just another one that
17 actually pass by that actually called 9-1-1.

18 Q But at this point did you get their names?

19 A At the first initial point, no. I did speak with
20 them as the investigation went on. And they were
21 interviewed in my car with their names and their
22 statements were taken on video camera after they were
23 advised. They were being video both subjects that witness
24 the collision.

25 Q Okay. So you talk to potential witnesses at the

1 scene got their names?

2 A Yes, sir.

3 Q You made that apart of the report?

4 A Yes, sir, I did.

5 Q Now, you mentioned photographs and we've got what's
6 been entered here two through 30 and they're already in
7 evidence. Are you familiar with these photographs?

8 A Yes, sir, these are the photographs that were taken
9 on the scene by me.

10 Q You actually took these?

11 A Yes, sir, I did.

12 MR. MEADORS: It might be -- if we get the Elmo
13 running to run through some of these, Judge?

14 THE COURT: Yes, sir.

15 (WHEREUPON, a pause in the proceedings.)

16 MR. MEADORS: Trooper, will you come down with
17 the Court's permission I'm sorry?

18 BY MR. MEADORS:

19 Q This is State's 30 can you describe what that is to
20 the jury?

21 A Yes, sir, that is the actual scene of the motor
22 vehicle that I observed on the day in question on Saint
23 Paul Church Road that was involved in the single vehicle
24 collision.

25 Q And how do you describe this condition of this

1 vehicle?

2 A As you can tell obviously by the impact, the impact
3 was fairly center of the vehicle and it's obviously what
4 was left of the vehicle or what was the vehicle has
5 actually burned pretty much into ash.

6 Q State's 29 what does that depict?

7 A Twenty-nine what this is we always back up in the
8 direction the vehicle is traveling and we'll photograph as
9 we walk up to the scene. That is Saint Paul Church Road.
10 And as you can see, the vehicle is off the right side of
11 the road. No skid marks or anything, that's slip up to
12 the vehicle.

13 Q That was going to be my next question. You saw no
14 skid marks or no break marks?

15 A No, sir, there was absolutely no skid marks, no break
16 marks that indicated they tried to stop prior to striking
17 the tree.

18 Q And is State's 26 is a close up more of the car?

19 A Yes, sir. Again, we take several steps as we're
20 coming up. We'll take photographs. We walk approximately
21 three to five steps take another photograph. We end up
22 normally with a lot of photographs leading up to the scene
23 because we step up every so many feet take another picture
24 that way, you know, we're not missing anything.

25 Q And State's Exhibit 24 does that kind of depict what

1 you're talking about as you're getting closer?

2 A Yes, sir, what that is that's actually standing at
3 the vehicle facing back in the direction that I was
4 previously traveling just to show an overall view.

5 Q State's Exhibit 23 what does that depict?

6 A That is the actual point of impact of the tree of the
7 motor home. That's the front of the vehicle and the tree.

8 Q And State's Exhibit 22 is that a closer picture?

9 A Closer picture of the point of impact, yes, sir.

10 Q State's Exhibit 21?

11 A That's the same point of impact just a little bit
12 wider angle. We take multiple multiple pictures.

13 Q From what you said you were moving in State's Exhibit
14 20 what is that?

15 A State's Exhibit 20 this is a photograph taken towards
16 the inside of the vehicle from what would be the driver
17 side. I'm standing on Saint Paul Church Road and
18 photographing the driver side of that vehicle.

19 Q In looking back at State's Exhibit 20 point to the
20 driver side?

21 A The driver side it would be where this is what's
22 referred to as B post. A post comes down to the
23 windshield and B post is pretty much the first post behind
24 your driver's door. So that's the driver side B post of
25 the vehicle.

1 Q State's Exhibit 19?

2 A Nineteen that is still the driver side of the
3 vehicle. I moved a few steps back to capture more of the
4 vehicle as large as it is it does take multiple vehicles
5 or multiple photos excuse me.

6 Q Now, at this time you're taking these pictures had
7 the defendant already gone? From the scene excuse me?

8 A Yes, sir, he had already left from the scene.

9 Q And where was Robert Skidmore?

10 A Mr. Skidmore I observed he was actually still inside
11 the vehicle. His torso was kind of center of the vehicle
12 angled towards the driver side with lower half of his
13 torso still being down more in the passenger side of the
14 vehicle.

15 Q And I'm going to keep going through just
16 chronologically for myself State's Exhibit 18?

17 A That's the driver side from the rear driver side
18 corner.

19 THE COURT: I would remind you, ladies and
20 gentlemen, don't be concerned if you don't get to see the
21 pictures as long as you like to you'll be able to take
22 those to the jury room with you.

23 BY MR. MEADORS:

24 Q State's Exhibit 17?

25 A Seventeen is going to be moving towards the passenger

1 side rear. It's still more rear then the actual passenger
2 side due to the trees and the wood line not able to get
3 all the way on the passenger side.

4 Q Sixteen?

5 A That will be the rear of the vehicle.

6 Q Fifteen?

7 A That's going to be backed up portion of the driver
8 side as you can see the roadway and the full driver side
9 in that picture.

10 Q State's Exhibit 14?

11 A Fourteen is going to be backed up driver side.

12 Again, you see the roadway and clearly the driver side
13 towards the roadway.

14 Q Is that just another shot of the driver side State's
15 13?

16 A Yes, sir.

17 Q Okay. Now, you mention a body is State's Exhibit 12
18 can you identify that?

19 A Yes, sir, State's Exhibit 12 is taken from the driver
20 side. I'll turn so y'all can see. And you can see the
21 debris on the frame of the driver side right here. You
22 can look back at the other pictures, but this is going to
23 be taken from the inside out excuse me -- from the outside
24 looking in. You can see this upright right here going
25 over and back down, that's a clear picture of the seat

1 frame of the driver seat, what's left of the driver seat
2 coming up, over and back down. If you look just to the
3 right of that, that is going to be the body of
4 Mr. Skidmore. As you can see if you look, he's
5 unfortunately he's charred up and in some bad condition as
6 you can see, but you can clearly see the torso as it comes
7 down. You can see his head on this side still to the
8 right of the driver seat, but as you follow it back down,
9 you can see where the torso leads back to the passenger
10 side of the vehicle. So as y'all can see, Mr. Skidmore's
11 body center torso kind of towards the center of the
12 vehicle the head still not beyond what's the driver seat
13 frame. As you can see right here again, the driver seat
14 frame comes up, goes back down and you actually see the
15 back support up top right there.

16 Q If you come down this way a little bit, State's 11?

17 A State's 11 was going to be taken from the same side.
18 I backed up and zoomed out just a lit bit more, again I
19 was going to take multiple pictures. At this point you
20 can still see the driver side of what I was telling y'all
21 the driver side right here. You can still see clearly the
22 driver seat as it comes up here and comes back down. It
23 actually captures the bottom of the seat rail right here
24 where it would meet and you have a cushion for your lower
25 half. If you look again to the right, again there's

1 Mr. Skidmore's head over toward's the center of the
2 vehicle. His torso if y'all look, his torso is clearly
3 coming from over off the passenger side of the vehicle,
4 not anywhere close to being on the driver side, again,
5 because you can see the seat rail of the driver seat.

6 Q State's Number 10?

7 A State's Number 10 this is back up a little bit more
8 back up of the previous pictures. Again, you can see the
9 B post of the driver side which is on Saint Paul Church
10 Road. You can see the seat back coming up a little bit
11 more clearer, a little bit more defined here, coming over
12 and out. If you look just to the right of that, you can
13 see Mr. Skidmore's torso in this picture also clearly with
14 the lower half of his torso coming from the passenger
15 seat.

16 Q And that's State's Number 10. Based on your looking
17 at this, can you determine -- can you see Mr. Skidmore's
18 head in State's Number 9?

19 A Yes, sir, I can see Mr. Skidmore's head. What this
20 is is a picture again from the driver side. I'd moved
21 down more towards the driver's door, so I'm a little bit
22 more in the driver's door, so I'm a little bit more in the
23 driver's door where previous pictures were kind of looking
24 from the rear up. If you look again, again the seat post
25 for the driver seat comes up, comes back down and angles

1 down this way. Mr. Skidmore's head is right here, the
2 black spot. And then his torso again running back towards
3 the right side of the passenger side of the vehicle. Like
4 I said, this is the B post of the driver's door. That's
5 the A post and that's the driver's door and the driver's
6 opening with the driver seat clearly right here that comes
7 up and moves back over for the seat frame.

8 Q Based on your observations and being out there, would
9 that be consistent with him being in the passenger side
10 and falling to the left?

11 A Yes, sir, he had fallen to the left or actually being
12 pulled towards the left not being in that seat.

13 Q And State's Number 8 may be a more close up of
14 State's 9; is that correct? If you can come down this way
15 a minute and show here.

16 A Yes, sir, State's 8 is a lot closer up of the body.
17 This is taken again from the driver side just back from
18 the B post. As you can see, this is the frame what was
19 the mobile home spot. Now, you look it's even closer.
20 The seat back that I keep referring to for all y'all that
21 can see it is this piece of metal that comes up, just kind
22 of a round tube that comes up, bends around and then it
23 comes back down and meets the base right here. All right,
24 again that's the seat post. It's a lot closer picture of
25 Mr. Skidmore and his torso and it shows his head right

1 here and the torso being toward's the passenger side.

2 Q That was number eight?

3 A Yes.

4 Q Got a few more to go through.

5 A Yes, sir.

6 Q Show us State's Number 7, tell us about State's
7 Number 7? Start down this way and move down if you will?

8 A State's Number 7 is taken from the driver side on the
9 outside. You can see the driver's door. You can see the
10 B post that I referred to a few times as I've spoke. All
11 right. You can see through the driver's door the seat
12 post as it comes up, it comes around and then back down is
13 the back of the seat. Through this picture, you can also
14 see Mr. Skidmore, you can see his torso. You can see his
15 head and you can see where that is in relation to where
16 the driver's seat actually is versus where his torso where
17 his head and body appeared to be coming from. Like I
18 said, you can clearly see the seat post. The driver's
19 door is clearly intact and was shut for the picture for
20 reference purpose of the pictures.

21 Q Is State's 6 also a shot of that?

22 A Yes, sir, that's almost the same shot a little
23 further back. At that time the door was opened up for a
24 better view of the seat, the driver's compartment.

25 Q We move closer in State's 5?

1 A State's Number 5 this is gone be taken -- y'all be
2 able to see the frame work of the motor home as I've taken
3 pictures. If you look, this is still the framework right
4 here coming up the side and it zoom in a little bit closer
5 on the body. In this picture even with the framework
6 being zoomed in, you can still see the back of the seat
7 post as it comes up. This is the seat of the driver seat.
8 This is going to be the bottom of the driver seat. And
9 again this is just a closer picture of the driver's rear,
10 rear driver's compartment where you can see the driver
11 seat and you can actually see in relation to Mr. Skidmore
12 and the torso in where the torso and Mr. Skidmore was
13 located.

14 Q State's Number 4?

15 A State's Number 4 this is taken from the driver side
16 also. This is a little bit more of a closeup picture
17 directly from the driver's door looking through the
18 driver's door. You can see clearly as the seat back comes
19 up, the seat framing comes up. You can see where the
20 driver seat clearly comes down and meets the bottom half
21 of the seat. You can also see Mr. Skidmore's head,
22 Mr. Skidmore's torso in relation to where there's the
23 driver seat and the driver compartment.

24 Q We just have two final State's 3?

25 A State's 3 is going to be also taken from the driver

1 side. It's going to be backed up behind the B post just a
2 little bit, just to capture more clearly defined. This
3 the bottom corner right here is the driver seat that I
4 keep referring to. If you look more, you'll be able to
5 see coming over this way where Mr. Skidmore's torso was
6 clearly on side of reason there so many driver's side
7 photos and not passenger side photos is due to the nature
8 of the fire. And the wood line being right there unable
9 to access the passenger side. So this is the best we can
10 actually show you what the passenger side of the
11 compartment would actually look like.

12 Q When you say unable to access the passenger side, you
13 couldn't get in on that side?

14 A No, sir, you couldn't get in. You couldn't really
15 hardly walk around it due to the denseness of the trees.

16 Q Finally State's 2, Trooper?

17 A State's 2 this is going to be taken from the driver
18 side also. In the very very bottom corner right here is
19 just real small, this is the back of the driver's seat
20 that I've referred to several times. You'll be able to
21 match them up when you're able to look at these pictures a
22 little bit closer. All right. This shows the driver seat
23 coming up and how it's on that angle. And it's a closer
24 picture of Mr. Skidmore lower torso. Again, this is
25 Mr. Skidmore right here. His torso actually comes down

1 and there's apart of the torso on what is believed to be
2 the passenger seat, what looks is on the passenger side of
3 the compartment. Again, this is the driver seat, his
4 torso and this is taken, of course, the passenger side.
5 And the actual what is left of the passenger seat is comes
6 up right here and brandishes over. If y'all look at them
7 real closely, this is number two. You can see that this
8 comes up and that framework matches the same framework is
9 what the driver's backseat or the driver seat is made of
10 that will indicate that is the passenger side and
11 passenger seat.

12 Q Thank you, Trooper, that is all we have of the
13 pictures, if you'll take a seat. Trooper, if after you
14 had taken these pictures, do you turn over the scene or
15 leave the scene to somebody else and attempt to go see the
16 defendant?

17 A Yes, sir. With the degree of how long the scene is
18 gone take to actually contain due to the fire and
19 everything and with being advised that one of the
20 occupants was flown to Richland, my first sergeant,
21 Sergeant Ham he arrives on scene at which time I leave him
22 with the actual scene being I already photographed
23 everything that I needed to do. And in turn, I turned
24 around and I left the scene and I went directly to
25 Richland Memorial hospital in Columbia to speak with the

1 occupant.

2 Q How long did this fire last?

3 A The fire itself they were out there several hours.

4 I'm not sure what time they actually ended the fire. When
5 I came back from Richland into Sumter County, I know we
6 still had units that were out there and was probably well
7 after four or five o'clock.

8 Q Trooper, you leave the Saint Paul Church Road the
9 incident location and where do you?

10 A I go straight to Richland Memorial hospital in
11 Columbia.

12 Q And how had the defendant gotten there?

13 A Again, he was the one that I was advised they were
14 landing a helicopter for. He was taken out of the Sumter
15 County EMS and transferred unit and transferred to the
16 helicopter once it arrived and landed on scene.

17 Q Okay. And when you got to Richland Memorial hospital
18 in Columbia, did you have an occasion to see Gene David
19 Evans, Jr.?

20 A Yes, sir, I did. I was advised on scene by a female
21 of the name of the occupant who was being flown out,
22 therefore I knew who to ask for. Once I arrived on scene
23 or excuse once I arrived at the ER, I was able to go to
24 the ER charge nurse ask for which room Mr. Evans was in.
25 At which time she did point me to the correct room.

1 Q And when you got to that room where Mr. Evans was,
2 did you identify yourself as the South Carolina Highway
3 Patrolman?

4 A Yes, sir, I did. As soon as I walked in the room,
5 Mr. Evans' eye looked right at me, acknowledging the fact
6 that I was in the room that somebody had walked in the
7 room. And I did walk up, speak to him and advise him of
8 my name and who I was and who I worked for.

9 Q Now, you're in your uniform today, were you in your
10 uniform on February 12th of 2017 at the hospital?

11 A Yes, sir. Yes, sir, I was.

12 Q And did you have an occasion to identify or did you
13 determine that this was Gene David Evans, Jr.?

14 A Yes, sir, I did. Once I walked in the room again, I
15 did state who I was. Physically, I asked if he was
16 Mr. Gene Evans, Jr., at which time he mumbled and nodded
17 his head, yes, as far as yes that he was who I was asking
18 for.

19 Q And was that timely in response to you saying are you
20 Gene Evans. Was it a timely response?

21 A Oh, yes, sir. Yes, sir, it was an immediate answer.

22 Q So did it appear based on your question and his
23 response that he understood what you were asking him?

24 A Yes, sir.

25 Q And what else did you do?

1 A Mr. Evans who is sitting in the courtroom over there,
2 he again he would mumble with every question I'd ask and
3 would nod his head yes or no. I asked several questions.
4 Again, I asked who if -- if he was indeed Gene Evans at
5 which I got a clear answer with a head nod and a mumble.
6 The mumbles were hard to understand, but the head nods
7 were clear on. I asked him if he knew what happened. He
8 clearly stated no with a head shake left and right to
9 indicate no.

10 Q And did you ask him if he was willing to give a
11 voluntary blood draw?

12 A Yes, sir. I advised him that he was in a very
13 serious car accident and that due to the serious nature of
14 the car accident during -- as part of our investigation, I
15 would like to request a voluntary blood sample from him
16 and if he would allow the nurse to draw a sample from him.

17 Q And did he indicate to you that he would allow you to
18 draw a voluntary blood -- did he say -- did he indicate to
19 you, yeah, you can take my blood?

20 A Yes, sir, he did again with another clear head up and
21 down yes or no.

22 Q And how -- was that a timely response?

23 A Yes, sir.

24 Q Okay. And you were in your uniform?

25 A Yes, sir.

1 Q And I'm going to show you what's State's 1. Do you
2 recognize that?

3 A Yes, sir, this is the blood draw form that we have to
4 fill out whenever we request or whenever we do take blood
5 from an individual.

6 Q Okay. And did you put X by the box that -- where you
7 requesting a voluntary blood sample?

8 A Yes, sir, it reads if you would like me to read it
9 says subject has not completed a valid breath test and a
10 voluntary blood sample has been requestance (sic) -- or
11 has been request for violation of and or drugs.

12 Q Now, after -- is your signature on there?

13 A Yes, sir, my signature is on here at the bottom.

14 Q And a nurse we had here earlier is now gone was she
15 also there?

16 A Yes, sir.

17 Q And did she -- you didn't draw the blood, did you?

18 A No, sir, I did not.

19 Q And did Jennifer Marchase I believe her name is
20 M-A-R-C-H-A-S-E, Your Honor, for the record. Did she draw
21 the blood in your presence from the Defendant Gene Evans?

22 A Yes, Mr. Evans that's seated over there. It was
23 taken directly from him at which time it was drawn into
24 two separate vials. The vials were then sealed by myself
25 and initialed to ensure nothing was tampered with.

1 Q So the nurse draw the blood in your presence?

2 A That's correct.

3 Q You took the blood from her?

4 A Yes, sir.

5 Q And what did you do with it?

6 A With the blood, once it was sealed -- again, it was
7 sealed. We put caps over it that way it cannot be
8 tampered with. The labels are then signed and initialed
9 by me. I then transported the blood back to Sumter to our
10 evidence locker, our refrigerator at our post A office on
11 Pike Road.

12 Q And did it stay in your custody there or Highway
13 Patrol's custody until it was taken to the MAIT team?

14 A Yes, sir, it was signed into evidence with a chain of
15 custody form saying that I received it, you know. It was
16 taken in my presence and that I physically am the one that
17 put it in that refrigerator until such time it does get
18 removed and the chain of custody filled out by who removes
19 it to carry it to the MAIT.

20 MR. MEADORS: Beg the Court's indulgence.

21 (WHEREUPON, a pause in the proceedings.)

22 BY MR. MEADORS:

23 Q I'm going to show you what's marked State's 32. Is
24 that the chain you were just talking about?

25 A Yes, sir, this is the chain of custody states that I

1 signed it in ---

2 THE COURT: Wait just a minute. Is that
3 admitted?

4 MR. MEADORS: Without objection, I apologize.

5 THE COURT: Admitted without objection, Mr.
6 Griffith?

7 MR. GRIFFITH: Without objection, Your Honor.

8 THE COURT: All right, admitted without
9 objection. You may proceed.

10 (WHEREUPON, State's Exhibit No. 32 was admitted
11 into evidence.)

12 A Yes, sir, this is the evidence or the chain of
13 custody that started. Again, it states it was from me to
14 our evidence refrigerator. The location is at our Sumter
15 office. The reason for it being placed in storage is
16 marked analysis and it is dated and time stamped on the
17 date that it was put in by me.

18 Q So this actually shows the blood from Jennifer
19 Marchase to you to all the way to SLED when it was
20 analyzed?

21 A Yes, sir, that was when it was taken and given to me.

22 Q Trooper, did you arrest Gene David Evans, Jr. on
23 February 12th 2017?

24 A No, sir, he was not arrested on February 12th 2017.

25 Q And your intention was not to arrest him that day,

1 correct?

2 A No, sir.

3 Q Subsequently after learning about the results from
4 the toxicology, do you know when that was approximately?

5 A Yes, sir, I have it in my notes. We received a
6 toxicology report on April 7th. Let me just verify that
7 as being the correct date. Yes, sir, on April 7th 2017,
8 the toxicology report was provided back to myself and my
9 first sergeant with the results.

10 Q And that was the toxicology results from an agent
11 with the South Carolina Law Enforcement Division, correct?

12 A That is correct that's from SLED who is responsible
13 for testing them.

14 Q And after you had gotten those results, did you get a
15 warrant for the arrest of the defendant for felony DUI
16 with death resulting?

17 A Yes, sir, I did. The results showed that Mr. Evans
18 did test positive for high level of methamphetamines on
19 the day of the collision. I took that evidence along with
20 the accident investigation that I did and presented them
21 to the magistrate office at which time a warrant was
22 obtained for his arrest.

23 Q And you arrested him on April 9th of 2017?

24 A Yes, sir, it was April 9th.

25 Q And where did you arrest him?

1 A It was actually at a family member's home here in
2 Sumter County on -- I'm trying to remember the name of the
3 road. It was on Ginger Lane if I'm not mistaken.

4 Q And is the individual that gave you his consent to
5 draw his blood in this courtroom?

6 A Yes, sir, he is.

7 Q And is the individual you arrested for felony DUI
8 with death resulting in the Court?

9 A Yes, sir, he is.

10 Q Would you point him out for the jury?

11 A That's gone be Mr. Evans who is seated by
12 Mr. Griffith wearing the blue shirt.

13 MR. MEADORS: We like the record so reflect. We
14 beg the Court's indulgence.

15 THE COURT: Record will so reflect.

16 (WHEREUPON, a pause in the proceedings.)

17 MR. MEADORS: I think that's all. Thank you.

18 THE COURT: All right. Cross-examination, Mr.
19 Griffith.

20 MR. GRIFFITH: Thank you. Please the Court.

21 CROSS-EXAMINATION

22 BY MR. GRIFFITH:

23 Q Trooper Boland, you made -- you testified as to all
24 of these pictures that you took and I'm going to show you
25 State's Exhibit 30. You recall seeing that one?

1 A Yes, sir.

2 Q Why don't you tell us what that is again?

3 A Again, that's just a backed up point of impact photo.
4 It shows the whole driver side of the vehicle. It shows
5 that off the road on Saint Paul Church Road, it shows the
6 road to the left of the vehicle with the driver side that
7 indicate that, you know, shows that that's taken of the
8 driver side of the vehicle. It shows the tree in which it
9 collided with it being more center of the vehicle also.

10 Q Now, would you say that this picture shows that the
11 passenger side is kind of caved in; isn't it?

12 A No, sir. If you actually look when you through here,
13 you can see the B post of the passenger side actually
14 coming up to the vehicle, that's clearly showed if you
15 look through the window and through the driver's door that
16 the passenger side of that vehicle of the cab portion is
17 actually still intact and still upright.

18 Q Here's State's Number 6?

19 A Yes, sir.

20 Q Doesn't that show that the passenger side is all
21 pushed in and crushed up?

22 A It shows actually the whole front of the vehicle
23 being pushed down not just the passenger side. Again, if
24 you look through the passenger or correction through the
25 driver's door past Mr. Skidmore's body, you can actually

1 still see some of the frame of the passenger side as it
2 does come up and not crush down on the body or anything
3 like that.

4 Q Okay. You did not see Mr. Evans driving the car, did
5 you?

6 A No, sir, he was removed by a bystander prior to my
7 arrival.

8 Q And isn't it true that you said that the torso was
9 pretty much toward the center of that cab; is that what
10 you're saying?

11 A The torso is coming over the center of the cab.

12 Q So it's past the center of the cab?

13 A The head portion of it is past the center of the cab.
14 The lower portion was still on the passenger side of the
15 cab.

16 Q So it's possible that there were objects piled in the
17 passenger side of the cab, isn't it?

18 A By the pictures, the pictures show the passenger
19 seat. One of the pictures do show the back of the
20 passenger seat along with everything being charred up and
21 charred around it. I cannot attest to whether there was
22 something else over there or not, but it does show that
23 the lower half of the torso was on that side of the
24 vehicle.

25 Q But it's possible that the passenger side was full of

1 stuff and he driving could have hit that and fallen down
2 right there; isn't it?

3 A No, sir. By those pictures if he would have been
4 driving, it would have took the body to actually pretty
5 much lift itself up out of the passenger seat or out of
6 the driver seat rotate itself this way and then move
7 towards the right side of the vehicle. It is not my
8 opinion at all that depicts anything that you're trying to
9 say.

10 Q Did you notice the way the steering wheel was
11 oriented in this vehicle?

12 A If you look at the steering wheel is actually pretty
13 much kind of disintegrated.

14 Q But Mr. Skidmore's body was not crushed into the
15 passenger side, was it?

16 A Lower half of his torso was still on the passenger
17 side of the vehicle. Again, there is several things with
18 the nature of the fire that was burned and charred all
19 around the vehicle to where I can't say if there was
20 something on top of him on the torso on that side or not,
21 but the pictures do show a clear picture of the torso in
22 the center of the vehicle with his lower quarters being
23 pointed toward the passenger side and his head is still
24 clearly not in the driver side.

25 Q But it does not show him in the driver seat crushed

1 under the car, does it?

2 A No, sir, every picture indicates that he was not the
3 driver correct.

4 Q It does not show in the passenger seat crushed under
5 the passenger seat?

6 A I'm sorry you said the driver side. I understood the
7 driver side I apologize if I misunderstood.

8 Q I may have said it.

9 A The picture showed his lower half of the torso on the
10 passenger side.

11 Q But it doesn't show him in the passenger seat, does
12 it?

13 A Again, if you look at the pictures, there's so much
14 that's burnt and charred. There is a picture that
15 indicates where the back of the passenger seat is. You
16 see it up here and you see the torso going down there
17 which pretty much puts it seated in the passenger seat.

18 Q But you didn't see the accident, did you?

19 A No, sir, I did not see the accident.

20 Q So but you did see the crushed car, didn't you? The
21 crushed RV?

22 A The whole front end being crushed in, yes, sir.

23 Q And isn't it true that had he been in the passenger
24 seat when he hit that tree, he would have been crushed
25 under that side, wouldn't he?

1 A No, sir, again, I pointed out that the whole front
2 end is laid down a little bit, but the back of the
3 passenger side B post is still clearly standing in the
4 picture that indicates nothing came directly down or
5 anything like that. It was a frontal impact and crushed
6 everything backwards. Again, it shows that on the driver
7 side as well.

8 Q He wasn't thrown through the windshield, was he?

9 A No, sir.

10 MR. GRIFFITH: I have no further questions.

11 THE COURT: Redirect?

12 MR. MEADORS: No, sir.

13 THE COURT: All right. Thank you, Trooper. You
14 may step down.

15 (WHEREUPON, the witness leaves the witness
16 stand.)

17 THE COURT: Mr. Griffith, would you like to have
18 this witness be available or you want to wait?

19 MR. GRIFFITH: I like wait on that.

20 THE COURT: Stay with us right now, Mr. Boland,
21 and we'll talk about that before we adjourn. All right.
22 Ladies and gentlemen, we've reached the stopping place for
23 the afternoon and we are going to stop. I have been told
24 by many many lawyers this over the years that I don't mind
25 making the lawyers work late, but I know the jurors have

1 lives outside of this courtroom and so we are going to
2 recess for the afternoon. I'm going to allow you to go to
3 your homes and families. I do want to make a couple of
4 admonitions that I've already made, but I want to
5 emphasize them especially in this case. You must decide
6 this case based solely on the evidence presented here in
7 this courtroom.

8 This means that during the trial you must not
9 conduct any independent research about this case, the
10 facts of the case, the evidence presented in the case or
11 the people or organizations involved in anyway in this
12 case. Do not try to find out information from any source
13 outside this courtroom. In other words, you are not to
14 look in dictionaries or other reference materials, search
15 the internet, websites or blogs or use any other
16 electronic tools to get information about the case or to
17 help you decide the case. You may not use computers,
18 telephones, cell phones, smart phones, tablets, internet
19 or other tools of technology with communication
20 capabilities at any time while you're in the courtroom or
21 during your deliberations. Of course, you may use them
22 overnight if necessary, but you must not use these devices
23 to communicate with anyone about the case until the case
24 is over. This mean that you must not use phone calls,
25 e-mails, text messages, instant messages, Twitter or any

1 blog, chat room or web site including Facebook, Google
2 Plus or anything else, LinkedIn or YouTube or any other
3 social media web sites to send or receive information
4 about the case. This includes information about a party,
5 a witness an attorney or the court officers, news accounts
6 or anything else. And you should not and must not read,
7 listen to or watch any news reports about this case. If
8 anything is in the newspaper, please put it down or if
9 there's anything on television, please turn it off because
10 you must not consider anything that you may have heard or
11 read about the case outside the courtroom whether it was
12 before or during the trial.

13 So with those admonitions, I am going to excuse
14 you now. I'm going to ask that you be back in your jury
15 room say tomorrow morning at 9:20, that's about ten
16 minutes before I be ready to start. And at that time I
17 would like for the 12 members of the principle jury to
18 select one of the members to be the foreperson of the
19 jury, at which time this foreperson will sit in the first
20 seat down here. The alternate should not participate in
21 that process, but the 12 of you should select one of you
22 to be a foreperson of the jury. But in the meantime over
23 the evening, just put this case out of your mind and enjoy
24 your families and any entertainment that you wish to take
25 in tonight and be back in your jury room tomorrow morning

1 at 9:20, select a foreperson, notify the bailiff who that
2 foreperson is and we'll try to be ready to start promptly
3 at 9:30 tomorrow morning. All right. We'll see you
4 tomorrow. Have a pleasant evening.

5 (WHEREUPON, the jury is excused for the day.)

6 THE COURT: All right. Mr. Griffith, I told you
7 that I would make Trooper Boland available to you if you
8 want him. What would you like to do in that connection
9 you want him to be available?

10 MR. GRIFFITH: Well, Your Honor, I hate to keep
11 him from anything. I think he's got something he's going
12 to go do, but at the end if my client does testify and we
13 would like to show some of these videos Trooper Boland
14 talking to him, Mr. Meadors may require that he be present
15 and he may ask that he authenticate.

16 MR. MEADORS: I won't do that.

17 THE COURT: So he says if you decide to use
18 those videos -- he would not question the authenticity of
19 those.

20 MR. GRIFFITH: Then I have ---

21 MR. MEADORS: I may not agree to everything in
22 there ---

23 THE COURT: Right.

24 MR. MEADORS: --- but I would not ---

25 THE COURT: You would not challenge

1 authenticity?

2 MR. MEADORS: Yes, sir.

3 MR. GRIFFITH: Well, then in that case, Your
4 Honor ---

5 THE COURT: You don't need him?

6 MR. GRIFFITH: I don't need him.

7 THE COURT: All right. Then, Trooper Boland,
8 you would be released. Okay. Counsel, I believe the
9 situation is that the defendant is incarcerated; is that
10 correct?

11 MR. GRIFFITH: That's correct.

12 THE COURT: So bond is not an issue, okay.
13 Anything that would prevent us from going forward in the
14 morning promptly at 9:30? Counsel, if so, I like for you
15 to be here a few minutes ahead of time, but let's be ready
16 -- I don't want to keep the jury waiting any more than
17 possible. I like to be ready to start back tomorrow
18 morning promptly at 9:30. I'm going to have the jury come
19 in early so that they can select a foreperson. If you do
20 have any written request for charge or instructions, I
21 would like them sometime available sometime tomorrow,
22 that's why I want to tell you about them now so you can
23 get those together this evening. If there any request
24 specific request for instructions and any specific request
25 for verdict forms, so that I will have time to prepare

1 those instructions or prepare the verdict forms.

2 MR. MEADORS: Judge, I think that Cribb case if
3 I remember also said the reckless and involuntary weren't
4 lesser-included offenses, but I'm going to ask Mr. Brown
5 to double check that tonight.

6 THE COURT: Well, that's what I want you all to
7 check on as to whether you think they are the
8 lesser-included. Mr. Brown, looks like you got an
9 assignment. You all let me know tomorrow how you feel
10 about that. Other thing counsel I would ask you, the
11 county spent a lot of money on this equipment, we ought to
12 be using it.

13 MR. MEADORS: I look back and theirs wasn't on
14 and that's why I figured it would be quicker to ---

15 THE COURT: All of that ought to be worked out
16 before we try to show the pictures, but we ought to use
17 that equipment if it's available because it does make it
18 easier for the jury. So let's try to check all that out
19 before you start trying to use it. All right. We'll be
20 in recess until -- yes, sir.

21 MR. GRIFFITH: One thing, Your Honor, he's
22 incarcerated that maybe keeping him back in a certain
23 section of the jail. We would ask that he be able to --
24 he can't get to a phone or anything like that there, so he
25 can get to a phone because he may want contact me during

1 the evening.

2 THE COURT: Well, I'm not going to tell the jail
3 how to do their job. I mean, that's their thing. You
4 make arrangements with -- Mr. Griffith should have access
5 to his client, that's all I will say. He should have
6 access to his client over the evening recess. He has that
7 right, but I'm not going to tell the jail how they need to
8 make that access available.

9 MR. GRIFFITH: Thank you, Your Honor.

10 THE COURT: All right. Thank you. We'll be in
11 recess until 9:30 in the morning.

12 (WHEREUPON, the proceedings were concluded for
13 the day to be reconvened on February 21, 2018.)

14 THE COURT: All right. We're back on the record
15 with regard to the matter of The State vs. Mr. Evans. Mr.
16 Evans is present with his counsel. The State is present
17 and represented by Mr. Meadors. Counsel I have been
18 advised that the jury has elected juror number 119 Mr.
19 Mooney as the foreperson of this jury and he will serve as
20 such during the rest of the case. Anything before we
21 bring the jury in on behalf of the State, Mr. Meadors?

22 MR. MEADORS: He's got a motion, Judge.

23 THE COURT: All right. Yes, sir, I'll hear from
24 you, Mr. Griffith.

25 MR. GRIFFITH: Your Honor, I would just ask

1 that -- there are a couple witnesses we just like to have
2 sequestered, so that they don't listen to each others
3 testimony and corroborate.

4 MR. MEADORS: He didn't move beforehand, but we
5 don't have an objection.

6 THE COURT: Okay, I was going to say, I'm not
7 sure your motion is timely.

8 MR. GRIFFITH: I understand.

9 THE COURT: But you have some witnesses that you
10 wish to -- all right, it's reciprocal now.

11 MR. GRIFFITH: We have no other witnesses at
12 this point.

13 THE COURT: Okay. All right. For the same sake
14 of the record, I am going to give the court reporter
15 Mr. Griffith's motion that was made yesterday regarding
16 the exclusion of the motion to suppress the results of the
17 blood test, as well as a copy of the statutes that I
18 relied on and a copy of the case that I relied on just so
19 the record will be complete. We'll make this a Court's
20 Exhibit, Ms. Reed.

21 (WHEREUPON, Court's Exhibit No. 2 was marked for
22 the record.)

23 THE COURT: And just by way of clarification and
24 I want the record to reflect that part of my ruling
25 yesterday with regard to the right of the defendant to

1 cross examine the highway patrolman on the allege
2 statements made by the defendant denying that he was
3 driving the vehicle, I think that falls clearly within
4 that category of that the defendant -- and the holdings
5 that a defendant cannot introduce evidence through
6 cross-examination unless he were able to get it in
7 himself. I think -- it is self-serving, but there is a
8 ruling, of course, of the Supreme Court that says you
9 cannot get into evidence matters that would be hearsay
10 otherwise. All right. Anything else before we bring the
11 jury in, Mr. Meadors?

12 MR. MEADORS: No, sir.

13 THE COURT: Mr. Griffith.

14 MR. GRIFFITH: Nothing, Your Honor.

15 THE COURT: All right. Bring the jury in
16 please.

17 (WHEREUPON, the jury came into open court.)

18 THE COURT: All right. Good morning, ladies and
19 gentlemen. I understand, Mr. Mooney, that your fellow
20 jurors have elected you as the foreperson of this jury, so
21 you should sit in that first seat on the first row for the
22 rest of this trial. Of course, the alternates should sit
23 where she is seated. The rest of you can sit in any seats
24 in the jury box. Before we begin, I need to ask you a
25 couple of questions, anyone approached you or attempted to

1 talk with you about this matter or anyone who has anything
2 to do with this case over the evening recess, if so please
3 signify by raising your hand? Negative response and
4 that's good.

5 Has any juror learned anything about the case or
6 anyone involved in the case in the print or broadcast
7 media, if so please signify by raising your hand? Again,
8 negative response and that's good.

9 Has any juror done any research or consulted the
10 internet or Google, Bing or any other means or done any
11 investigation or research on the facts, the law or the
12 people involved in this case, if so please raise your
13 hand? Again, negative and that's good.

14 And finally has any juror learned anything about
15 this case or anyone who has anything to do with this case
16 including but not limited to the parties, witnesses,
17 victims, law enforcement and attorneys other than what
18 you've heard in this courtroom, if so please raise your
19 hand? Again, negative response and that's good. All
20 right. Yesterday, when we recessed, the State was
21 presenting their case to you and they will have a right to
22 continue with their presentation.

23 Mr. Meadors.

24 MR. MEADORS: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. MEADORS: The State would call Shonda Brown.

2 BAILIFF: Put your hand on the Bible and raise
3 your right hand. State your name?

4 THE WITNESS: Shonda Brown.

5 BAILIFF: Do you solemnly swear or affirm your
6 testimony to the court shall be the truth, the whole
7 truth, and nothing but the truth so help you God?

8 THE WITNESS: I do.

9 BAILIFF: Step around, please watch your step.
10 State your name and spell your last name for the record
11 please.

12 THE CLERK: Shonda Brown.

13 WHEREUPON,

14 Shonda Brown,

15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MEADORS:

18 Q Good morning, Ms. Brown.

19 A Good morning.

20 Q I do this with every witness, Ms. Brown. Would you
21 please tell these folks about Shonda Brown where you from?

22 A I'm from Eastover, South Carolina.

23 Q Born and raised?

24 A Yes, sir.

25 Q Where did you go to high school?

1 A Lower Richland.

2 Q And what did you do after high school, Ms. Brown?

3 A Had babies after I got out of high school.

4 Q How many children do you have?

5 A I have three.

6 Q Did you work also?

7 A Yes.

8 Q Where did you work?

9 A I had various jobs. When I was 21, I worked at a
10 nursing home.

11 Q Yes, ma'am.

12 A And then I didn't work for a little while. Then I
13 work -- when I was like 24, I went to Gold Kist for a
14 couple months and then I didn't work for a while. Then in
15 2000 I got my CDL and I been working ever since.

16 Q Okay. In 2000, you got your CDL. And where have you
17 been working ever since?

18 A Well, I drove trucks in 2001 until 2002 and then I
19 start working for the Sumter School district.

20 Q Okay. And what do you do for the school district?

21 A Drive the school bus.

22 Q And you been doing that for how long?

23 A Eighteen years.

24 Q What time do you get up in the morning?

25 A I get up at four o'clock. I have to be to work at

1 5:30.

2 Q Okay. Did you do that this morning?

3 A No, because I just got off Wal-Mart and I was tired.

4 Q Okay. But most the mornings you would drive the
5 school bus?

6 A Yes, sir.

7 Q And you knew you had to be here today, correct?

8 A Yes, sir.

9 Q All right. And what time do you finish your route?

10 A By nine o'clock.

11 Q And you mention you also work at Wal-Mart?

12 A Yes, sir.

13 Q And how often do you work there?

14 A Sunday, Monday, Tuesday, Wednesday, off Thursday,
15 work Friday, off Saturday.

16 Q Thank you for being here today. I want to take you
17 back to February 12th of last year 2017. And do you know
18 a fellow name Andrew Moye? I may not -- how do you
19 pronounce his last name?

20 A Moye.

21 Q Okay. M-O-Y-E?

22 A Yes, sir.

23 Q And who is he to you?

24 A My boyfriend.

25 Q Do you remember back when -- about this wreck we're

1 here about?

2 A Yes.

3 Q Would you dispute me that that's on February 12th of
4 2017?

5 A No.

6 Q Okay. But do you remember the day the wreck
7 happened?

8 A Yeah.

9 Q Okay. Can you tell these folks who were you with
10 that day?

11 A My boyfriend.

12 Q Okay. And where were -- where were y'all going?

13 A We was going to Wateree to the fish pond.

14 Q Okay. And what were you gone do?

15 A Just sit down there.

16 Q And what type of vehicle were you in?

17 A A '78 F-150.

18 Q And who was driving?

19 A Me.

20 Q Okay. And pronounce his name again for me?

21 A Andrew Moyer.

22 Q Moyer, I'm sorry. And Mr. Moyer where was he in your
23 car?

24 A He was in the passenger seat.

25 Q Can you tell us where you started from. I know

1 you've told us where you intended, where you wanted to go.

2 Where did you leave from?

3 A We left from home.

4 Q Okay. And that's here in Sumter?

5 A Yes.

6 Q And what route did you take?

7 A We came the back way back behind where Bethal Church

8 Road and lead to Starcks Fair and then we turn on Pine

9 Wood Road and then we turn on Saint Paul.

10 Q Okay. You taken -- and that's the way you went that
11 day?

12 A Uh-huh.

13 Q Okay. When you got on Saint Paul Road and you were
14 heading in which direction?

15 A We was heading towards to the pond.

16 Q Can you tell the folks what, if anything, you
17 observed when you on Saint Paul Church Road?

18 A When we first got on Saint Paul as we was getting
19 around the little curve midway up Saint Paul before you
20 get to this little church, I don't know what the name of
21 that church is, but it was a RV in our lane. So as we was
22 going down the road we went over to the right so the RV
23 could have the road because if we didn't, it would have
24 ran into us. So as we was going off to the right, it
25 overcorrected -- it look like it overcorrected and hit a

1 tree.

2 Q So the RV was coming in your lane?

3 A It was in our lane.

4 Q Any question about that?

5 A Ain't no question about that.

6 Q All right. Is it -- how many lanes on that road?

7 A Two.

8 Q Okay. So you see this RV coming at you and what do
9 you do? What did you say you did?

10 A Gave him -- I went over to the right. I curse also,
11 but I went over to the right.

12 Q And then what, if anything, did you observe the RV
13 do?

14 A It overcorrected a little bit. A little bit too
15 much.

16 Q And then what happened?

17 A It hit a tree.

18 Q Now, did y'all keep going?

19 A No, we stopped.

20 Q And what happened after you stopped?

21 A My boyfriend took off running to help the man get out
22 of the RV.

23 Q And what did you do?

24 A Scream.

25 Q Okay. Pretty -- you were upset or nervous?

1 A Yeah, I never seen nothing like that before.

2 Q Okay. And what did you do after you screamed?

3 A I was stoping some cars to try to get them to help.

4 Q And how close did you get -- can you describe the
5 condition of the RV?

6 A It was messed up and it was smoking.

7 Q How close did you go to the RV?

8 A I didn't go all the way to the RV because I didn't
9 want to see it. I was right behind it though might be 50
10 or 100 feet.

11 Q Did you see what your boyfriend did?

12 A Yeah.

13 Q What did he do?

14 A He pulled the man from under the steering wheel?

15 Q And you saw that?

16 A Yeah.

17 Q And what did he do when he pulled the man from under
18 the steering wheel? What did he do with him?

19 A Put him on the back of a little truck.

20 Q So he saved him?

21 A Yeah.

22 Q Okay. And you saw him do that?

23 A Yes.

24 Q And did you see that man behind the wheel?

25 A Yes.

1 Q Okay. What did your boyfriend do after that?

2 A He was trying to get -- because one of the people
3 that was behind the RV said that it was somebody else in
4 there and he went around to the other side try to get the
5 other person out, but it was too much stuff on him,
6 couldn't even get him.

7 Q Did he try to get the other person?

8 A Yeah, he tried.

9 Q Was he able to get the other person?

10 A No.

11 Q What happened after that?

12 A The fire department and stuff came and it was a whole
13 bunch of commotion out there, but the other guy he was on
14 the back of the truck and he was moaning and groaning and
15 stuff like that. And then the state trooper came up and
16 then ask us did we see anything and we told him.

17 Q And did you give the state trooper a statement that
18 day?

19 A Yes, I did.

20 Q Were you in his car when you did that?

21 A Yes.

22 Q And I don't know if you remember this Lance Corporal
23 Trotter back here. Did you also give another statement to
24 the highway patrol?

25 A Yes.

1 Q Okay. Did you ever get a look at the fellow that
2 came out you said from underneath the steering wheel?

3 A Yes.

4 Q You did. Is he in the courtroom?

5 A Yes.

6 Q Would you mind pointing him out for the ladies and
7 gentlemen? Mr. Evans, Gene Evans?

8 A He looks a whole lot better now.

9 Q He looks better now?

10 A Yeah.

11 MR. MEADORS: We'd ask the record to reflect
12 that she pointed out the defendant, Your Honor.

13 THE COURT: The record would so reflect.

14 BY MR. MEADORS:

15 Q Did you know Mr. Evans?

16 A No.

17 Q Did you know the passenger -- you didn't even know
18 who the passenger was?

19 A We don't know none of those people.

20 MR. MEADORS: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (WHEREUPON, a pause in the proceedings.)

23 BY MR. MEADORS:

24 Q How close did you get to the car, the car that was
25 coming towards you before they veered off?

1 A It was like I want to say might be 100 feet, 200 feet
2 something like that because as -- this is the curve and we
3 was like this, but as it was coming in our lane, we just
4 off a little bit. It stayed in our lane a little bit
5 before he just overcorrected.

6 Q And that's when you got off?

7 A Uh-huh.

8 MR. MEADORS: Thank you for stopping and we
9 appreciate you being here today, that's all.

10 THE COURT: Cross-examination, Mr. Griffith.

11 MR. GRIFFITH: Thank you, Your Honor. If it
12 please the Court.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. GRIFFITH:

16 Q Ms. Brown, thank you very much for stopping. It's
17 very nice of both of y'all. You say you were about 50 to
18 100 feet away; is that right?

19 THE COURT: You have to answer out.

20 A Oh, yes.

21 THE COURT: She's got to take down everything.
22 You don't know this. This is a strange setting for you I
23 know, but this lady right here is taking down everything
24 that is said and so she has to have a verbal response.

25 MR. GRIFFITH: She can't hear you shaking your

1 head.

2 BY MR. GRIFFITH:

3 Q And so you were 50 or 100 feet away, right?

4 A Talking about when we saw him in our lane or when he
5 was in the car?

6 Q When you stopped and your boyfriend got out, you
7 stayed 50 or 100 feet away?

8 A Yeah.

9 Q You didn't want to see the accident?

10 A No.

11 Q This is about 50 feet; isn't it?

12 A Yeah.

13 Q You were this far away or further, right?

14 A I was about that far right there.

15 Q Okay. And you were behind the RV, weren't you?

16 A The way the RV had hit the tree either if you -- I
17 wasn't behind it, it was like beside it. I could see the
18 back of it. I could see the front door of the RV.

19 Q But you couldn't see inside the RV, could you?

20 A No.

21 Q When your boyfriend pulled one of the people out, you
22 didn't really -- you couldn't really see him reaching in
23 to get him, could you?

24 A I saw when he open the door and it was an arm on the
25 steering wheel and he grabbed what was under the steering

1 wheel and pull it out.

2 Q Okay. But you could see the arm from that? You
3 could see the arm?

4 A Yeah.

5 Q Okay. But you weren't the first people on the scene,
6 were you? There were others?

7 A Yeah, it was others.

8 Q And some others really started helping too before?

9 A The only people that was helping was the one that was
10 following behind the RV.

11 Q So they -- Mr. Moye and those people were pulling
12 people -- trying to pull people out; is that correct?

13 A Yeah.

14 Q Did you see anybody else reaching in the driver's
15 side to pull out the other guy?

16 A No, not until -- when we he got the first person out
17 from the steering wheel, that's when the lady behind them
18 said that her boyfriend was in there. And he ran back and
19 ran around the side, but he couldn't get in there. He
20 couldn't.

21 Q Did you see that someone else reached into the
22 driver's side to try to pull the other person out too
23 besides Mr. Moye?

24 A No.

25 MR. GRIFFITH: I have no further questions. And

1 thank you again for being here.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. MEADORS:

5 Q He's actually the distances of how close you were to
6 him. And again when they're approaching you, how close
7 were you?

8 A Excuse me.

9 Q When the RV was approaching your car, how close did
10 you say you got to their car before you turned off?

11 A It was about 100 to 200 feet something like that.

12 Q Could you see then who was driving?

13 A Yeah, you could see because when -- after we got in
14 the lane, he was still in our lane, so I'm the driver. He
15 had to pass me and I look right in his face.

16 Q Could you see him then?

17 A I saw him, I was driving. When I pulled over to the
18 side and after we gave him the road, I look right in his
19 face. The window was down and all. I could see him.

20 Q Who did you see driving the defendant?

21 A Uh-huh.

22 Q Is there any doubt in your mind? I mean, again, you
23 have to say yes or no?

24 A Oh. It's no doubt in my mind.

25 MR. MEADORS: And we like the record to reflect

1 she picked the defendant. Thank you, that's all.

2 THE COURT: Recross.

3 MR. GRIFFITH: Court's indulgence.

4 THE COURT: All right.

5 (WHEREUPON, a pause in the proceedings.)

6 MR. GRIFFITH: Nothing further, Your Honor.

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

8 Thank you for coming.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: All right. Mr. Meadors, you may
12 call your next witness.

13 MR. MEADORS: Your Honor, the State would call
14 Mr. Andrew Moye to the stand.

15 THE COURT: All right, Mr. Moye, come around
16 please.

17 BAILIFF: Put your left hand on the Bible, raise
18 your right hand. State your name?

19 THE WITNESS: Andrew Moye, Jr.

20 BAILIFF: Do you solemnly swear or affirm your
21 testimony to the court shall be the truth, the whole
22 truth, and nothing but the truth so help you God?

23 THE WITNESS: Yes, sir.

24 BAILIFF: Thank you. Step around, watch your
25 step. State your full name for the record and spell your

1 last name please.

2 THE WITNESS: Andrew Moye, Jr. M-O-Y-E.

3 WHEREUPON,

4 Andrew Moye, Jr.

5 after first having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MEADORS:

8 Q Good morning, Mr. Moye.

9 A Good morning.

10 Q Mr. Moye, you seem to be soft spoken, so if you just
11 speak into that mic so the court reporter and these ladies
12 and gentlemen can hear you, sir. Would you please tell
13 these folks about Andrew Moye where you from?

14 A I'm from Eastover, South Carolina, but I move to
15 Sumter about a couple years ago.

16 Q So you born and raised in Eastover?

17 A Yes, sir.

18 Q Where did you go to high school, Mr. Moye?

19 A Lower Richland.

20 Q Okay. And what did you do after school?

21 A Work with my father for a while painting doing
22 construction work.

23 Q How long did you do that?

24 A About six years.

25 Q What other type work have you done besides that,

1 Mr. Moye?

2 A I use to work with PLCC.

3 Q PLCC?

4 A Yeah, a tree company. Now, I work with Pilgrim Pride
5 in Sumter.

6 Q And what do you do at Pilgrims Pride, Mr. Moye?

7 A Cone hanger.

8 Q I'm sorry, sir?

9 A I hang birds on the cone line.

10 Q And you supposed to be working today, aren't you?

11 A Yes, sir.

12 Q All right. Well, thank you for being here today.

13 Your boss knows you're here?

14 A Yeah, I told her, but I still need to take something
15 back.

16 Q Okay. Mr. Moye, I want to take you back -- do you
17 remember this collision on Saint Paul Church Road?

18 A Yes, sir.

19 Q And do you remember what you were doing that day,
20 sir?

21 A Me and my girlfriend was heading to go fishing.

22 Q Where were you going?

23 A Off 378 there I don't know the river.

24 Q And who was driving?

25 A My girlfriend.

1 Q And were you in the vehicle?

2 A On the passenger side.

3 Q Okay. Can you tell these folks once you got on Saint
4 Paul Church Road what did you observe?

5 A As we was coming down the road, an RV was in our
6 lane. My girlfriend had to swerve over to the right to
7 keep it from hitting us. Once -- look like the RV got
8 control of it, it swerve back over, but, I guess, he
9 swerve too hard and that's when he hit a tree.

10 Q Was the RV actually in your lane coming at your car?

11 A Yes, sir.

12 Q After you testified y'all moved over and the RV
13 corrected, what happened after that?

14 A It like straighten up a little bit, but, I guess,
15 that's when he loss control of it and he hit a tree.

16 Q Now, you were planning on going with your girlfriend,
17 did y'all stop?

18 A Yes, sir.

19 Q Okay. Why did you stop?

20 A Wanted to see if everybody was all right. Actually,
21 I never seen nothing like that, you know, firsthand.

22 Q Was it pretty traumatic?

23 A Yes, because -- when it -- you can hear it once it
24 hit that tree made a big explosion like.

25 Q Okay. What did you do?

1 A I jumped out and ran to the RV.

2 Q Okay. Was that kind of instinct you just did it?

3 A Yes, sir.

4 Q All right. And when you got to the RV, what did you
5 do?

6 A Open the door and pull the driver out.

7 Q Where was the driver, the person you referred to as
8 the driver where was he?

9 A He was under the steering wheel.

10 Q And show us how you pulled him out?

11 A I open the door and he was leaning up on the steering
12 wheel and had his seat belt on and I unhooked him and I
13 just grabbed him. He was saying he was in pain, he was
14 hurting. So I grabbed him up under his waist and drug him
15 out.

16 Q You took his seat belt off?

17 A Yes, sir.

18 Q Put your hands under his arms and pulled him out?

19 A Yes, sir.

20 Q And what did he say to you?

21 A He was in pain like he broke his spinal cord or
22 something.

23 Q What did you do with him?

24 A It was some other vehicles following behind the RV
25 they stopped and I put him on the back of the truck.

1 Q Do you know whose truck it was?

2 A No, sir.

3 Q Did you know him?

4 A No.

5 Q Did you know -- did you become aware that there might
6 be somebody else in the RV?

7 A Yes, sir.

8 Q Okay. And how did that come about?

9 A When I went back -- because I knew once I got him out
10 I could see them.

11 Q You actually saw the other person?

12 A I saw him, but it was so much stuff. I was trying to
13 get him from the front, from the driver side door was all
14 that stuff in the camper was pushed up against me. He was
15 pushed up on the dash, so that when I went around the
16 other side to try to get the door open, but the door was
17 bent from hitting the tree. That's when I came back
18 around again try to get him from the driver side.

19 Q Was that person -- where was that person in the
20 vehicle?

21 A On the passenger side.

22 Q All right. Was stuff on top of him?

23 A Yeah, it was all that from the back and at this time
24 the RV had started smoking. It was catching a fire.

25 Q Did you try ---

1 A Still try to get him.

2 Q Go back the other side and get him?

3 A Yes, sir.

4 Q Were you able to get him out?

5 A No, sir.

6 Q Did it start getting hot?

7 A Yes, sir.

8 Q But you tried?

9 A I tried.

10 Q What happened after that?

11 A It started flaming up more, more and more and then
12 stuff start popping out from it across the field and
13 stuff.

14 Q Was there anyway you could get him out after that?

15 A No, sir.

16 Q All right. Did the defendant ever say anything to
17 you?

18 A Not at that point. I had heard from him after that
19 by getting together to take us out to eat.

20 Q Did he ever thank you for saving him?

21 A Yes, sir, he thank me.

22 MR. MEADORS: Beg the Court's indulgence.

23 THE COURT: Okay.

24 (WHEREUPON, a pause in the proceedings.)

25

1 BY MR. MEADORS:

2 Q Mr. Moye, is the individual that you said you saw
3 behind the steering wheel and the individual you said you
4 testified you took the seat belt off and the individual
5 you said you grabbed underneath his arm took him out of
6 that RV, is that individual in this courtroom?

7 A Yes, sir. He look different, but, yes, sir.

8 Q He looks different?

9 A Yes, sir.

10 Q Is that person in the courtroom?

11 A Yes, sir.

12 Q Would you point him out? You point to the blue shirt
13 to Mr. Evans?

14 A Yes, sir.

15 MR. MEADORS: We'd ask the record to reflect.

16 THE COURT: The record will so reflect.

17 MR. MEADORS: Thank you for stopping and thank
18 you for being here. Answer any questions Mr. Griffith
19 has.

20 THE COURT: Cross-examination, Mr. Griffith.

21 MR. GRIFFITH: Thank you, Your Honor. Please
22 the Court.

23 CROSS-EXAMINATION

24 BY MR. GRIFFITH:

25 Q Mr. Moye, again thank you for stopping same sentiment

1 and that was brave.

2 A Thank you, sir.

3 Q Mr. Moye, you said that you unbuckled him, would it
4 surprise you if I told you that it was other testimony or
5 interviews that said that they were not buckled in?

6 MR. MEADORS: Your Honor, objection to that.

7 THE COURT: Sustained. Objection sustained.

8 MR. GRIFFITH: Okay.

9 BY MR. GRIFFITH:

10 Q Are you certain he was buckled in?

11 A The seat belt was around him and saying that it been
12 latched, all I know he was leaning up on the steering
13 wheel and I moved it off him and did went to grab him. I
14 can't remember if it was fasten or nothing, I know it was
15 around him.

16 Q Okay.

17 A And the passenger wasn't fastened. The dolly wasn't
18 fasten.

19 Q Okay. So the passenger was definitely not buckled
20 in?

21 A I assume, sir, because all that debris was on top of
22 him. You know, I couldn't see under that.

23 Q And you pulled out Mr. Evans and laid him on a truck?

24 A I first I pull him out and put him on the ground
25 because the vehicles -- my girlfriend was directing

1 traffic back there. Then that's when the pickup pull up
2 closer and then I would put him on the back of the truck.

3 Q Did the people in the pickup also help?

4 A Yeah, they tried to help, but they quit. They
5 stopped because like I said the RV was on fire. They gave
6 up.

7 Q Everybody had to quit eventually, right?

8 A Yes.

9 Q When you first were reaching in to get the other
10 person, did you say there head was up against the
11 dashboard?

12 A It was leaning down by the dash, yes, sir.

13 Q By the dash?

14 A Yeah, curve over like that.

15 Q Okay. And did you try to pull them out and grab
16 their feet?

17 A I couldn't get to his feet. I had to try to get him
18 from his upper body because everything else -- he was pack
19 down. I tried to get him from up top because all that
20 weight from the seat it wasn't that much room to get him
21 because he was like pinned in.

22 Q But he was kind of in the middle of the RV, right?
23 He wasn't on one side or the other. He was kind of in the
24 middle on the dash; is that right? Isn't that right?

25 A Yeah.

1 Q Okay. You went around the other side, but that door
2 was all smashed in, wasn't it?

3 A Yes, sir. From side the tree pin up from hitting
4 that tree.

5 Q Yes, sir. The people that were helping you did they
6 also reach into the truck?

7 A From trying to get the other guy out from the other
8 side.

9 Q Yes, sir.

10 A They was trying to help on the other side.

11 Q On the driver side?

12 A No, on the passenger side.

13 Q Did they reach in from the driver side? Didn't they
14 reach in from the driver side too?

15 A Yeah, but it was -- after I got him, at the time that
16 I was pulling the defendant out, that when they was trying
17 to get the other side open.

18 Q So while you pulled him out, they were reaching in
19 trying to get the second guy, right?

20 A Trying to get the door open on the other side. Like
21 I said, once again the RV was on fire. At the time when I
22 was getting him, it was on fire. It was flaming up then.

23 Q And how far back would you say Ms. Brown, your
24 girlfriend, was she from the RV maybe back to those doors?

25 A About 20 or 30 feet something like that.

1 Q This is about 20 feet was she ---

2 A Go a little further. Like I said, she was directing
3 traffic.

4 Q A good ways back?

5 A Yeah. She could see who I pulled from under the
6 steering wheel. She had vision to see that.

7 Q Okay. But she couldn't see inside the van, could
8 she?

9 A No, sir.

10 Q She saw him once you got him out, didn't she?

11 A Yes.

12 Q Okay.

13 A But once I got pulled him out like when they had
14 passed us, when they swerve back in the other lane, she
15 said he was the driver.

16 MR. GRIFFITH: I have no further questions.

17 MR. MEADORS: Neither do I. Thank you.

18 THE COURT: All right. Thank you, sir. You may
19 step down. Thank you.

20 (WHEREUPON, the witness leaves the witness
21 stand.)

22 THE COURT: All right, Mr. Meadors.

23 MR. MEADORS: Your Honor, our next witness is
24 going to involve the technology, Your Honor, said, so
25 could we have 'til 10:15 to make sure it's up and running

1 that will be ---

2 THE COURT: Let's make it 'til 10:20. We'll
3 take about ten minutes. Ladies and gentlemen, I am going
4 to allow you to go to your jury room now. Please do not
5 discuss the case among yourselves. Any discussion among
6 yourselves is still premature. Again, you can talk about
7 anything you want to children, sports, weather anything at
8 all, but don't talk about this case and we'll send for you
9 in about ten minutes. Thank you very much.

10 (WHEREUPON, the jury retire to the jury room.)

11 THE COURT: All right. We'll be in recess until
12 10:20.

13 (WHEREUPON, a break was taken.)

14 THE COURT: All right. We're back on the record
15 with regard to the matter The State vs. Evans. Mr. Evans
16 is present with his counsel. The State is present and
17 represented by the Third Circuit Solicitor's office
18 Mr. Meadors. Anything before we bring the jury in, Mr.
19 Meadors?

20 MR. MEADORS: May we approach, Judge?

21 (WHEREUPON, a bench conference was held.)

22 THE COURT: All right. After the bench
23 conference, we are now ready to resume and we'll bring the
24 jury in please.

25

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: Thank you very much, ladies and
3 gentlemen. Thank you for your patience. In addition to
4 you taking a little recess, we had a few matters that we
5 had to take care of. And we have now done those and we
6 are ready to go forward.

7 Mr. Meadors, you may call your next witness.

8 MR. MEADORS: Thank you, Your Honor. The State
9 would call Lance Corporal Brian Trotter.

10 BAILIFF: Raise your right hand, sir. State
11 your name?

12 THE WITNESS: Brian Nelson Trotter.

13 BAILIFF: Do you solemnly swear or affirm your
14 testimony to the court shall be the truth, the whole truth
15 and nothing but the truth so help you God?

16 THE WITNESS: I do.

17 BAILIFF: Thank you much, sir. Step around
18 watch your step.

19 WHEREUPON,

20 Brian Nelson Trotter,
21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 Q Good morning, you're Lance Corporal?

24 A Yes, sir.

25 Q It's all right if I call you Corporal or Trooper for

1 this?

2 A Yes, sir.

3 Q Okay. Trooper, will you please tell the ladies and
4 gentlemen of this jury about yourself, your background,
5 where you from, your background, your training and in
6 particular your training and experience in the field of
7 expertise I'm gone offer you today?

8 A Yes, sir, I grew up in Blount County Tennessee. It's
9 right outside of Knoxville. I enrolled in the Navy on my
10 17th birthday. And got an appointment to the U.S. Naval
11 Academy. Earned a bachelor of science degree in aerospace
12 engineering and was commissioned an ensign in the Navy.
13 Spent 20 years as a navigator and mission commander on a
14 turboprop patrol air plane. And in the last tour, I was
15 an electronic warfare officer on an aircraft carrier. I
16 retired from the Navy and was fortunate enough to get
17 picked up for the Highway Patrol. It's an unusual
18 transition, but that's what I did, very happy with this.
19 Been a residence in Lexington county since 2011. Toward
20 the end my Navy career, I got a master's degree in
21 aviation science from Embry-Riddle Aeronautical
22 University. I attended the Criminal Justice Academy in
23 Columbia. I did 19 weeks of Highway Patrol training at
24 the South Carolina Criminal Justice Academy. At the
25 completion of that, I completed technical collision

1 investigator at scene phase one with 80 hours of training,
2 technical collision investigator, technical phase two, an
3 additional 80 hours of training.

4 Q At that tech at scene phase one was that in 2012?

5 A Yes, sir.

6 Q Okay. And tech two was in 2016?

7 A Yes, sir, I was picked up for the MAIT team in March.
8 This will be almost two years ago. MAIT stands for the
9 multi-disciplinary accident investigation team. We're a
10 specialized unit in the Highway Patrol that does major
11 crash investigation reconstruction. So roughly 800
12 troopers across the state. There are 32 of us. I'm in
13 the Midlands office. And we investigate collisions in the
14 14 counties and the Midlands of South Carolina. So after
15 I was fortunate enough to be selected for MAIT, I had to
16 complete the technical phase two portion of my training,
17 that was in 2016. I attended the Pennsylvania state
18 police collision reconstruction seminar later that year.
19 Went back to the academy and completed reconstruction
20 phase three for another 80 hours of training. I've
21 completed crash data recorder technician level one and
22 two. I'm qualified as a background investigator for the
23 Highway Patrol. I did a momentum and a conservation
24 linear moment class, which was 24 hours. Then completed
25 40 hours pedestrian bicycle reconstruction training. I'm

1 qualified in the Highway Patrol as a small unman aerial
2 vehicle operator, which is our drone. I've completed 40
3 hours motorcycle collision reconstruction training at the
4 Criminal Justice Academy. I attended the SCARS
5 conference South Carolina Accident Reconstruction Society
6 seminar in Charleston, which was 36 hours. I'm a
7 post-evidence custodian, which was five hours of training.
8 I've had a total of 449 of training directly related to
9 collision investigation and reconstruction in addition to
10 the standard Criminal Justice Academy training that every
11 police officer in South Carolina gets.

12 Q Are MAIT called out by local troopers or sheriff's
13 departments or cities in certain cases to assist in the
14 investigation?

15 A Yes, sir. If it's a highway patrol case and it meets
16 certain criteria, the supervisor will call the on call
17 MAIT lieutenant. He will decide if its a MAIT response.
18 And then we go based on his recommendation. We also
19 assist city police departments with their investigations.
20 We've assisted Sumter Police Departments on a number of
21 occasions. When the Amtrak collision took place a couple
22 months ago, NTSB was too far away to get here quickly
23 enough. The FBI took over as the lead investigating unit.
24 The FBI doesn't have a lot of experience investigating
25 collisions, so they called my team out.

1 Q And so how many collisions or accident scenes have
2 you investigated?

3 A Well, I was a road trooper for four years. I
4 investigated over a thousand reportable collisions. Those
5 are ranging from a scratch, fender bender all the way up
6 to fatality. Since I've been on MAIT I've investigated in
7 the neighborhood of 200 that involved a fatality and or
8 felony charges.

9 Q And have you been offered as an expert and accepted
10 as an expert in the field of accident and or collision
11 reconstruction?

12 A Yes, sir.

13 MR. MEADORS: Your Honor, at this time we would
14 offer Lance Corporal Brian N. Trotter as an in the field
15 of collision and or accident reconstruction.

16 THE COURT: Mr. Griffith, any questions or...

17 MR. GRIFFITH: Yes, Your Honor, if it please the
18 Court.

19 VOIR DIRE EXAMINATION

20 BY MR. GRIFFITH:

21 Q Lance Corporal Trotter, Trooper Trotter, if you don't
22 mind.

23 A Yes, sir.

24 Q You're from Tennessee no wonder you seem like a nice
25 guy. Well, you had 80 hours of collision training one,

1 that's two weeks?

2 A That's right.

3 Q You had 80 hours of collision training two, that's
4 two weeks?

5 A Yes, sir.

6 Q Did you say there was a collision training?

7 A There is.

8 Q And that was two weeks?

9 A I believe three is also two weeks, yeah.

10 Q All right. Then you had 36 hours of accident
11 reconstruction?

12 A Thirty-six hours was a seminar.

13 Q A seminar. I go to seminars all the time I usually

14 ---

15 THE COURT: No comments.

16 BY MR. GRIFFITH:

17 Q Okay. You had some bicycle training, bicycle
18 accidents?

19 A Yes, sir.

20 Q So really you've had six weeks worth of training and
21 a seminar; is that correct?

22 A And a degree in engineering.

23 Q Your degree is an aviation engineering; isn't that
24 correct?

25 A Well, aerospace engineering is a subset of mechanical

1 engineering.

2 Q Aerospace engineering and mechanical engineering.

3 That's not auto accident engineering, is it?

4 A No, it's not.

5 Q So with six weeks worth of training and a 36 hour
6 seminar, how many times have you been offered as an
7 expert?

8 A One time.

9 Q One time.

10 MR. GRIFFITH: I have no further questions, Your
11 Honor.

12 THE COURT: All right. What's your position
13 with regard to this -- the proffer of Mr. Meadors to this
14 witness as an expert in the field of accident collision
15 reconstruction, Mr. Griffith?

16 MR. GRIFFITH: I would object, Your Honor ---

17 THE COURT: All right, that's all I need to
18 hear. Thank you. Ladies and gentlemen of the jury, if
19 you go out for just a minute please. I got a legal matter
20 I need to take care of.

21 (WHEREUPON, the jury retire to the jury room.)

22 THE COURT: All right. Mr. Griffith, the proper
23 way to have done this would have been to let me know ahead
24 of time that you objected to this witness or had some
25 questions as to whether this witness was qualified and we

1 should have had a hearing outside the presence of the jury
2 under State vs. Counsel, that's the right way for
3 challenging the expertise of a witness is. You all did
4 not notify me that there was any question with regard to
5 his qualification, but I'll hear from you so far as to
6 what your objections are under State vs. Counsel.

7 MR. GRIFFITH: Your Honor, I would object in
8 that in six weeks worth of training just doesn't seem like
9 enough training to qualify him as an expert in accident
10 and collision reconstruction.

11 THE COURT: Well, you still haven't articulated
12 your objection under State vs. Counsel. That's the proper
13 way to challenge a witnesses expertise and to challenge
14 whether the witness should be qualified or not and that's
15 the controlling law in this state.

16 MR. GRIFFITH: I have no additional objection,
17 Your Honor.

18 THE COURT: Sir.

19 MR. GRIFFITH: I have no additional objection,
20 Your Honor.

21 THE COURT: No additional objection other than
22 the fact that you don't think factually that the six --
23 supposedly six weeks training is sufficient to qualify him
24 as an expert; is that right?

25 MR. GRIFFITH: That's right, Your Honor.

1 THE COURT: Mr. Meadors, you wish to be heard?

2 MR. MEADORS: Judge, he's testified he's got an
3 engineering degree. He's been to over a thousand sites.
4 In addition to that, Judge, he's had training in
5 reconstruction one and two. I didn't ask him that, but
6 he's accredited. I can do that later. Judge, he's
7 testified he's been to these courses. I don't think it
8 matters the length. He's experienced. He's been to the
9 -- he's been qualified once as an expert in this field of
10 accident reconstruction. He's got a background in
11 training in engineering. We believe he does have the
12 sufficient -- I didn't even know this was an issue. I got
13 all my case law downstairs. I did not know this was even
14 an issue ---

15 THE COURT: I got my case law too and I'm going
16 to get it right now.

17 MR. MEADORS: I didn't know this -- I never had
18 a MAIT person that I didn't offer as an expert quite
19 frankly and I didn't -- he was on the witness list and
20 there wasn't an objection to it.

21 THE COURT: All right. I understand. Keep your
22 places counsel, I'm going to get my case law that I got on
23 this subject.

24 (WHEREUPON, a break was taken.)

25 THE COURT: All right. There generally two

1 types of expert witness that are offered in a case
2 scientific expert testimony and non-scientific expert
3 testimony. The test of admissible expert is in South
4 Carolina is set forth in State vs. Counsel. In that case,
5 the Court said that when admitting scientific evidence
6 under Rule 702 South Carolina Rules of Evidence. The
7 trial judge must find the evidence will assist the trier
8 of fact. The expert witness is qualified and underlining
9 science is reliable. The case further States that the
10 trial judge should apply the Jones factor should determine
11 reliability. If the evidence is admissible under 702 of
12 South Carolina rules of evidence, the trial judge would
13 determine as probative value is outweighed -- should
14 determine whether it's probative value is outweighed by
15 its prejudicial effect under Rule 403 of the South
16 Carolina rules of evidence.

17 Once the evidence is admitted under these
18 standards, the jury should give it such weight as it deems
19 appropriate. This is the language of State vs. Counsel.
20 The proper procedure for determining the admissibility of
21 expert testimony would be to excuse the jury and have the
22 qualifications and testimony proffered in camera. Then
23 the Court would then make a finding with regard to whether
24 it is admissible, whether the witness is qualified by
25 knowledge, skill, experience, training or education and

1 the underlying science is reliable and determining the
2 reliability the Court should apply the factors set forth
3 in the State vs. Jones, that was the law and was further
4 clarified and is still the law which further clarified in
5 separating scientific and non-scientific evidence.
6 Scientific evidence been that shown in State vs. Counsel
7 and Daughter vs. Merril M-E-R-R-I-L and Dowd
8 Pharmaceuticals, which is while the holdings have been
9 that we have not adopted Dalbert. We are very close to it
10 with State vs. Counsel.

11 However, in State vs. White 382, South Carolina,
12 265 676 Southeastern Second 684, a 2009 case, the court
13 distinguished non-scientific evidence and wrote and held
14 that the factors to be determining whether non-scientific
15 evidence was admissible, was to look at the qualifications
16 of the expert which must be sufficient and a determination
17 that the expert's testimony will be reliable should also
18 be made. So it's not quite as hard a standard with --
19 there is with peer review required with scientific
20 evidence. But in any event in this case, I would find
21 that the evidence is admissible because it will assist the
22 trier of fact to determine the fact an issue specifically
23 the nature of the collision that resulted in the decedents
24 death in this case and what the cause of that collision
25 was including the operator of the vehicle.

1 I would further that this witness is qualified
2 by knowledge, skill, experience, training or education and
3 that this is a reliable science although there's no -- the
4 reliability is based upon several factors that I have
5 looked at. Prior application of the method to the type of
6 experience in this case and the consistency of the method
7 of which is used by to determine this witness'
8 qualification. I would go further to say that the
9 evidence is admissible under 403 South Carolina Rules of
10 Evidence because the probative value outweighs the
11 prejudicial effect. The witness is qualified to testify
12 as an expert.

13 MR. MEADORS: Your Honor, can I add one case on
14 the record.

15 THE COURT: Yes, sir.

16 MR. MEADORS: I just got my book State vs. Goode
17 406 Southeastern 2nd 391, which obviously qualification of
18 a witness is an expert rest in sound discretion of the
19 trial judge. That was a case where trooper had -- who had
20 received a 12-week training at the highway academy
21 including a specific point of impact accident
22 investigation training four or five weeks on the job was
23 qualified to give an expert opinion about the impact?

24 THE COURT: What's that case?

25 MR. MEADORS: State vs. Goode 406 Southeastern

1 2nd 391.

2 THE COURT: I still didn't get the last name.

3 MR. MEADORS: Goode. G-O-O-D-E.

4 THE COURT: And it's two what?

5 MR. MEADORS: 401 Southeastern 2nd 420. Excuse
6 me strike that. Hold on one second, Your Honor. Goode is
7 right 406 Southeastern 2nd. 406 Southeastern 2nd 391.

8 THE COURT: And that case held that a Trooper
9 was -- that case qualified a trooper in accident
10 reconstruction; is that right?

11 MR. MEADORS: In a line of specific ruling was a
12 line of impact collision, but I think that's roughly the
13 same thing, yes, sir.

14 THE COURT: All right. Mr. Griffith, anything
15 you like to add?

16 MR. GRIFFITH: Your Honor, the State continues
17 to kick around, if I may, the words rolling meth lab. I
18 didn't hear anything about him being qualified. If
19 they're going to offer that, I just would say he can talk
20 about the accident, but I wouldn't -- I'd still object if
21 he was going to go anywhere and to any other areas other
22 than the accident, how it happened.

23 MR. MEADORS: I don't know what he's talking
24 about.

25 THE COURT: Okay. I can't rule on an objection

1 until there has been some testimony that is objectionable.
2 And so I don't have any idea no motion in limine to -- we
3 not gone go through this witness' testimony with the jury
4 out and then come back to it. If there's an objection,
5 then you have the right to make it.

6 MR. MEADORS: We had a conversation months ago
7 about why this might have caught on fire. There's
8 methamphetamine in there, but I never intended to offer
9 evidence that this might be a rolling meth lab. I guess,
10 that's what he's referring to. I obviously would not try
11 to get out and don't intend to.

12 THE COURT: All right, counsels, talk to me
13 don't talk to each other during the course of a trial?

14 MR. GRIFFITH: We good, Your Honor.

15 THE COURT: All right. Witness is qualified,
16 bring the jury in. Mr. Meadors, is State vs. Goode in the
17 prosecutors handbook?

18 MR. MEADORS: No, sir, it's in another book, but
19 I'll give you a copy of it.

20 THE COURT: I like to have a copy of it to put
21 with my other cases.

22 MR. MEADORS: Judge, it might be in the
23 prosecutors desk book, that's not where I got it from.

24 THE COURT: Okay.
25

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: All right. Thank you, ladies and
3 gentlemen, again, I don't like to keep jurors in the jury
4 room more than its absolutely necessary, but it was
5 necessary in this matter because we did have some legal
6 matters that we had to tend to. You will recall that I
7 told you at the beginning that there maybe times when I
8 will have to send you out so that we could address certain
9 legal issues. And this was one of those times. And I had
10 to do that, but we have taken care of that and we are now
11 ready to go forward.

12 The witness was offer -- Trooper Trotter was
13 offered as an expert witness in the field of accident and
14 collision reconstruction. And I have qualified him as an
15 expert in the field of accident or collision
16 reconstruction. You will recall that when we had the
17 doctor on the stand I told you a little bit about what
18 expert witness was. Again, I would tell you if the
19 witness is not testifying as an expert, the witness'
20 testimony in the form of opinion or inferences is limited
21 to those opinions or inferences which are rationally based
22 on a perception of the witness or helpful to a clear
23 understanding of the witness' testimony or to the
24 determination of a fact at issue and do not require
25 special knowledge, skill or experience or training.

1 However, if scientific, technical or other
2 specialize knowledge will assist the trier of fact and
3 again that's you to understand the evidence or to
4 determine a fact an issue, a witness qualified as an
5 expert by knowledge, skill, experience, training or
6 education may testify in the form of an opinion. So an
7 expert witness can give an opinion where as a non-expert
8 witness cannot give an opinion. And I have qualified this
9 witness as an expert in the field of accident or collision
10 reconstruction. All right. Mr. Meadors, you may proceed.

11 MR. MEADORS: Thank you, Your Honor.

12 BY MR. MEADORS:

13 Q Trooper, did you respond to this incident we're
14 talking about on February 12th 2017 at Saint Paul church
15 Road?

16 A Yes, sir, I did.

17 Q And how did you get involve?

18 A I got a phone call from my supervisor. As a result
19 of that phone call, I drove out to the scene of the
20 collision on Saint Paul Church Road and I got there at
21 three p.m.

22 Q What's your job when you get there?

23 A Well, for scene work, normally -- it really has no
24 normally. It depends on how many people are out there and
25 how we divided the work. But something that we do at

1 every scene is we talk to the officers who are out there
2 if there are any. We get an idea of what they've seen and
3 what they've got and what they think happened. And then
4 we all do an independent walk through at a scene, look at
5 the evidence on the road if there is any. I look at the
6 vehicle. I look at everything that's out there whether
7 their tire marks like the damage profile of the vehicle
8 and do a general walk around. And at every collision
9 scene, I take photographs. I video of the scene. And
10 depending on the nature of the collision, there some other
11 things, but that was the main thing I did that day was
12 photographs and videos document the evidence that was out
13 there.

14 Q And have you reviewed with me State's 34, which is
15 the video you took that day?

16 A Yes, sir.

17 MR. MEADORS: Your Honor, at this time we like
18 to publish I believe without objection State's Exhibit 34.

19 THE COURT: It is in evidence.

20 MR. GRIFFITH: It is no objection.

21 (WHEREUPON, State's Exhibit No. 34 was admitted
22 into evidence.)

23 THE COURT: All right. State's Exhibit 34 is in
24 evidence and you may publish it to the jury. Again,
25 ladies and gentlemen, I will tell you that anything that

1 is shown to you in the courtroom that is in evidence you
2 will have the opportunity to see it as often as you would
3 like or as much as you would like when you retire to the
4 jury room. And if when you do retire to deliberate your
5 verdict in this case if you need to see that additionally
6 we can make those arrangements, but for now the lawyers
7 have the right or the State has the right to publish or
8 show you this video. All right. You may proceed.

9 (WHEREUPON, video played for the jury.)

10 MR. MEADORS:

11 Q Is this Saint Paul's Church Road?

12 A Yes, sir.

13 Q That is in Sumter County?

14 A Yes, sir.

15 Q Do you comment doing this or are you just trying to
16 capture the scene as you saw it?

17 A There's no comments on this one. In fact, I disabled
18 the audio on that video camera. We do make audio notes at
19 every scene which I did in this case as well when I
20 described what I saw and what I did. As a matter of
21 practice, we turn off the audio for the video so that we
22 don't hear fire trucks. It's just really a distraction to
23 what we're trying to do.

24 Q So is this incident location actually before that
25 curve? We saw the sign for the curve. Is this before the

1 curve?

2 A Yes, sir, it's a straight section of the roadway
3 where this was. And what I was doing in the video prior
4 to where it is now is I start back an appropriate distance
5 and I walk around in a circle to give anyone viewing the
6 video an idea of where it is if there's some kind of
7 landmark. And then if I'm walking the path that vehicle
8 would have taken, and then I'm basically documenting the
9 condition of the vehicle and the location, where it is
10 when I found it. And in this particular case, it's what
11 we refer to as final rest and it's where the vehicle ended
12 up at the end of the collision sequence.

13 Q At this point had the defendant already left when
14 you're filming this?

15 A He was, yes, sir.

16 Q And had the -- was Robert Bob Skidmore still in the
17 vehicle at this point?

18 A No, sir, he wasn't.

19 Q So he had already been taken out?

20 A Yes, sir.

21 Q What was that we just passed on the ground right here
22 maybe going back to it?

23 A It was -- well, there's a propane tank next to the
24 tire.

25 Q Okay.

1 A You can see it again now.

2 Q Did you see any skid marks on the road?

3 A No skid marks on the road. I was able to -- you can
4 see -- there's a tire mark in the grass. There's a tire
5 impression where he ran off the right side of the road and
6 leads up to the area of the rear of the vehicle. That --
7 those two tire marks were consistent with the right front
8 wheel and right rear wheels running off the side of the
9 road. I measured them to be approximately 85 feet four
10 inches long, but there's no skid mark on the roadway and
11 no evidence of what we call pre-impact breaking.

12 Q What does that mean?

13 A Any breaking before the impact is pre-impact
14 breaking. It doesn't mean that there wasn't any
15 pre-impact breaking. That there was just no evidence of
16 pre-impact breaking. It's an older model vehicle. I
17 believe it's a '83 model Chevrolet Chassis motor home, so
18 it's not going to have antilock breaks. Of course,
19 someone can apply the breaks and not leave a skid mark,
20 but there's no clear evidence of any breaking prior to
21 impacting the tree. Also that tire mark that runs off in
22 the grass, when you see a tire mark that's under breaking,
23 especially heavy breaking if it's in the grass the tire is
24 going to lock up. It's almost going to lockup when it's
25 in the grass because there's very little resistance to a

1 tire going through grass and dirt. And I was able to see
2 -- it was not very clear on this video, but I was able to
3 see impressions of the tire tread in the mud and the
4 grass. Now, when a tire's rolling, it's leaving the
5 impression of its tread pattern in the dirt or the mud.
6 When a tire's locked up, it's just a straight through the
7 grass. And that's a longer version of what I meant by no
8 evidence of pre-impact breaking.

9 Q You saw no evidence of that whatsoever the pre-impact
10 breaking?

11 A No, sir.

12 Q Okay. You basically doing 360 of the ---

13 A I turned away from it in the video for a second. I
14 believe I walked passed it probably and I'm probably
15 walking back towards it. That's what it is.

16 Q So that is a double yellow line there?

17 A Yes, sir.

18 Q Okay. Based on your investigation, the witnesses
19 would have been going this direction in the right lane?

20 A Yes, sir. The direction I'm walking now would have
21 been the direction that their witnesses were traveling.

22 Q Ms. Brown and Mr. Moyer?

23 A Yes, sir, this is opposite direction of the way the
24 motor home was traveling.

25 Q Is there any significance of this picture?

1 A This is just the -- me walking back in the opposite
2 direction of the motor home's path of travel.

3 Q After you make this video -- were you able to
4 determine a speed in this case?

5 A No, sir.

6 Q Okay. Are you always -- is that unusual that you
7 weren't?

8 A It's not unusual, any case even those where speed
9 would not make a difference if there's a way using
10 accepted reconstruction methods to calculate a speed, then
11 we will attempt to do that. But in this case, there's
12 not. Some vehicles especially newer ones equipped with
13 airbags have an airbag control module that records data in
14 the last usually five seconds before the air bag is
15 deployed. We'll analyze that and get a speed off that.
16 This is an older vehicle doesn't have an air bag module.
17 If there's skid marks in the roadway or -- there are a lot
18 of different ways to calculate a speed, but in this
19 particular collision, there was no way for us to calculate
20 a speed.

21 Q And I'm going to show you what's marked State's 35
22 ---

23 MR. MEADORS: This is without objection, Your
24 Honor.

25 THE COURT: All right, no objection?

1 MR. GRIFFITH: Without objection.

2 THE COURT: All right. State's Exhibit 35.

3 (WHEREUPON, State's Exhibit No. 35 was admitted
4 into evidence.)

5 BY MR. MEADORS:

6 Q You said this is an older vehicle. As part of your
7 investigation, did you attempt to identify what make and
8 model this was?

9 A Yes, sir, we did.

10 Q And were you able do that?

11 A It was an '83 motor home. It's known as a Jamboree.
12 It's on the frame or the Chassis is made by Chevrolet.

13 Q Okay. So it would not have been equipped with
14 anything that would have allowed you to determine speed,
15 any kind of box or anything that we have in our cars now?

16 A No, sir.

17 Q Okay. And this depicts a new one, correct?

18 A I believe that depicts an '83 model Jamboree.

19 Q That's in good shape maybe that was a terrible
20 question. That was an '83. That's not the actual RV
21 here.

22 A It's not. It's not.

23 Q That is the type of RV this was?

24 A Yes, sir.

25 Q Okay. Now, Lance Corporal, you made the video. You

1 had your observations. What do you do next specifically
2 regarding the accident scene?

3 A Well, with this particular case, I took photographs
4 of the scene the same way that Trooper Boland did. If you
5 recall from his photographs, he walked on a circle just
6 like I did. For the video, he followed the path of the
7 motor home. He documented the motor home's condition at
8 final rest. And then he walked the path in the opposite
9 direction of the motor home. And I did that and I took
10 the video. And if you'll notice at the end of the video,
11 the tow truck driver was just hooking it up to get it off
12 the tree and out of the ditch back on to the road to load
13 it up. Once the tow truck driver get it out of those
14 trees, I took additional photographs because it was up
15 against the trees and there was some trees on the
16 passenger side that were pretty thick with some sticker
17 bushes and who knows what else in there. It's difficult
18 to get over there and document it. So once I got the tow
19 truck to pull it off the trees, I took additional
20 photographs. I then draw a field sketch of the scene,
21 measure the width of the roadway, the length of the tire
22 marks that I referred to earlier. And I noted audio notes
23 at the end.

24 Q Okay. I want to show you what's marked State's 33?

25 MR. MEADORS: And, Your Honor, this is without

1 objection.

2 MR. GRIFFITH: Without objection, Your Honor.

3 THE COURT: All right. State's Exhibit 33 in
4 evidence without objection.

5 (WHEREUPON, State's Exhibit No. 33 was admitted
6 into evidence.)

7 BY MR. MEADORS:

8 Q Did you take that picture?

9 A Yes, sir, I did.

10 Q I am going to ---

11 MR. MEADORS: We gear it up it should work, but
12 if it doesn't, it's not my fault.

13 BY MR. MEADORS:

14 Q Lance Corporal, what is this?

15 A That is a photograph of the front of this camper or
16 RV that I took after the tow truck driver pulled it out of
17 the trees.

18 Q So obviously the dent in the front -- is that the
19 front?

20 A Yes, sir, that's the front.

21 Q What can you tell us about -- what is this picture
22 tell you is an expert in accident reconstruction and
23 collision reconstruction when you look at that photo
24 State's Exhibit 35?

25 A This photograph is very telling. If you look at the

1 photographs that you have seen earlier, you see a camper
2 that went off the road and hit a tree. And then as a
3 result of that, a person has died. When I look at this,
4 there were several trees on the side of the road there,
5 but as you can see -- I don't know anything about trees.
6 What kind of tree it was, but there was one tree in
7 particular that was very large compared to the other
8 little ones around it. And that's what caused the damage
9 to the front bumper and radiator area on that. And if you
10 look at it, that's a significant amount of crush on this
11 vehicle. This is a heavy duty commercial truck type
12 frame. If it weren't a camper, it would probably be a
13 bread truck or tow truck or something like that. It's a
14 big heavy vehicle, but what's significant in this case is
15 if you look at the center of that impact, that crush, it's
16 slightly left of the center of the truck. And by left I
17 mean closer to the driver side of the vehicle, then it is
18 to the passenger side. So since you're looking at it the
19 center of this what we call -- I don't want to get too
20 technical, what we call principal direction of force.
21 Right in the center of this crush, it's closer to the
22 driver side than it is to the passenger side. So as you
23 look at the photograph, it's more to the right than it is
24 to the left. It's not quite dead center. He did not dead
25 center that tree. And this is called an offset tree

1 strike. It can also be called a poll strike or whatever
2 it is that you hit, but it's an offset tree strike in this
3 case. The other thing I notice this from the photograph
4 is that the front wheels are turned slightly to the right.
5 And the path of travel along the -- I believe it's
6 84 feet, 85 feet four inches that it went off the road
7 appeared to be straight. No, I didn't measure it with a
8 laser, but it appeared to be straight. And as you can
9 see, there's a significant amount of deflection to the
10 right of this wheel -- of the two front wheels. Now, the
11 one on the passenger side burned up, but it is the two
12 front wheels are turned to the right. So both of those
13 are significant in this particular case.

14 Q Why is that significant?

15 A Well, everything we do in collision reconstruction is
16 based on physics. Physics is the foundation of
17 engineering. So I don't want to get too far in the weeds
18 on this ---

19 Q As far as you need to please?

20 A Yes, sir. The physics I'm referring to it is about
21 10th grade level or eighth grade level. Isaac Newton came
22 up with three laws of physics. The first one is an object
23 that's at rest, will remain at rest until it's acted on by
24 force. The second one is an object in motion, will remain
25 in motion until it's acted on by an external force. And

1 the third one is every action has an equal and opposite
2 reaction. So we've all heard that at some point in our
3 schooling. And everything we do in collision
4 reconstruction is based eventually works back Newton's
5 laws. The other thing I want to talk about with this
6 particular collision is that I want you to understand is
7 that every crash has three collisions inside it. The
8 first collision is when this camper hit a tree or any in
9 crash when the vehicle hit something whether it's another
10 vehicle or a tree or a pole or a ditch, that's the first
11 collision. The second collision is the human body that's
12 inside the vehicle goes generally in the opposite
13 direction of the force in this case forward and hits
14 whatever's in front of it. Hopefully, it's your seat
15 belt, which is why we want you to wear your seat belt, but
16 otherwise it's the steering wheel or the dash or the
17 windshield that's the second collision. The third
18 collision that's present almost every crash is inside your
19 body your organs are inside your chest cavity and they
20 continue to travel under Newton's law until they impact
21 your chest cavity. And that's what happens inside the
22 human body is outside my area of expertise, but those are
23 the three collisions that happened in these crashes. So
24 I'm going to try and come back to why this photograph is
25 so significant. Going back to Newton's law, I want you to

1 think about if you go to the grocery store and you put
2 some groceries in your passenger seat, someone pulls out
3 in front of you and slack on breaks, the groceries come
4 out of the seat and they go forward, everybody's had that
5 happen. Whatever's in your seat when you slam on your
6 breaks goes forward and that happen in this collision.
7 Could I stand up and address?

8 Q If the judge let's you.

9 THE COURT: Yes, sure.

10 A Some of this is easier for me to talk with my hands.

11 THE COURT: Could you just keep your voice up
12 because you're away from the microphone.

13 THE WITNESS: Yes, sir.

14 A So when I talk to you about the grocery bags that are
15 in your passenger seat, in this case what we're referring
16 to are the human beings inside that vehicle. Now, I don't
17 want you to think that I'm down playing the fact that
18 these are human beings, but I want you to follow this very
19 basic physics that I'm talking about and unfortunately
20 that's what happens to the human body when it's inside a
21 vehicle. Slam on breaks have some sort of sudden stop and
22 whatever's unrestrained in that vehicle goes forward. I
23 think everybody can follow that. That happen in this
24 collision. The other example I want you to think about is
25 kids on bicycles today they had the hand break on the

1 front, mine never did. Has a hand break on the front for
2 the front wheel, you grab ahold of that front break and
3 the rear end comes up. And kids do that as a trick,
4 that's probably got a name, but you all seen them do that
5 with these little stunt bikes, so I want you to remember
6 that. A sudden stop and the rear end is going to shift
7 because what happens is that rear end is still trying to
8 go forward. Under Newton's laws of motion, you done this
9 violent stop to the front end and still being continue to
10 go forward. You doing too much the bicycles going to go
11 over the handle bars. So in this particular crash,
12 remember I told you this was an offset collision. So if
13 you had an object with your vehicle and you center it, you
14 stop. You hit the tree or the pole. If it's centered in
15 that vehicle meaning it goes through what we call the
16 center of mass, which is a center of gravity or the center
17 of the vehicle, then it's going to stop. And it's not
18 going to do anything side to side. It's just going to
19 stop. And like the kid on the bicycle, there's going to
20 be a big weight transfer forward, so that front suspension
21 is going to compress. That rear suspension is going to
22 expand. And in extreme cases, the rear wheels will come
23 off the ground. I've seen a lot of high speed videos in
24 my training of crashes that we've staged at the seminars
25 where the vehicles rear wheels have come off the ground in

1 a violent crash. Now, this is not a dead center
2 collision. This is an offset tree strike. So I want you
3 to think now about if you're walking down a hallway and
4 someone bump into you on your shoulder or you walk into a
5 pole because you're not paying attention, so you're
6 walking and you hit this pole or into a person's shoulder
7 and that cause you to twist because you hit something off
8 center. If you walked into a pole like this, you would
9 stop, bounce back, but if you hit on your shoulder, it's
10 going to cause you to turn around like this. And that's
11 what happened in this collision and I don't say that
12 because I was there. And I didn't witness it, but I have
13 investigated a lot of these crashes and it's not my
14 opinion that something is going to rotate when it hits
15 something off center, that's a fact of physics. When you
16 hit something off center, there's now a distance between
17 center fast travel and impact and it's going to cause it
18 to rotate. So what happened with this crash was this
19 camper hit this tree or this tree and it went forward like
20 the kid on the bicycle. The people in the car went
21 forward like the groceries on the seat. And then the
22 vehicle unloaded the rear suspension, loaded the front
23 suspension. When I say loaded the front suspension, its
24 weight transferred forward just like the kid on the bike.
25 The wheels may or may not have come off the ground, then

1 that camper rotated. A view from above, it would counter
2 clockwise, so I hope that makes sense. It hit the pole
3 and so there's three separate motions that happened when
4 this camper hit that tree, forward weight transfer,
5 rotating to the left this way and the occupants inside
6 going forward. Now, this is where this is important is
7 looking at what happened to the occupants in the inside of
8 that vehicle. So if you hit something straight like I
9 said before, the groceries come off the seat. If you hit
10 going dead straight, you're going to go straightforward.
11 You're going to get thrown into your seat belt or you're
12 going to get thrown into the steering wheel or the dash or
13 the windshield or whatever is in front of you. The other
14 example I want to talk about just briefly to illustrate
15 where I'm going with this, is I want you to imagine that
16 I'm standing on a piece of a carpet and someone pulls this
17 rug out from underneath me. I'm going to fall forward
18 because this rug has been pulled from underneath me.
19 Again, it's Newton's law as I'm standing here relative to
20 the carpet, I'm going to fall forward equal and opposite
21 reaction. So we slam on breaks, force going behind you.
22 Opposite reaction groceries go off the seat this way. I
23 get the rug pulled out from me from behind, opposite
24 reactions to fall forward. So in the dynamics of this
25 crash, there were two directions of force being applied to

1 the vehicle and to the occupants of that car. The first
2 one was a crash force going forward as it hit the tree.
3 The second one was this camper is rotating around the
4 tree to the right. So the rug gets pulled out from under
5 me this way, I go the opposite way. The camper goes
6 right, body goes to the left and I'm facing and everything
7 is backwards, right. So if it hits the tree, rotates to
8 the right. Camper goes right, my unrestrain body goes to
9 the left. So when you look at the photographs that
10 Trooper Boland took with the deceased in there, it's
11 entirely consistent that he could be in that passenger
12 seat and be in the position that he's in because the
13 forces in this crash were forward on the person -- the
14 force on the vehicle were backwards and right. So the
15 force is on people forward and left. So what I'm
16 explaining to you is not my theory, it's facts. And I
17 hopefully have explained it to you in a way that you can
18 understand my reasoning here. And the last thing that I
19 want to explain is that these were not separate events of
20 going forward and then rotating. This was a very violent
21 crash. It probably happened the entire crash, happened in
22 less than a tenth of a second would be my estimate based
23 on the airbag module profiles I see from other cars. So
24 it would have gone forward and rotating to the right.
25 This happens all at once and then it comes to rest like

1 this. Forward and rotating to the right and the
2 passengers inside the vehicle are pushed, pulled or
3 continued up and then to the left.

4 Q This is State's Exhibit 12 does that help?

5 A This is the victim. As you can see, his body is
6 slightly to the left of the passenger seat and the defense
7 would have you believe ---

8 Q No, you just give your opinion.

9 THE COURT: No.

10 A This is entirely consistent with the dynamics of the
11 crash that I just explain to you.

12 Q Look at State's 5 please. Is that consistent with
13 your opinion or is what you were...

14 A Yes, sir, it is.

15 Q Explain that again?

16 THE COURT: He can use the pointer on the
17 picture down there and it will show on the screen pen or a
18 pointer. He's going to get you a pointer.

19 A So this would be looking forward into the vehicle.
20 So this is the -- I believe this is the frame of the
21 driver seat and the remains of the passenger seat are over
22 here. So as you can see the victim's body is pointed in a
23 direction that's forward and to the left.

24 Q State's 7 and again you took pictures like this also
25 right basically the same as Trooper Boland?

1 A The victim had been removed.

2 Q Okay. So these are pictures Trooper Boland took with
3 the victim still in there?

4 A So this is with the person taking this photograph
5 standing outside of the driver side of the vehicle means
6 you can see from this angle here. He has pointed somewhat
7 forward and towards the driver side of the car towards the
8 photographer.

9 Q Do you have an opinion based on viewing the accident
10 scene and science and your background where Bob Skidmore
11 was in the RV when this accident happened?

12 A He was in the passenger seat.

13 Q That is your opinion?

14 A Yes, sir.

15 Q Okay. I'm not a scientist.

16 THE COURT: I'm sorry I didn't hear his answer
17 on that. What was your answer.

18 A It's my opinion he was in the passenger seat.

19 THE COURT: Okay.

20 BY MR. MEADORS:

21 Q Keep your voice up, if you come over here. If this
22 hits this, which way is this going to go?

23 A Towards me.

24 Q And if this hits this a little bit this way if
25 something over here which way is it going to go?

1 A It was going to go in the direction it was hit.

2 Q Based on your expertise in examining these pictures
3 and all, if this hits a tree, if there's a person in here,
4 is there anyway they go right?

5 A There is, no. In this crash, everything in this
6 crash went forward and left. Anybody who was in the
7 driver seat or the passenger seat would have gone --
8 anybody in this van, any object in this van is going to go
9 forward and left. If you're in the driver seat, you're
10 going to go forward. And if you're into your seat belt or
11 steering wheel and you're going to go left only if there's
12 a door there stopping you.

13 Q And the follow up question would be is there anyway
14 in your experience and looking at these pictures that you
15 could go -- you're in the driver seat go right and then
16 back to the left?

17 A No, sir.

18 Q Is there anyway that's possible in your opinion?

19 A No, sir.

20 MR. MEADORS: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (WHEREUPON, a pause in the proceedings.)

23 MR. MEADORS: Thank you, Lance Corporal.

24 THE COURT: Cross-examination, Mr. Griffith.

25 MR. GRIFFITH: Yes, Your Honor. Court's

1 indulgence, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. GRIFFITH:

4 Q Trooper Trotter, your studies and you have seen
5 accidents like this before. You've also -- have you seen
6 accidents involving an RV like this?

7 A Not nothing serious, no.

8 Q Have you ever driven an RV like this?

9 A Yes, sir, I have.

10 Q This old?

11 A No, sir, no.

12 Q So if I told you that in this type RV the steering
13 wheels like this not like this, is that consistent with
14 what you saw or could you tell that by looking?

15 A I don't believe there's much left of the steering
16 wheel when I've seen it. I have seen older heavy duty
17 type vehicles. I wouldn't call it horizontal, but it's
18 not in the same plain that you're use to of the passenger
19 car.

20 Q It's more like this; isn't that right?

21 A Yes, sir, I would say that.

22 Q So if a person were standing in this vehicle and they
23 were losing control and they stood up, try to turn this
24 wheel and they stood up and they're like this with the
25 wheel and it hit the tree, you testified they would go

1 forward and right?

2 A No, sir.

3 Q I mean, left I'm sorry?

4 A Yes, sir.

5 Q But now they're standing up and they go forward and
6 left toward the steering wheel if they are standing up
7 trying to turn this thing. So it would be consistent that
8 they would land in that direction; is that correct? Would
9 that ---

10 A Are you saying if someone were standing up on their
11 right side of the steering wheel? He end up underneath
12 the steering wheel?

13 Q Yeah. Is that right?

14 A I suppose, yes, sir.

15 Q Now, you said that this right here ---

16 THE COURT: Refer to the exhibit number.

17 BY MR. GRIFFITH:

18 Q Oh, I'm sorry. This is State's 6, State's Exhibit 6.
19 It's State's Exhibit 6 this is the frame of the driver's
20 seat; is that correct?

21 A Is there more on the photograph that's not on the
22 screen.

23 Q Let's see this is State's Exhibit 7 and that's the
24 same?

25 A Yes, sir, that's the frame -- I believe that's the

1 frame of the driver's seat.

2 Q And in State's Exhibit 6 now is that the frame?

3 A Yes, sir.

4 Q Okay. While you were examining this wreck could you
5 tell how much stuff was in the truck or van?

6 A Well, I don't really know how to quantify it, but it
7 was a lot of stuff.

8 Q It was packed, wasn't it? Wouldn't you say it was
9 packed?

10 A Yes, sir, mostly it was unidentifiable. There's a
11 lot of debris in there.

12 Q And I believe you testified there really wasn't
13 anything left of the passenger seat is that what you said?

14 A I think there might have been some remnants -- there
15 was very little of it left.

16 Q And in your expert opinion that packed vehicle when
17 it hit the tree, all that stuff that was not tied down is
18 moving forward to the left?

19 A Yes, sir.

20 MR. GRIFFITH: I have no further questions.

21 THE COURT: Redirect.

22 MR. MEADORS: No, sir.

23 THE COURT: All right. Thank you, sir. You may
24 step down.

25 (WHEREUPON, the witness leaves the witness

1 stand.)

2 THE COURT: Okay. All right. Ladies and
3 gentlemen of the jury, I been informed ahead of time that
4 there's a matter that we need to take up. It's going to
5 take a few minutes to do that and we need to do it outside
6 your presence. And so I'm going to ask that you go to
7 your jury room for a few minutes while we do that before
8 we call the next witness. Please go with the bailiff, but
9 do not discuss the case among yourselves. It's still
10 premature for you to begin any discussion of the case,
11 just relax for a few minutes and we'll send for you
12 shortly. Thank you.

13 (WHEREUPON, the jury retire to the jury room.)

14 THE COURT: All right. I believe you needed to
15 do some setting up; is that correct?

16 MR. MEADORS: I just want to make sure they're
17 here, Your Honor.

18 THE COURT: All right. While you're doing that
19 before you do that, let me -- and so we can have sometime
20 to discuss this matter probably over the lunch recess let
21 me talk with the defendant about his Fifth Amendment
22 rights. Mr. Griffith, would you and your client stand
23 please.

24 Mr. Evans, you may be called as a witness to
25 testify in this case. I now advise you that you have the

1 right to invoke the protections given to you by the Fifth
2 Amendments of the Constitution of the United States and a
3 similar counterpart provision of the State of South
4 Carolina. The Fifth Amendment to the Constitution of the
5 United States provides in part that no person shall be
6 compelled in any criminal case to be a witness against
7 himself. This provision of constitutional law means that
8 you cannot be compelled or required to testify in this
9 case. This is a right and a privilege which the law
10 extends to you. It is a personal privilege that no one
11 can waive that right except you. You have the right not
12 to testify, but you also have the right to testify. The
13 Court will grant you the right to consult with your lawyer
14 before you make a decision. If you elect not to testify,
15 your failing to testify cannot be used by the State as an
16 inference of guilt and your failure to testify cannot be
17 considered by the jury in their deliberations and I will
18 so instruct them.

19 If you elect to testify and waive the privileges
20 extended to you by the Fifth Amendment to the constitution,
21 I advise you that you would then assume the role of a
22 witness in this case and you would waive or give up your
23 constitutional privilege against self incrimination. This
24 means that if you voluntarily take the witness stand and
25 testify, you will then subject yourself to the same rules

1 that govern other witnesses and you may be examined and
2 cross-examined on any relevant issue in this case. And
3 you may be impeached to the same extent as any other
4 witness. All of which are subject to the rules of law and
5 the rules of evidence.

6 I further advise you that if you elect to take
7 the witness stand and testify, that this decision on your
8 part must be made freely and voluntarily, intelligently
9 and with knowledge of the protections given to you by the
10 Fifth Amendment to the constitution and with knowledge of
11 the consequences of your election to testify.

12 Now, I'm not going to require that you give me
13 an answer to this now, but I want you to talk with your
14 lawyer about whether or not you should or should not
15 testify. And at a later time in this trial, I will ask
16 you whether you wished you exercise your privileges under
17 the Fifth Amendment or you wish to waive those and
18 testify, but my question to you now is do you understand
19 what I've explained to you about your Fifth Amendment
20 rights.

21 THE DEFENDANT: Yes, Judge King.

22 THE COURT: Do you have any questions that you
23 want to ask me about your Fifth Amendment rights?

24 THE DEFENDANT: Yes.

25 THE COURT: You do? What's the question?

1 THE DEFENDANT: The questions I understand that,
2 you know, when I'm on the stand, they ask me questions and
3 I got to give the direct answers. And I'm not able to
4 give what they give because I don't have what they have, I
5 understand that, but is it any -- I guess what I'm asking
6 is there some of the stuff that's being presented, I mean,
7 I have questions about it other than just my attorney.
8 And I know he suppose to represent too, but if I'm on the
9 stand and he was to ask me a question about something
10 similar to say the photos. I didn't know anything about
11 the photos until yesterday.

12 THE COURT: Well, the content of your testimony
13 is not what I'm advising you about now. Whatever you
14 testify to, whatever you can testify to and whatever you
15 can't testify to, we can only find out when you take the
16 stand. And if it's something you stand can't testify to
17 or you don't remember that, then you just simply say that.
18 The question I'm telling you now is that you don't have to
19 say anything. You don't have to take the stand at all.
20 But if you do, then you got to answer the questions to the
21 best of your ability. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. I'm not going to ask you now
24 whether you do or do not wish to testify. I'll give you
25 an opportunity to confer with your lawyer at a later time.

1 I'll find out whether or not you wish to testify or you
2 wish to waive that -- and you wish to waive your Fifth
3 Amendment right. Thank you, sir.

4 All right. Mr. Meadors, you need to check on
5 your witnesses and we need to take ten minutes?

6 MR. MEADORS: At least.

7 THE COURT: All right. Let's start back at five
8 minutes 'til 12 please.

9 (WHEREUPON, a break was taken.)

10 THE COURT: All right. Back on the record with
11 regard to the matter of The State vs. Evans. Mr. Evans is
12 present with his counsel. The State is present and
13 represented by Mr. Meadors. Mr. Meadors, you ready to go
14 forward?

15 MR. MEADORS: We're ready, yes, sir.

16 THE COURT: Ready, Mr. Griffith?

17 MR. GRIFFITH: Yes, Your Honor.

18 THE COURT: Bring the jury in please.

19 (WHEREUPON, the jury came into open court.)

20 THE COURT: Thank you. Ladies and gentlemen,
21 for your patience and we are ready to go forward. The
22 State is continuing to present their case to and we be
23 entitled to do so at this time. Go ahead, Mr. Meadors.

24 MR. MEADORS: The State would call Special Agent
25 Kevin Selinsky.

1 BAILIFF: Place your left hand on the Bible and
2 raise your right hand. State your name?

3 THE WITNESS: Kevin Selinsky.

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

7 THE WITNESS: I do.

8 BAILIFF: Thank you much, sir. Watch your step.
9 State your name for the record and spell your last name
10 please.

11 THE WITNESS: Kevin Selinsky S-E-L-I-N-S-K-Y.

12 WHEREUPON,

13 Kevin J. Selinsky,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MEADORS:

17 Q Good afternoon, Agent Selinsky. How are you?

18 A Good.

19 Q Tell the ladies and gentlemen of this jury a little
20 bit about yourself specifically your background, your
21 education and your training in the field of expertise I'm
22 going to offer you today please?

23 A I work for the South Carolina Law Enforcement
24 Division, that's commonly known as SLED. I work in the
25 forensic science laboratory and more specifically in the

1 toxicology department where I am a forensic toxicologist.
2 I been there just shy of five years. And at that lab we
3 do three main things. We do human performance,
4 toxicology. We do post-mortem toxicology for death
5 investigations and we do drug facilitated sexual assaults.
6 You want me to continue on or ---

7 Q Tell about your training and background?

8 A All right. I have my bachelors in forensic and
9 toxicology chemistry from West Chester University up in
10 Pennsylvania. I have my masters in forensic science from
11 Towson University just outside of Baltimore. In terms of
12 training, we go through a rigorous training program
13 largely it's in-house. Where we are responsible for
14 running a certain number of samples for more of the
15 analytical side of it. And then there is constant
16 training whether it be courses that we go to week long
17 courses, in-house training where some experts may come in
18 and talk to us reading constant new journal articles on
19 ourselves learning about the ever changing world of
20 toxicology and how it would affect the three situations
21 that we deal with mainly before. That largely covers my
22 education.

23 Q And how many exams, if you will, have you conducted?
24 I know you said you did in practice, but how many times
25 have you determined what's in a person's blood or?

1 A In the lab, we actually do it a little bit different.
2 A case will come in and I won't get assign a case until
3 some of the work is done, that's just call batch analysis.
4 So if a case comes in, some of the technicians are going
5 to do certain work. And then I'll be responsible for
6 certain drug class to get values and quantitate those
7 values. And the main reason we do that is just the shear
8 volume of cases that we have. If we were to be
9 responsible for a case from point A to point Z simply
10 nothing would ever get done in a timely fashion. So I've
11 probably done somewhere in the range of hundreds maybe
12 thousands of cases in the five years. I think in the lab
13 altogether we get 16 to 20,000 cases overall. A large
14 portion of those go to toxicology. A lot of them go to
15 various departments where a large portion of them touch
16 toxicology.

17 Q Can you give us just a general overdue exactly what
18 you do when get the blood in this case blood?

19 A Yes, when we have -- in this case came in as a DUI,
20 so what we do is -- let me change that. In this case, it
21 came as a traffic felony DUI. It came in under the same
22 case number and all that is just the randomly generated
23 number that gets a specific bar code for when the agency
24 in this case I believe it was highway patrol that dropped
25 it off. So specifically with the DUI when that comes in

1 since this case it was blood that we were in, the first
2 thing we do is we run a blood alcohol analysis on it to
3 determine the presence or absence of ethanol or maybe any
4 other alcohols that are there. Depending on the value
5 from that, if we feel there's impairment from that number,
6 we might be done. If you come in and you just have a
7 relative high blood alcohol, we typically don't do drug
8 work largely because it would just take a little bit more
9 time and then more money as well when you can already
10 prove impairment. And then if you don't have impairment
11 or if the submitting officer request a drug screen or
12 lists the specific drug, we're going to do a 12-panel drug
13 screen and it's -- what we consider the 12 most commonly
14 used and abused drugs. And we're going to screen the
15 blood sample for that. And then if any of those come back
16 positive on the drug screen, we're going to confirm those.
17 In the blood, we're going to get quantitated values. So
18 actually a number of how much was it at the blood. And
19 then like I said confirm those and then there could be
20 more work done on it, but that gets a little bit more
21 specific in this case.

22 Q And how many times have you testified or have you
23 testified and how many times have you testified in courts
24 of record of this state as an expert in the field of
25 forensic toxicology?

1 A I have testified and it's probably been maybe about a
2 half dozen times.

3 MR. MEADORS: Your Honor, at this time we offer
4 Special Agent Kevin Selinsky as an expert in the field of
5 forensic toxicology.

6 MR. GRIFFITH: Without objection, Your Honor.

7 THE COURT: All right. The witness will be
8 qualified in the field of -- as an expert in the field of
9 forensic toxicology. Ladies and gentlemen, I'm not going
10 to go through the whole spill that I did a while ago, but
11 you will recall that if a person is qualified as an expert
12 as oppose to non-expert witness, that witness is allowed
13 to give an opinion in his testimony if that testimony will
14 aid the trier of fact and he's qualified by knowledge,
15 skill, experience or training. And if that testimony will
16 aid you in your decision. So I have qualified this
17 witness as an expert in the field of forensic toxicology.
18 All right, Mr. Meadors.

19 MR. MEADORS: Thank you, Your Honor.

20 BY MR. MEADORS:

21 Q Special Agent, I'm going to show you what's been
22 entered as State's 32 and this is a chain of evidence of
23 the blood in this case. It's not a chain case, but are
24 you familiar generally with the blood comes in from a
25 suspect or deceased to law enforcement to SLED?

1 A Yes.

2 Q And then how do you get it?

3 A Well, it depends on the agents. They'll have -- a
4 lot of them have a specific person that brings similar or
5 smaller ones or bring their own cases. But I believe this
6 came from highway patrol. So then they have somebody that
7 comes from the agency in a town outside Blythewood where
8 they collect it all from the state. Since they have a
9 relatively large number of them, I believe they come once
10 or twice a week to drop off cases. And what they do is
11 they log it into our evidence technicians down on the
12 first floor. And what they do there is first is drop it
13 off, seal it in a heat sealed pouch. Get all the
14 paperwork in order and then it is logged into our
15 laboratory system. It is given a random bar code and just
16 a numerical order lab number for how it came into our
17 case, so we can track it ourselves.

18 Q And that was done in this case?

19 A Yes.

20 Q Is that done because you want to make sure the blood
21 that you're testing and going to testify about is the
22 actual same blood that was drawn from the suspect or taken
23 from the decease, correct?

24 A Yes, well, with SLED we're more concerned with our
25 in-house. We only have control over our in-house chain of

1 custody obviously, but, yes, that's what we do, yes.

2 Q Okay. After you complete your examinations, do you
3 prepare a report that's provided to the State and then
4 provided to the defense and that's standard?

5 A Yes.

6 Q Okay. And in this case did you have the opportunity
7 to examine blood from the defendant in this case Robert
8 excuse me -- Gene David Evans, Jr.?

9 A Yes.

10 Q Can you tell the ladies and gentlemen of the jury --
11 I think you were starting to when I qualified you what you
12 did in this specific case first look for alcohol and then
13 the 12. Could you follow up on that?

14 A Yes. So when the case comes in, it came in as a
15 felony DUI. So for the main difference between the DUI
16 and felony DUI is just you have to prove basically more
17 impairment for a felony DUI. So it came in first thing
18 you do with all almost all blood cases, blood samples
19 where there's post mortem is going to run a blood alcohol,
20 but that's definitely the case. And DUI so we run the
21 blood alcohol on it. I believe that come back negative.
22 I can look at my report?

23 Q Sure.

24 A Yes, we first ran that, that came back negative. And
25 on the report it just says ethanol negative and then it

1 says the units for that. So there's no ethanol present at
2 the time of the test. And then ---

3 Q And I believe you made a statement that it's more
4 impairment for felony DUI, that's not the law, but is that
5 what you thought it was?

6 A No, that's just how we do it in our lab.

7 Q Okay. Go ahead.

8 A And then we run like I said a 12-panel drug screen
9 and I mention before that's 12 of the most commonly used
10 and abused drug. Some of them are single classes where
11 it's one specific drug. Then you have something like an
12 opioid where it could be -- there's a wide range for
13 opioids that are covered, so it's a lot more than 12
14 drugs. I don't know the exact number that it covers, but
15 it's certainly more than 12. And then we run that and if
16 any of those come back positive, we have to then go and
17 confirm those and more so quantitated to get a number for
18 how much is actually in the blood to assume or to assure I
19 should say, that there was no false negatives or anything
20 on the first test because we always do two tests when we
21 run anything to prove that it actually is what we have
22 said to be.

23 Q So you get signs that it might be and then you run
24 another test just to be sure in quantify?

25 A A more specific test, yes.

1 Q And you did that in this case?

2 A Yes.

3 Q And you did that. I mean, that's what your job is,
4 right?

5 A I didn't do it specifically in this one because at
6 the time I was -- we have class that we run together, it's
7 opioids and cocaines and I'm responsible for that class.
8 So it's not possible to do everything in every case cause
9 it's just not enough hours in a day really to get anything
10 done in that case. So I was responsible for in the case
11 is moving things along, making sure all the work is done
12 properly, reviewing all the work.

13 Q And you did that in this case?

14 A Yes.

15 Q What did -- you said there was no alcohol?

16 A No.

17 Q And is that .010 ethanol I see. What does that mean?

18 A That is the threshold I believe you're talking about?

19 Q Right.

20 A Yes, that is the threshold, so that is the level, so
21 that is the level 0.01 percent or depending on how you
22 look at it. We're not going to report anything lower than
23 that. So you technically could have something that comes
24 back at a 0.05, but we're not going to call that positive.
25 We're just going to go ahead and call that negative.

1 Q And then you start screening for the other 12 you
2 mention?

3 A Yes.

4 Q And what did you screen -- did he screen -- his
5 blood, the defendant, screen positive for?

6 A It screen positive for methamphetamine and
7 amphetamine.

8 Q What is methamphetamine?

9 A Methamphetamine is a central nervous system
10 stimulant. It's a commonly abused drug for that purposes.

11 Q And what were the results or the amount of your
12 result the amount of methamphetamine that was in the blood
13 taken from the defendant David Gene Evans, Jr.?

14 A The methamphetamine was a 0.78 milligrams per liter
15 and the amphetamine was a 0.11 milligrams per liter.

16 Q 0.78 methamphetamine 0.11 amphetamine?

17 A Correct.

18 Q And can you tell us practically what that means?
19 What does .78 based on your expertise in toxicology mean
20 when it's found in someone's blood?

21 A So for what it actually is when you have milligrams
22 per liter, there is .78 milligrams of the specified drug
23 per liter of blood. So that is what that means and
24 obviously it was more in it for the body. It's depending
25 on how much blood you have in the body, but we're just

1 measuring it. But we're just measuring it per liter of
2 blood. And in terms that, that certainly is a -- it's a
3 fair bit of methamphetamine. It's not a super large
4 amount, but certainly a fair bit of methamphetamine.

5 Q What do you mean by that?

6 A It's certainly in the abuse range because at lower
7 levels along the lines of like a .05 to maybe a .1. And
8 is sometimes used for ADHD medication attention deficit
9 disorder and things along those lines.

10 Q And the lower levels .05 you said?

11 A Yes.

12 Q Okay. And when you get to .78 that is -- can you
13 tell us based on your training and expertise how that
14 would affect one's body?

15 A Yes, as I mentioned before methamphetamine is a
16 central nervous system stimulant, so basically what it
17 does is going to get everything revved up in the body.
18 You're going to have increased heart rate, increased
19 perspiration, dilated pupils. And in terms of actual
20 affects, might have increased risk taking, just inability
21 to concentrate just because you're so amped up, have so
22 much energy. Some people have hallucinations at really
23 high levels. Like I said, just really -- it is exactly
24 what it says it is. It's just a stimulant, so I'm just
25 going to get everything going to extreme levels.

1 Q Could it affect your driving?

2 A Yes.

3 Q In what way?

4 A One of the things I had said before with the increase
5 risk taking because we often consider driving to be a very
6 complex task. So there's many things you're driving.
7 You're checking your speed. You're checking your mirrors.
8 You're checking your lane position. You're checking for
9 other cars around you, so it's a lot more than you might
10 think cause you do it on a daily basis so it becomes
11 second nature. So a lot of times you increase speed,
12 maybe closer following, risk taking, jotting in and out of
13 traffic, trouble to maintain lane because you're just so
14 jittery you have excited movements.

15 Q On your report too, I see where there's amphetamine
16 .11 milligrams per liter; is that correct?

17 A Correct.

18 Q When you have a .78 milligrams per liter of
19 methamphetamine and then a result -- your result of
20 amphetamine .11 milligrams per liter, what does tell you
21 as a forensic toxicologist?

22 A Well, amphetamine is a metabolite of the
23 methamphetamine, so the amphetamine came down from the
24 break down of methamphetamine in the body. So the body
25 converts the methamphetamine to the amphetamine. And we

1 typically look at it as a ratio. Since the
2 methamphetamine is 7.8 and the amphetamine is a .11,
3 that's give or take seven or eight to one ratio of the
4 methamphetamine to amphetamine. So that being relatively
5 high, it shows that there wasn't that much time since use
6 to convert the methamphetamine to the amphetamine because
7 obviously if you have more time, you're going to have more
8 drug B then you are A because you have more time for the
9 body to break down the drug.

10 Q Okay. And can you quantitate that further and give
11 us a time frame based on your experience?

12 A You're probably looking in the range of a few hours
13 at most.

14 Q That this would have been ingested prior to the
15 incident?

16 A Prior to the blood draw.

17 Q Prior to the blood draw?

18 A Yes.

19 Q Okay. Now, do you have an opinion based on your
20 examination of the blood from the Defendant Gene D. Evans,
21 whether or not he would have been under the influence of
22 drugs at the time of the blood draw?

23 A Yes, like to say for a 100 percent certainty because
24 obviously I was not there and did not see the situation,
25 but, yes, given what we have, that would certainly be my

1 opinion.

2 Q Base on the blood that you examine is it your opinion
3 that he was under the influence of methamphetamine?

4 A Yes.

5 Q Okay. And there's no way you can ever be at a site
6 or a collision, but that's just a standard?

7 A Yes.

8 Q Okay. And methamphetamine getting toward -- we've
9 had prior cases together. You can get up to the fatal
10 range can't you with methamphetamine, doesn't it go
11 through stages?

12 A Yes.

13 Q And this would be in the higher stages, wouldn't it?

14 A It certainly in the higher stage, yes.

15 Q Okay. Now, you also ---

16 MR. MEADORS: Beg the Court's indulgence.

17 THE COURT: Yes.

18 BY MR. MEADORS:

19 Q Do you have an extra copy of yours?

20 A I just have mine right here.

21 MR. MEADORS: We'll mark this and I have notes
22 on it, but I'll clean it up before we finish, Your Honor.

23 THE COURT: All right, just mark it for
24 identification.

25 MR. MEADORS: It's without objection, Your

1 Honor.

2 THE COURT: And what is it?

3 MR. MEADORS: It's his results from the
4 analysis.

5 THE COURT: Any objection to that?

6 MR. GRIFFITH: No objection, Your Honor.

7 THE COURT: State's number ---

8 MR. MEADORS: Thirty-six.

9 THE COURT: State's Number 36 is admitted
10 without objection.

11 (WHEREUPON, State's Exhibit No. 36 was admitted
12 into evidence.)

13 BY MR. MEADORS:

14 Q Special Agent, did you also examine the blood from
15 the victim in this case Robert Skidmore?

16 A Yes.

17 Q And same procedure you look to see if there's alcohol
18 first?

19 A Yes, more less, yes.

20 Q And then try to identify one of the 12 more common
21 drugs if you will?

22 A Yes.

23 MR. MEADORS: Will you mark the next one?

24 THE COURT: That's 37.

25 MR. MEADORS: State's 37 without objection.

1 THE COURT: Thirty-seven admitted without
2 objection.

3 (WHEREUPON, State's Exhibit No. 37 was admitted
4 into evidence.)

5 BY MR. MEADORS:

6 Q Were you able to determine what, if anything, did Mr.
7 Skidmore have any alcohol in his system?

8 A Alcohol, no.

9 Q Okay. And what if all did you -- were you able to
10 determine whether or not he had methamphetamine in his
11 system?

12 A Yes, I was.

13 Q Did he?

14 A He did.

15 Q And how much was in his system?

16 A The methamphetamine was 0.53 milligrams per liter and
17 the amphetamine that he also had was a 0.08 milligrams per
18 liter.

19 Q And just kind of going back to your prior testimony
20 as far as ingestion, can you tell us anything between the
21 -- about the .53 and methamphetamine and the point .08 of
22 amphetamine the relationship to those numbers if anything?

23 A Probably a few hours is what I probably say the same
24 thing.

25 Q Okay. And it obviously is a lesser amount that's in

1 his system, correct?

2 A Yes.

3 Q And at this -- the blood at this point was taken from
4 autopsy from Skidmore, correct?

5 A Yes.

6 Q So you expect that to be about the same time?

7 A As the time of ---

8 Q At the time of the draw?

9 A Yes.

10 Q From his body, correct?

11 A Correct.

12 MR. MEADORS: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (WHEREUPON, a pause in the proceedings.)

15 MR. MEADORS: Special Agent, thank you for being
16 here.

17 THE COURT: Cross-examination, Mr. Griffith.

18 MR. GRIFFITH: Thank you, Your Honor. Please
19 the Court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. GRIFFITH:

23 Q This is State's Exhibit 36 that's the one that he was
24 just showing to you. The question I have is notice that
25 all of the others have a threshold?

1 THE COURT: You got it upside down.

2 MR. GRIFFITH: I know. I was trying to make it
3 as big as I could.

4 BY MR. GRIFFITH:

5 Q All the others have a threshold, but the opioids et
6 cetra, but the methamphetamine down at the bottom does
7 not. What's the threshold on that?

8 A Well, it's a little bit different because as you can
9 see the -- it should be ten above because it's the --
10 where's the benzos -- you had mentioned the opioids,
11 that's under where it says screen by enzyme linked essay
12 and in parenthesis Elisa and those are the analytes that
13 are listed. Those have a threshold because those tests
14 are done just preliminary. So we have a -- you have to
15 have some sort of a cut off number or threshold there to
16 reported it as -- because basically a reason that screen
17 is called positive or negative. We're not going to ever
18 call it just positive or negative based on that. We're
19 going to do some more testing to give a final number. So
20 this doesn't have a threshold because that is the cut off
21 for that. We do have like limited detection for our lab
22 that we have depending on the -- what we are quanting,
23 getting a quantitated value for, but that is not listed on
24 the report there.

25 Q And as far as .78 how would that compare to an

1 alcohol level of .08 for instance, which is you were
2 intoxicated at .08?

3 A That's very difficult to say in general, but probably
4 even more so because alcohol is such a nervous system
5 depressant and the methamphetamine you had mentioned
6 whatever level it's a central nervous system stimulant.
7 So there basically doing the opposite. One is giving you
8 a stimulant and one is depressing everything.

9 Q Well, is there a state level that says beyond this
10 point you are intoxicated for methamphetamine?

11 A No.

12 Q Okay. So there's not a level that says at this point
13 for alcohol, of course, is .08. So there's not one like
14 that for methamphetamine is that what you're saying?

15 A No.

16 Q Have you seen methamphetamines way above .78?

17 A Yes.

18 Q A lot, a lot way up there like ten or something?

19 A Usually get over one. You'll occasionally get a one
20 that is just significantly higher. Obviously it's open to
21 interpretation what's significantly obviously, but higher
22 for sure we have seen this.

23 Q And as the body converse this to an amphetamine
24 wouldn't that depend on a person metabolism?

25 A Yeah, a lot of it can depend on certain things how

1 often they have taken the drug, whether they use it daily,
2 whether it's the first time things along those lines, yes.

3 Q Well, depending on how fast they metabolize anything
4 like food or anything else their metabolism?

5 A Going to be a little bit different because that's
6 more of one thing then metabolism of drugs is just
7 receptors in the body taking it in and breaking it down.
8 So it's the same general thing. I mean, that's why the
9 same word is used metabolism it's breaking things down
10 from something complex and to something more simple
11 because the purpose of the body is when you take
12 something, it's -- you take some complex drug in order --
13 the body wants to get rid of that foreign body, so it's
14 going to break it down into something as simple as I can
15 to get it out of the body as fast as I can.

16 Q Would it be metabolize faster if a person for
17 instance urinated more or relieved in any other way, would
18 it pass through faster or less?

19 A I wouldn't think that would have really much affect.

20 Q I notice also it says opioids negative. Let's see
21 Fentanyl Citrate. Is that an opioid?

22 A It is a synthetic opioid, yes.

23 Q If he were getting Fentanyl Citrate at that time in
24 the helicopter, that would have shown up on here?

25 A No, sir.

1 Q Why not?

2 A It's just like -- I said it's just a different --
3 well, there's some many opioids. This company I believe
4 has a specific screen that is I believe just for Fentanyl.
5 So in order for us to see Fentanyl, we have to run a more
6 specific screen on a different instrument. And we do that
7 just depending on the case flow through the lab what it
8 may or may not need.

9 MR. GRIFFITH: Thank you. I have no further
10 questions.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MR. MEADORS:

14 Q Is methamphetamine illegal? It's a narcotic illegal,
15 correct?

16 A Yes, I believe it's a schedule two drug.

17 Q All right. Cocaine illegal?

18 A Yes.

19 Q So there no parallels to what a certain reading might
20 be for these illegal drugs whether or not you should
21 drive, right?

22 A Yeah, for obvious reasons testing. It's pretty
23 frowned upon to be using drugs.

24 Q There are illegal drugs, right?

25 A Yes.

1 Q So there's not going to be a threshold about how much
2 you can take or not whether or not you should drive,
3 correct?

4 A Yes, and that's the battle going on now between
5 the -- all the experts and whether or not are something
6 needed or not. But like you said, yes, they're still
7 illegal, so getting that number is -- would be quite
8 difficult.

9 Q And we are approaching fatal amounts -- I know we
10 talked before about some other matters. You're getting up
11 toward -- it comes a point where you could die from taking
12 so much methamphetamine, correct?

13 A Most certainly, yes.

14 Q And this is in the high range, isn't it?

15 A Yes.

16 Q In the later stages of that, correct?

17 A Yeah, and obviously would depend on reading more of a
18 case history to see -- at that level, but certainly
19 higher, yes.

20 Q And it's your opinion, expert opinion that the
21 defendant at the time of this blood draw was under the
22 influence of methamphetamine, correct?

23 A Yes.

24 MR. MEADORS: Thank you.

25 THE COURT: Recross.

1 MR. GRIFFITH: No, Your Honor, no questions.

2 THE COURT: All right, sir. You may step down.
3 Thank you for coming.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 THE COURT: All right. Mr. Meadors, you may
7 proceed.

8 MR. MEADORS: Beg the Court's indulgence.

9 THE COURT: All right, sir.

10 (WHEREUPON, a pause in the proceedings.)

11 MR. MEADORS: The State of South Carolina rest.

12 THE COURT: All right. Counsel let me see you
13 just a moment about scheduling.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 THE COURT: All right. Ladies and gentlemen,
18 you have heard the State announce that they have rested,
19 that means that you have heard everything that you should
20 hear or will hear from them at this time. And there are
21 some matters of law which we need to take up and those
22 will carry us into the lunch recess. So I'm going to go
23 ahead and excuse you and allow you to go and get your
24 lunch and ask you to please be back in your jury room at
25 two o'clock, that's an hour and a half. We got some legal

1 matters that we have to take up. After which, we will
2 take a lunch break. So we going to break at this time for
3 lunch. I will give you the same instructions that I had
4 given all along. The same admonitions don't talk with
5 anybody about the case. Don't allow anyone to talk with
6 you about the case. Don't do any research on your own or
7 any source whatsoever and do not discuss the case among
8 yourselves when you return to the jury room. It's still
9 premature for you to begin any discussion of this matter
10 among yourselves. But just forget about this matter for
11 the next hour and a half and please be back in your jury
12 room at two o'clock. And we'll be ready to resume at that
13 time. Have a pleasant lunch and I'll see you after lunch.

14 (WHEREUPON, the jury is excused for a lunch
15 break.)

16 THE COURT: Motions on behalf of the defendant,
17 Mr. Griffith.

18 MR. GRIFFITH: Your Honor, we would ask for a
19 directed verdict in that the State has failed to prove
20 beyond a reasonable doubt that Mr. Evans was driving the
21 vehicle other than by circumstantial evidence.

22 THE COURT: Isn't circumstantial evidence
23 enough?

24 MR. GRIFFITH: We do not believe that the
25 circumstantial evidence has risen to proof beyond a

1 reasonable doubt and that there is room for other
2 scenarios to be in place. We would ask for a directed
3 verdict based on that.

4 THE COURT: All right. Rule 19 of the South
5 Carolina rules of criminal procedure provide that upon
6 motion of the defendant or motion the Court shall direct a
7 verdict in the defendant's favor on any offense charged in
8 the indictment after the evidence on either side is closed
9 if there's a failure of competent evidence tending to
10 prove the charge in the indictment. I've always thought
11 that the use of the word competent in that rule is
12 unfortunate because it implies a waiting -- weighing of
13 the evidence.

14 When I entered the task force a number of years
15 ago to revise the criminal rules, we reworded that however
16 that revision was never adopted by the Supreme Court.
17 None of the rules that we recommended were adopted, but
18 the rule goes on to say ruling on a motion the trial judge
19 would consider only the existence or non-existence of the
20 evidence and not it's weight. There is evidence in the
21 record that -- there is evidence in the record and from
22 the witness stand that the defendant in this case had
23 methamphetamines and those methamphetamines would affect
24 his ability to drive and that he was under the influence
25 of methamphetamines at the time of this accident. There's

1 evidence in the record to that and I cannot weigh that
2 evidence, that would be the jury's prerogative, so I would
3 respectfully deny the motion.

4 MR. GRIFFITH: If it please the Court, Your
5 Honor.

6 THE COURT: Yes, sir.

7 MR. GRIFFITH: If the Court would address our
8 motion for a directed verdict based on circumstantial
9 evidence as to whether or not he was driving the vehicle.

10 THE COURT: All right. Again, there is evidence
11 in the record with regard to the driving. My recollection
12 of the testimony -- I'm not going to try and summarize at
13 all, but the witness, Mr. Moye, said he pulled him out
14 from the driver side and identified him as being the
15 driver as did his lady friend who was driving the car.
16 They almost ran off the road identified him as being the
17 driver. That's not circumstantial evidence, that's direct
18 evidence that he was the driver of the car. It's also
19 plenty of circumstantial evidence in the record to show
20 that he was behind the wheel of the car if the jury
21 believes the testimony is up to the jury to determine what
22 weight is to be given to the testimony, that is not a
23 function of the Court. And the Court would respectfully
24 deny the motion on the basis of his not being -- there
25 being no evidence of his driving in the car. Motion

1 denied.

2 MR. GRIFFITH: Thank you, Your Honor.

3 THE COURT: All right. Mr. Meadors, what I
4 would like is a copy of -- if you would so I could get my
5 charges together of the 56-5-2945.

6 MR. MEADORS: Judge, you just want this book,
7 I've got it right here.

8 THE COURT: Yeah, I'll make a copy right out of
9 that, that's good.

10 MR. MEADORS: It's a 2018 too, it's brand new.
11 Just keep it, Judge.

12 THE COURT: I'll make a copy of it. Any
13 specific -- let me tell you a little bit about -- we'll
14 address the matter of the defendant testifying in this
15 matter after lunch. Over lunch recess, Mr. Griffith and
16 Mr. Evans, you all discuss the matters whether you should
17 or should not testify in this case and your Fifth
18 Amendment rights. And when we reconvene after lunch, I
19 will ask you as to whether you do or do not wish to take
20 the stand you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. All right. And the other
23 thing is counsel let's talk about the proposed charges. I
24 will charge my general felony charge which includes
25 presumption of innocence, reasonable doubt, burden of

1 proof. I will also charge the Logan charge on direct and
2 circumstantial evidence. I will also charge -- give a
3 charge on expert testimony and will charge the elements of
4 56-5-2945. I do not think that the -- after hearing the
5 evidence of the last witness that section 56-5-2950(g)
6 regarding inferences from alcohol is appropriate so --
7 because there's are no inferences from alcohol. So this
8 looks like to me is 56-5-2945 and which says is unlawful
9 driving under the influence and where a felony arises or
10 with the death. So if there's anything else any other
11 request to charges that you would have?

12 MR. MEADORS: Your Honor, I agree with you that
13 the elements, you know, driving a motor vehicle under the
14 influence either neglects a duty imposed by law or --
15 which is just straight out the statute. I do think that's
16 the law.

17 THE COURT: All right. What about you,
18 Mr. Griffith, you think of anything else?

19 MR. GRIFFITH: No, Your Honor.

20 THE COURT: Let me see the statute.

21 MR. MEADORS: Judge, this is hard to copy. I'd
22 rather you just keep this until the trial is over because
23 we don't need it. It's easier to read.

24 THE COURT: I like to mark the parts that are
25 not relevant.

1 MR. MEADORS: You can do that.

2 THE COURT: I'll probably get Andrea to copy
3 what I want. Okay. I'll take care of that. I know what
4 we need. Anything further before we break for lunch,
5 Mr. Meadors?

6 MR. MEADORS: No, sir.

7 THE COURT: Mr. Griffith.

8 MR. GRIFFITH: I'm sorry, Your Honor. He was
9 talking to me.

10 THE COURT: All right. Will be in recess until
11 two o'clock.

12 (WHEREUPON, a lunch break was taken.)

13 THE COURT: All right. We're back on the record
14 with regard to the matter of The State vs. Evans. Mr.
15 Evans is present with his counsel. The State is present
16 and represented by Mr. Meadors. The State has rested
17 their case. And the defendant now has the opportunity to
18 present any evidence or testimony that he wishes to
19 present. In that regard, Mr. Griffith, is your client
20 ready to address whether he wishes to waive his Fifth
21 Amendment rights or not?

22 MR. GRIFFITH: Your Honor, he would like to
23 waive his rights and testify.

24 THE COURT: All right. Have him stand again
25 please. Mr. Evans, before lunch we -- the Court advised

1 you of your rights under the Fifth Amendment to the
2 Constitution of the United States and advised you that I
3 was going to give you an opportunity to talk to your
4 lawyer about your Fifth Amendment rights. Have you had
5 that opportunity? Have you discussed it with your lawyer?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And have understood your talks with
8 him regarding your Fifth Amendment rights?

9 THE DEFENDANT: Yes. It's still some unclarity
10 on what I can say and what I cannot say.

11 THE COURT: Well, it's not a question of -- at
12 this point it's not a question of what you can say and
13 what you can't say. The question is whether you want to
14 say anything at all. You don't have to testify or say
15 anything whatsoever and that's your right under the
16 Fifth Amendment. If your answers are not permitted by the
17 rules, then Mr. Meadors will object. And I will rule on
18 them at that time, but the question now is whether or not
19 you wish to waive your right to say nothing at all and
20 take the stand.

21 THE DEFENDANT: I want to take the stand, but I
22 have a question.

23 THE COURT: All right.

24 THE DEFENDANT: Is it -- the questions -- I can
25 only the questions or can I say -- can I give my testimony

1 of what happened?

2 THE COURT: Well, I can't rule on that until I
3 know what happens and whether an objection is made. I
4 can't say. I don't know what that's gone be or whether
5 it's going to be objectionable or whether Mr. Meadors will
6 have any objection or how the questions will be phrased.
7 I cannot tell you what you can say or what you can't say.
8 I can only at this point say that you have the right to
9 say nothing or the right to take the stand and answer the
10 questions.

11 MR. MEADORS: Judge, he don't want to proffer
12 it, does he?

13 THE COURT: Sir?

14 MR. MEADORS: He don't want to proffer it, does
15 he?

16 THE DEFENDANT: What that mean?

17 THE COURT: No. Don't have anything to do with
18 it. The question is do you wish to take the stand or do
19 you not wish to take the stand?

20 THE DEFENDANT: I wish to take the stand, Your
21 Honor.

22 THE COURT: All right. And you understand that
23 you don't have to?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And is this decision on

1 your part freely and voluntarily made?

2 THE DEFENDANT: It's freely.

3 THE COURT: Okay. All right. The Court finds
4 that the defendant after having been advised by the Court
5 and his lawyer regarding his Fifth Amendment rights wishes
6 to waive those Fifth Amendment rights and privilege
7 against self-incrimination and take the stand. The Court
8 finds that this decision by the defendant is a free,
9 voluntary, intelligent and knowing decision. And the
10 Court will respect that decision. All right. Thank you.
11 You may be seat. In addition to that, Mr. Griffith, do
12 you anticipate any other witnesses?

13 MR. GRIFFITH: I do not anticipate other
14 witnesses. However, Your Honor, the State of course will
15 be having the opportunity to question him on his ---

16 THE COURT: Criminal record. What about his 609
17 impeachment issues, Mr. Meadors, what are they?

18 MR. MEADORS: Mr. Griffith and I went over this
19 a little bit before lunch. He's got a bunch of
20 convictions in Florida. I don't know when he got out, but
21 I guess heading to the ten year time line, we got a
22 burglary in October of '07 that he got five years on. I'm
23 assuming he did ---

24 THE COURT: 6/09/06.

25 MR. MEADORS: Would it be ten year period, I

1 don't know.

2 THE COURT: Wait just a minute. Burglary is
3 that in South Carolina?

4 MR. MEADORS: Florida.

5 THE DEFENDANT: Florida, sir.

6 THE COURT: And that was in 2007?

7 MR. MEADORS: That was October of '07 he got
8 five years.

9 THE COURT: All right. That be just outside the
10 ten years, but as far as a conviction is concern, but the
11 rule is ten years from -- let me look at this. Date of
12 conviction or the release from the confinement imposed for
13 that conviction. Mr. Griffith, did he get time and when
14 did he out of jail?

15 MR. GRIFFITH: He got -- he serve five years,
16 Your Honor. He got out in 2012.

17 THE COURT: Okay. So that would be within the
18 ten years. Do you agree that that's a impeachable offense
19 under 609, Mr. Griffith?

20 MR. GRIFFITH: Yes, Your Honor.

21 THE COURT: Okay. All right. Anything else,
22 Mr. Meadors?

23 MR. MEADORS: Got some DUI's, but I can't tell
24 what offense, so I cannot offer that. I don't know what
25 it is. I see another burglary, but that may have been

1 from the 2007.

2 THE DEFENDANT: It was a violation.

3 MR. MEADORS: Judge, I see several drug charges
4 convictions -- strike that never mind.

5 THE COURT: Well, I was going to say I'm not
6 really interested in what you see. I'm interested in what
7 you want to use.

8 MR. MEADORS: I try not to do that. I'll speed
9 it up. Burglary in 2015.

10 THE COURT: Is that in South Carolina?

11 THE DEFENDANT: It is in Florida.

12 MR. GRIFFITH: Florida.

13 MR. MEADORS: Florida. I think he was on
14 probation for that here because I see a probation
15 violation.

16 THE COURT: All right. So it be a burglary in
17 2015. Mr. Griffith, you agree that that's also an
18 impeachable offense?

19 MR. GRIFFITH: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. MEADORS: And there was a grand theft auto
22 along with that.

23 THE COURT: And grand theft auto. All right,
24 that would also be an impeachable offense as apart of the
25 same -- is that the same time?

1 MR. MEADORS: I have that in the same time
2 period.

3 THE COURT: You concur, Mr. Griffith, the auto
4 grand theft and the burglary are both convictions in 2015?

5 MR. GRIFFITH: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. MEADORS: Then I believe there's a
8 possession of a stolen vehicle in South Carolina.

9 THE DEFENDANT: That's the same one. That's the
10 possession of a stolen vehicle which turn into ---

11 THE COURT: Talk to your lawyer and let him tell
12 me.

13 MR. GRIFFITH: That possession of a stolen
14 vehicle is the grand theft auto that he was talking about
15 in Florida. It's the same.

16 THE COURT: What say you, Mr. Meadors?

17 MR. MEADORS: I'll take him at his word. So
18 that's August 2012. It's a possession of stolen vehicle
19 in South Carolina and then the burglary will just be a
20 burglary from 2014 then.

21 THE COURT: All right. Tell me exactly, Mr.
22 Meadors, what charges you want to use to impeach him with?

23 MR. MEADORS: Burglary 2007, burglary 2015,
24 possession of a stolen motor vehicle 2012.

25 THE COURT: Okay. All right.

1 MR. MEADORS: I think -- one second, Your Honor.
2 Looks like a burglary 2015, but is that a probation
3 violation? That's it.

4 THE COURT: So a burglary of 2007, 2015
5 burglary, and a possession stolen vehicle 2012?

6 MR. MEADORS: Yes, sir.

7 THE COURT: You agree.

8 MR. GRIFFITH: Yes, Your Honor.

9 THE COURT: Okay. All right. Mr. Evans, I
10 guess, I should go back to this now to make sure you
11 understand if you stand for a minute please. We go back
12 to the question of whether you do or do not wish to
13 testify. You understand that the State will have the
14 right to use those three convictions as impeachment
15 against you. Do you understand?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: And knowing that if you take the
18 stand, they can use those to impeach your testimony, do
19 you still wish to waive your right and privilege against
20 self-incrimination and take the stand?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: Okay. And that decision on your
23 part is freely and voluntarily made; is that right? Is it
24 freely and voluntarily made?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. All right. Okay. I think
2 that covers it. Thank you.

3 MR. GRIFFITH: Your Honor, if we may approach, I
4 actually just got this document. I don't think it's
5 going to be relevant to the ---

6 THE COURT: You may sit down, Mr. Evans. Thank
7 you.

8 MR. GRIFFITH: But I would like to share it with
9 counsel and discuss it with Your Honor. He was sent to
10 that facility from the detention center and this document
11 was from the probate office saying he wasn't responsible
12 for his -- but I had already let the Court know that I've
13 had no communication problem with him and the State has
14 found him competent. I just got this and I just want to
15 be sure that it ---

16 THE COURT: What is it?

17 MR. GRIFFITH: I've not submitted an order to
18 ask that the Court ---

19 THE COURT: What is it?

20 MR. GRIFFITH: It's appointment of counsel,
21 appointment of guardian ad litem. It appears to be just
22 a notice of a hearing. It's -- it was just brought to my
23 attention by my client.

24 THE COURT: All right.

25 MR. MEADORS: I think it's a form that may not

1 be relevant, but if you like to show it to Your Honor,
2 since we brought it up. You ought to review it.

3 (WHEREUPON, a bench conference was held.)

4 THE COURT: All this is is a notice of a hearing
5 to which was suppose to have been on the 20th to determine
6 if he was mentally ill, but this is nothing more than a
7 notice of appearing -- of a hearing and appointment of a
8 guardian ad litem. I do not think that that has anything
9 to do with the matter of his -- findings -- I mean,
10 there's no finding in here that he's been found to be
11 mentally ill or any of those sort of things. I don't
12 know -- who is Brenda Fraiser?

13 MR. GRIFFITH: She's his girlfriend.

14 THE COURT: All right.

15 THE DEFENDANT: Brenda Fraiser is the lady ---

16 THE COURT: I don't think there's anything that
17 needs further action by the Court on that. Do you, Mr.
18 Griffith?

19 MR. GRIFFITH: I don't think anything else, Your
20 Honor. Brenda Fraiser works at the hospital, Your Honor.

21 THE COURT: Anything before we bring the jury
22 in, Mr. Meadors?

23 MR. MEADORS: No, sir.

24 THE COURT: Mr. Griffith.

25 MR. GRIFFITH: No, Your Honor.

1 THE COURT: Mr. Meadors, one thing I do want you
2 to determine and maybe both of you. One of the parts of
3 felony DUI is to -- I think under the code and under the
4 law that he has to be violating some provision of law.
5 And I need to know which of the motor vehicle statutes you
6 think he violated that the jury should be charged on to be
7 given an opportunity to determine if he violated some law.
8 And I have your code sections here if you need it.

9 MR. MEADORS: I think I've got the law right
10 here.

11 THE COURT: Anything in 56-5-10 and thereafter
12 that fall under the motor vehicle code. And I don't need
13 it right now, but I just need to know what statutes you
14 want me to charge that he was violating or may have been
15 violating, that would entitle them to charge him DUI.

16 MR. MEADORS: I think in the indictment that I
17 alleged...

18 THE COURT: We'll get those after we get the
19 testimony. Let's don't keep the jury waiting that long.

20 MR. MEADORS: 56-5-1810 and 56-5-1880.

21 THE COURT: All right. 56-5-1810.

22 MR. MEADORS: And 56-5-1880.

23 THE COURT: Those are the two.

24 MR. MEADORS: That's driving left of center both
25 of those I think reference that. I'll double check.

1 THE COURT: Thank you. All right. Bring the
2 jury in please.

3 (WHEREUPON, the jury came into open court.)

4 THE COURT: Thank you, ladies and gentlemen for
5 your promptness in being back here. I again apologize for
6 keeping you waiting for a few minutes, but there are legal
7 matters that the Court has to deal with and we had to in
8 this case. And we are now ready to go forward. Again,
9 I would ask you if any has approached you or attempted to
10 talk with you about this matter or anyone who has anything
11 to do with this case please signify by raising your hand.
12 Negative response and that's good. Has any juror learned
13 anything about the case or anyone involved in the case in
14 the print and broadcast media, if so please signify by
15 raising your hand. Thank you.

16 Has any juror done any research, consulted the
17 internet through Google, Bing or any other means or done
18 any investigation or research on the facts, the law or the
19 people involved in this case, if so please raise your
20 right hand? Thank you.

21 Has any juror learned anything about this case
22 or anyone who has anything to do with the case including
23 but not limited to the parties, the witnesses, the
24 victims, law enforcement and attorneys other than what you
25 have heard in this courtroom, if so please raise your

1 right hand? Again negative and that's good. And we are
2 now ready to proceed. You have heard the State announce
3 that they have rested their case. And now the defense
4 will have the right to present any testimony or evidence
5 that they wish to present.

6 Mr. Griffith, you may move forward.

7 MR. GRIFFITH: Thank you, Your Honor. The
8 defense call Mr. Gene Evans.

9 THE COURT: Come around please, Mr. Evans.

10 BAILIFF: Left hand on the Bible, raise your
11 right hand. State your name?

12 THE WITNESS: Gene David Evans, Jr.

13 BAILIFF: Do you solemnly swear or affirm your
14 testimony to the court shall be the truth, the whole truth
15 and nothing but the truth so help you God?

16 THE WITNESS: So help me God.

17 BAILIFF: Step around please and watch your
18 step. State your full name and spell your last name for
19 the record.

20 THE WITNESS: My name is Gene David Evans, Jr.
21 last name E-V-A-N-S.

22 WHEREUPON,

23 Gene D. Evans, Jr.,
24 after first having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. GRIFFITH:

2 Q Mr. Evans, can you tell the court where you're from
3 originally?

4 A I'm originally -- I was born right here at Tuomey
5 hospital in July 10th 2070.

6 Q And where have you spent -- have you always been in
7 South Carolina?

8 A No, sir, in 1980, I move -- my mom and dad separated
9 and I move to Ormond Beach, Florida, that's right here
10 Dayton Beach, Florida. I went school and college there.

11 Q Okay. And when did you come back to South Carolina?

12 A Approximately a little over three years ago to spend
13 time with my mom and dad in their latter years.

14 Q Why was it you came back I'm sorry?

15 A To spend time with my mom and dad in their latter
16 years.

17 Q Okay. Beg the Court's indulgence. And you were
18 friends with Mr. Skidmore, were you not?

19 A Yes.

20 Q And how long have you known him?

21 A Just give me a minute please just for a second. I
22 didn't know Robert that long, but me and Robert share a
23 lot of the same issues.

24 Q And ---

25 A Approximately three years I known him.

1 Q Let's start with that period of time, a couple days
2 before. What is it that you guys had decided you were
3 going to do?

4 A His girlfriend had some issues where her RV was --
5 where she was living in her RV. The RV already shown and
6 they wanted to move. And they needed a place to go and
7 also she was going to help me in the return to repair her
8 RV to give me the money to pay my restitution, that I was
9 on probation.

10 Q And so when did you folk start loading up the RV?

11 A I never did load the RV.

12 Q Somebody else did?

13 A Melissa Flowers and Robert Skidmore loaded the RV.

14 Q They had it loaded when you got there; isn't that
15 right?

16 A I never made it to the camp ground. I met them at an
17 abandoned gas station on 378 in front of the Shaw Air
18 Force. It was at the shoreline and they was at the last
19 abandon gas station at 378. I'm not familiar with the
20 roads, but I know it was 378 Air Force is across the
21 street.

22 Q How did they get the RV from where it started to that
23 location?

24 A Robert drove it.

25 Q What was in the RV?

1 A Everything that she had outside the RV at the camp
2 site, which was grills, chairs, round metal tables, metal
3 chairs. Actually, you can see one in one of the photos
4 where it's on the bed on the top of the -- on the top
5 there. I'm sure y'all seen. Chairs, stepping stones,
6 bricks, three propane tanks that went along with the grill
7 and also like cooker, like a boiler thing, a smaller
8 propane tank went to, water hoses, everything that she's
9 had. She's been there I don't know how long. I don't
10 even know how long she's been there, but she's been there
11 a while. Everything outside the RV was inside even the
12 tarp covering the top where the bricks and blocks on the
13 top.

14 Q Okay. And when you got to the RV you say Robert was
15 driving?

16 A Yes, Robert was sitting in the seat and Melissa was
17 standing behind him.

18 Q Why was she standing behind him?

19 A Because there was no other place for anyone to be.

20 Q Was there room in the passenger seat?

21 A It was packed and it had the seat belt and bungee
22 cords that she had the awning thing with over that and it
23 was packed. I don't know was underneath the tarp and
24 stuff like that, but it had the seat belt across it with
25 some bungee cords strapped across that. There was no way

1 that anyone could sit in the passenger seat or get in or
2 get out of the passenger side of the passenger door not
3 the door to the RV because it had a separate door to get
4 in the RV, then add a door for a passenger side.

5 Q Did she stay in the vehicle?

6 A No, Robert stepped out the vehicle. She climbed
7 across the seat and climbed out the vehicle and got in the
8 car with my girlfriend and told -- whispered in my ear
9 says David I want you to drive because I don't trust
10 Robert.

11 Q So ---

12 A And I said okay.

13 Q She had questions about how good he could drive?

14 A Because the RV's been sitting too long and the tires
15 were dry rotted and it was very hard to turn the steering
16 wheel, that's what Robert told me. He said it was very
17 hard to turn.

18 Q So you got in the driver's seat?

19 A No, I did not get in the driver seat at that time.
20 Robert got in. He climbed over the seat and then I got in
21 and behind the steering wheel. That's the only way you
22 can get in and out.

23 Q So Robert was behind you and you were in the seat?

24 A Yes, sir.

25 Q Okay. And so how far did you drive it?

1 A I pulled out on 378 and it was hard to turn. I
2 pulled out on 378 took a right. When I took a right on
3 378, we went down a road. I found out later it was the
4 end of Saint Paul Church Road ends on 378. And when I
5 took a right there -- and when I took there, I just kept
6 on turning right and I went off the road. And I said this
7 thing can't be on the road and Robert said I'll drive it.
8 And I said okay because I felt kind of bad for him that
9 she did that to him kind of embarrassed him. So I stepped
10 out, Robert climbed out of the RV. I climbed back in the
11 RV and then Robert got in the RV and he proceeded down
12 Saint Paul Church Road.

13 Q So where were you then?

14 A I was standing behind the seat. Can I show you? If
15 you turn that picture and pull that drawer out a little
16 bit.

17 Q Can I have some technical help?

18 A If you see the seat there that's leaning forward,
19 when Robert was sitting down like this here, he got real
20 close to the steering wheel and he was holding the
21 steering wheel. And when he was turned, sorry -- when he
22 was turning, he kept on turning. And so I said Robert we
23 can't drive this. He said I got it. I said okay. Well,
24 anyway while we were going down the road and I'm like this
25 right here, got my hand on the back of the seat. And I

1 got my hand on the head up here, you can't see out the
2 window unless you look down. And when I kept looking down
3 like this right here, I said you got it. He said yeah.
4 And he said it's hard to turn and I said okay. When we
5 got to the end of that road, we took a left. And when we
6 took a left, we was struggling with it left. And I was
7 like come on, come on. You got it, come on. And so he
8 turned and then we proceeded on down, I guess, Wedge Field
9 Highway or Wedge Field Road or whatever it maybe. I don't
10 know what road it is, but I know it comes to a four-way
11 stop sign. And then goes across the railroad track
12 because when we went across the railroad track, Robert
13 kind of lost it a little bit going across the railroad
14 track. And then when we proceeded on down the road,
15 Robert was like this right here in front of the steering
16 wheel. He stood up -- he jumped up like this right here
17 and he goes like this with this steering wheel. And I'm
18 behind the seat and I said what are you doing and I went
19 for the wheel. And when I went for the wheel like this
20 right here, that's where I hit that seat right there, that
21 lunged forward and this here. I broke my clavicle, my
22 sternum, my clavicle, my ribs on this side. And my knee
23 went in between the seat and where Robert's laying right
24 there my knee went in between that and I broke that. And
25 I had a forehead laceration going at the wheel, from going

1 at the wheel. Forehead laceration all the way from here
2 to right here.

3 Q Have a seat just a second and let me ask you a couple
4 questions. So you had all kind of bruises on your chest?

5 A Yeah, I was -- I don't remember -- I don't
6 remember -- after I said Robert what are you doing and I
7 went for the wheel. And when I went for the wheel, I
8 went down like this right here. We were going off the
9 road. And it wasn't no sharp turn off the road. If you
10 look at the picture, it's a slow gradual off the road. It
11 wasn't sharp because you can't turn -- you wouldn't have
12 been able to turn the thing sharp.

13 Q I'm asking you is you had a bunch of chest injuries,
14 right?

15 A Yes, I had a broken sternum, broken clavicle and
16 broken ribs.

17 Q You say see this piece of metal here that's from the
18 driver's seat?

19 A Yes, sir.

20 Q And that's what you hit?

21 A Yes, that's what broken -- that's what broke all this
22 right here.

23 Q Okay. So you didn't hit the steering wheel?

24 A I don't know what happened. I don't know if that's
25 what broke my head here. I don't know if that's what did

1 that or the concussion in the back of my head I don't know
2 what did that.

3 Q So tell us again just before you hit the tree, where
4 was Robert standing? Was he standing, sitting, what was
5 he doing?

6 A He was pulling -- trying to pull the steering wheel.
7 I didn't see why he was trying to pull the steering wheel.
8 I just seen him pulling the steering wheel and I said
9 Robert what are you doing and I went for the steering
10 wheel. And when I went for the steering wheel, it was --
11 I heard a big boom, that's it.

12 Q Was he standing up?

13 A When he was turning, yes, he was forced. He was
14 trying to turn to get it back over. Now, I don't know
15 where the RV was at that time, I don't know, but shortly
16 after that is when I heard the boom.

17 Q But he stood up?

18 A Yes, he did stand up.

19 Q Would you say he was in front of the steering wheel
20 or to the right or to the left of the steering wheel where
21 was he?

22 A I would say that he was like almost like where his
23 shoulder is right there where he was like here's the seat,
24 but it was close and the steering wheel -- he was leaning
25 to this side. He was leaning to this side like this

1 trying to pull the steering wheel. And then I went on
2 this side and I said what are you doing and went for the
3 steering wheel.

4 Q And you don't remember anything about the accident
5 after that, do you?

6 A Only that Melissa Flowers got real close to me after
7 that. She spent a lot of time with me after that as
8 supposedly the owner of the RV.

9 Q But you don't remember the accident?

10 A No, I don't remember any of the accident. I couldn't
11 have there's no way. There's no way I could have
12 remembered any because I had concussions on the back of my
13 head like the size of a softball. I had lacerations here
14 from here to here that had some kind of damage into my
15 skull right here underneath my eyeball. I don't remember
16 anybody.

17 Q Do you remember being taken to the hospital by
18 helicopter?

19 A No, sir, I don't remember. To this day, I still say
20 I never been in a plane before even though I know I been
21 in that helicopter because of the paperwork and the
22 \$44,000 bill, but I still never been in a plane before
23 unconscious I never have.

24 Q Do you remember talking to a trooper that came to
25 talk to you in the hospital?

1 A I'm not 100 percent sure, but I think I did talk to
2 that officer there. I'm not 100 percent sure.

3 Q But ---

4 A His voice in the way he was talking earlier did sound
5 like him and his mannerism.

6 Q Do you remember someone asking you about taking your
7 blood or anything like that?

8 A It was impossible, Mr. Griffith. It was impossible.
9 There's no way because from what I understand I was in the
10 hospital for quite a few days. From what I understand is
11 all my family was there and everything because it was so
12 bad. I was in such a bad condition. I don't remember any
13 of them there and they said ---

14 THE COURT: You can't testify as to what
15 somebody else said.

16 A Okay. Officer Boland was there before my family and
17 I don't remember him being there ever. I couldn't have.

18 Q How you been doing since then?

19 A Well, I've snatched veins out my arms. I swallowed
20 razor blades.

21 MR. MEADORS: Objection.

22 THE COURT: All right. Yes, sir, what's your
23 objection, Mr. Meadors?

24 MR. MEADORS: Relevance.

25 THE COURT: All right. What is the relevance?

1 MR. GRIFFITH: Goes to the state of mind now,
2 Your Honor, now as to his remorse.

3 THE COURT: That's not an issue. Objection is
4 sustained.

5 MR. GRIFFITH: I'll withdraw the question.

6 BY MR. GRIFFITH:

7 Q Is there anything else about the accident that you
8 remember that would help us know more about what happened?

9 A I just wish and pray to God that I would have stopped
10 the whole thing from going forward. I mean, I don't know
11 what else I could have done. I mean, I was genuinely
12 trying to help Melissa Flowers because they actually was
13 going to move in with me and I'm getting -- it's like AA
14 an addict helps an addict, you know what I mean. That's
15 how you stay clean. That's why they have AA and NA and
16 stuff ---

17 THE COURT: All right. That's getting far
18 field.

19 BY MR. GRIFFITH:

20 Q So were you driving the RV when it crashed?

21 A No, sir, I was not driving that RV when it crashed.

22 MR. GRIFFITH: I have no further questions.

23 THE COURT: All right. Mr. Meadors,
24 cross-examination.

25 CROSS-EXAMINATION

1 BY MR. MEADORS:

2 Q You telling me you just remembered talking to this
3 trooper this week?

4 A This week?

5 Q You said a minute ago on the stand you said, well, I
6 think I remember because I heard his voice that I did talk
7 to him. Did you not -- you didn't know you talked to him
8 before this week? You just realize it this week in the
9 courtroom?

10 A Yes, I'm not sure though. I'm not positive, not 100
11 percent sure that's the officer I talk to. If he's the
12 one that came that did the reenactment on the scene, then
13 that's who I talk to because the way his voice sound
14 similar to his because I couldn't open -- I was still in
15 the hospital.

16 Q But you've heard an audio of it since then, hadn't
17 you?

18 A No, I've had no discovery 'til yesterday. I've seen
19 none of those pictures.

20 Q So you hadn't heard an audio of his -- your statement
21 in the hospital?

22 A No, sir, I don't remember his audio. No, sir.

23 Q And do you remember that you told him that you left
24 from the friend's house. You didn't even mention going by
25 the gas station when you first talk to him. You remember

1 that?

2 A I remember saying if -- is that the officer that I
3 spoke with in the hospital?

4 THE COURT: No, sir, you can't ask questions.
5 You have to answer the lawyer's questions as best you can.

6 Q You testified you remember that was him when you
7 heard your voice. You remember that a few minutes ago.

8 A Not 100 percent sure. Yes, I did say that.

9 Q Do you remember talking to an officer in the
10 hospital?

11 A Yes, I remember speaking with an officer in the
12 hospital.

13 Q And you remember he was in the uniform, wasn't he?

14 A I don't remember if he was in the uniform or not. I
15 don't remember.

16 Q Matter of fact, you talk to two officers in the
17 hospital, didn't you?

18 A No, I spoke with one officer that said he was an
19 officer over the reenactment officer, that's the only
20 officer that I spoke with.

21 Q And Trooper Boland came and you gave him consent to
22 get your blood? You remember that?

23 A No, I did not. I could not. It's impossible.

24 Q What's impossible?

25 A That I spoke with the Officer Boland before --

1 because he said he was there before all my family was and
2 I don't even remember all my family there.

3 Q So you're denying that Trooper Boland came to see
4 you?

5 A I'm denying that I spoke with Trooper Boland.

6 Q You're denying that you nodded your head when he said
7 can I give you a blood draw?

8 A I couldn't have.

9 Q And you gave him a blood draw, didn't you?

10 A I did not talk to Officer Boland and I did not
11 volunteer a blood draw from -- for Officer Boland I did
12 not.

13 Q You remember thanking Andrew Moye for pulling you out
14 of the car?

15 A That was after I got out the hospital.

16 Q He saved your life, didn't he?

17 A Yes, he did.

18 Q Okay.

19 A And I was just showing gratification because I wanted
20 to take him out to dinner Saturday, but I ended up back in
21 the hospital Friday night because that bone cracked open
22 in my chest again.

23 Q And do you remember telling this trooper right
24 here -- do you remember seeing him now or not?

25 A I don't remember seeing him, but I remember the

1 voice. His voice is similar to the voice that was in the
2 hospital that I spoke to that was the reenactment. That's
3 what making me think that it was him because he said he's
4 the reenactment and it sounded similar to his voice. I
5 could not see him, no, I did not see.

6 Q You see his outfit. His trooper outfit on?

7 A No, sir, I did not.

8 Q He identified himself as a trooper?

9 A Trooper, yes.

10 Q Read you your rights?

11 A I don't remember that reading my rights.

12 Q You don't remember him reading your rights and saying
13 you got a right to remain silent?

14 A No, but I'll take him at his word for it. I do
15 believe he would have, I do.

16 Q And he told you you weren't under arrest?

17 A I don't remember that, but I agree that he would
18 have.

19 Q And do you remember telling him you don't know
20 exactly what happened?

21 A Yes, I remember saying I don't exactly -- I think I
22 think my words was I don't know exactly what happened ask
23 Robert.

24 Q So you starting to remember it now?

25 A I said ask Robert what happened.

1 Q What point of the conversation did you tell him that
2 was that the first, middle or the end?

3 A When he ask me what happened. I think he ask me said
4 what happened and I think my response was somewhere. I
5 don't know if it's in the correct order but ---

6 Q You remember the conversation. You remember it right
7 now?

8 A No, I don't remember the conversation. I remember --
9 I'm telling you what I remember is that he ask me a
10 question of you was in an accident and the reenactment and
11 to what happened. I said I don't remember what happened.
12 I said ask Robert what happened. I don't know what order
13 it was in, but I had said ask Robert what happened. I did
14 not know Robert was dead at the time.

15 Q You told him you weren't the driver, right? You
16 remember telling him that?

17 A Yes, I remember telling him I wasn't the driver. I
18 don't know what order that was in.

19 Q I'm not trying to trick you. You said you were
20 standing -- sitting behind him or beside him, right?

21 A Right.

22 Q And you were the last one driving that you remember.
23 Do you remember telling him that?

24 A No, sir, I don't remember telling him that I was the
25 last one driving.

1 Q Strike that. You remember saying that Robert was the
2 last one driving that you remember?

3 A Yes.

4 Q Okay. You remember that?

5 A Yes.

6 Q That you remember? And do you remember telling him
7 you left from the house in the RV. You never mention a
8 gas station, did you? The day after this happened you
9 never mention meeting at a gas station?

10 A I would never say that I left from the house because
11 there never was a house. It was a camp site and it was
12 gas station that I left from I would have never told him
13 anything different.

14 Q But do you remember telling him -- did you tell him
15 you met him at a gas station?

16 A Yes.

17 Q On the first statement?

18 A I don't know ---

19 Q We'll play it in a minute. We'll hear it, that's
20 fine. And you told him that you were leaning over telling
21 him which way to go, right?

22 A Yes.

23 Q Okay. You remember that, right?

24 A Because that's true.

25 Q And didn't you tell him though or did you if you

1 remember that you didn't remember what happened at all
2 after y'all left in the RV that you didn't remember
3 anything?

4 A I don't remember telling him that. I don't know why
5 I would say that when I just told you that I told him that
6 he was the last one driving and that I was standing in the
7 RV or whatever it was that was said.

8 Q Because you're adding details today on the road and
9 where you're driving and he's turning. And you're doing
10 all the details going right up to the wreck. You told him
11 you didn't remember anything after you left because of the
12 accident?

13 A After the accident, I don't remember anything. I
14 couldn't have remembered anything.

15 Q And do you remember the last question he asked you
16 you weren't driving and you said not that I know of, sir?

17 A I was not driving.

18 Q But do you remember telling him not that I know of?

19 A I don't remember telling him that. I don't remember
20 saying it like that. I don't remember.

21 Q Robert Skidmore according to your testimony was
22 behind the steering when this happened, correct?

23 A Yes, he was standing up in front of the steering
24 wheel. He wasn't sitting like this here. He was standing
25 like this here pulling trying to pull the steering wheel.

1 Q Y'all hit the tree head on, correct?

2 A I don't know what we had hit until today when I seen
3 them pictures. I had no idea what it hit. I did go to
4 the scene and there's a group of trees there, but in the
5 picture that I seen today, it shows one big round thing.
6 I don't know if it's just a bunch of trees where they got
7 hit and they come together and then leaned. I have no
8 idea. I mean his theory is there was something there, but
9 even until this day there's not one round solid looking
10 pole or tree or anything. It's just a group of them that
11 look like they got smoosh together and then bent over,
12 that's what it looks like to me. I'm not an expert.

13 Q Your vehicle was in the wrong lane heading down
14 toward Shaunte (sic) Brown and Michael (sic) Moyer, wasn't
15 it? That RV was in the wrong lane, wasn't it?

16 A I believe Shon and I believe Andrew. I don't know --
17 when he was pulling it, I assume that's why he was pulling
18 it back over.

19 Q No question the vehicle was in the wrong lane headed
20 toward them; isn't that true?

21 A I didn't see it. I just seen him jump up and pull
22 the wheel and I said what are you doing and what's when I
23 went at the wheel.

24 Q You said you believe Shonda and Andrew?

25 A I do believe we drifted in their lane. I believe

1 what they said about that. Yes, I did.

2 Q And you had a seat belt over you when Andrew pulled
3 you out of the seat?

4 A There was bungee cords, seat belts. There was like a
5 web right there holding stuff in the place for the stuff
6 don't fall off the top.

7 Q You had a seat belt on behind the driver -- in the
8 driver seat -- behind the driver wheel there was a seat
9 belt over you, wasn't it?

10 A No, there was not.

11 Q Well ---

12 A Because it couldn't have been a seat belt on me
13 because I was not driving the RV.

14 Q You remember when Mr. Andrew came and got you out?

15 A No, I don't remember none of that.

16 Q Took the seat belt from over you. You heard him
17 testify to that, didn't you?

18 A I heard him say that he remove the seat belt, yes.

19 Q And you don't remember that?

20 A I heard him say that, yes.

21 Q Do you remember that?

22 A No, I couldn't have. I couldn't remember it.
23 There's no way.

24 Q What's the last thing you remember before that?

25 A Saying Robert what are you doing and went for

1 steering wheel, that was the last thing I heard. And I
2 did hear a boom. I heard a boom.

3 MR. MEADORS: So can I approach?

4 THE COURT: Yes.

5 BY MR. MEADORS:

6 Q So were you behind the driver?

7 A Yes, I was standing right here on this side.

8 Q Right here. Before you hit whatever you hit?

9 A Yes, I had one hand up top where the bed is up here
10 and one hand here.

11 THE COURT: Keep your voice up.

12 BY MR. MEADORS:

13 Q And you end up where?

14 A I don't know where I ended up at.

15 Q You don't know where you ended up at?

16 A No, I don't know where I ended up at. Only thing --
17 I went for the steering wheel that's it. I don't know
18 where I ended up at.

19 Q But you were found in the driver's seat behind the
20 wheel, weren't you?

21 A I don't know. I know they pulled me out of the
22 driver's side. I don't know if I was -- where I was at in
23 the vehicle. I do not know.

24 Q And Mr. Skidmore was in front of you, correct?

25 A Mr. Skidmore was to my right. From the picture, he

1 was to my right.

2 Q And if he would have hit, he would have gone and gone
3 out that way, wasn't he, if he had been driving or if he
4 was behind the wheel he be over there to the left,
5 wouldn't he? I mean, you agree with the ---

6 A There's no way from the way I see it now. Now, I'm
7 not Mister -- from the way I seen it. I can only tell you
8 the truth. When I went for the wheel and then that's what
9 broke all this up over here. Robert was pulling this
10 away. When Robert was pulling this away and from the
11 looks of the vehicle and have part of that vehicle hit, it
12 look like it actually bent the front even more from what I
13 seen. Now, from that right there and Robert smashed up on
14 his left side of his face because he went into the
15 dashboard and the glass at the same time as I'm trying to
16 pull this away, that's the way I see it. I'm not an
17 expert. Now, I got lacerations on my eye and I got a
18 concussion on the back of my head. And I had all this was
19 broken on this side from going from the seat, that's what
20 the lady said at the hospital. She goes it appears that
21 this from -- from something big hit me right here from the
22 steering wheel whatever it was hit me right here.

23 Q State's 6 that's Bob over here in State's 6, isn't
24 it, that's Bob?

25 A Yes, that's what you say. It don't look like him. I

1 mean, come on.

2 Q Bob didn't go right after you hit this tree, did he?

3 A I don't know.

4 Q Did he go right and then come back left?

5 A I don't know.

6 Q Is that when you flipped over and went in the seat
7 when he was going right and coming back because that's
8 basically what you're saying -- explains this; isn't it?

9 A I don't know where he went or where I went. I have
10 no idea.

11 Q But that would defile logic in physics -- would you
12 agree with me in that? If you're hit head on, the person
13 who's here is not going to go right and then come back
14 left while you're flipping over and coming down in the
15 driver's seat, aren't they?

16 A Well, the laws in physics I do have a high school
17 diploma. I'm not an expert in anything. I have a high
18 school diploma and I do got some college credits. While I
19 was physics, like you said you got a bag of groceries
20 sitting on the seat here, you hit something straight on,
21 them groceries is going to hit straight on the floor off
22 the seat. If you hit ---

23 Q That be you, right? Weren't you behind?

24 A Yes, I was standing on the seat with this hand on
25 this seat and this hand right on this like here right

1 here. I was not standing over here.

2 Q Well, Bob would be to the left of you if that
3 happened. If he was there and you were there, he be over
4 here?

5 A Yes, he was standing -- he was more to my left then
6 to my center.

7 Q He would have been here and you would have been on
8 the other side?

9 A He wouldn't have been over there. The door is over
10 there.

11 Q If he been driving, he would?

12 A He's sitting in this seat driving and steering wheel
13 here. I'm sitting here with my hand here. My other hand
14 here. I'm not here, but behind him and I'm not on this
15 side over here. I'm here.

16 Q And Bob's to your left in that seat?

17 A And Bob's more to my left then my center. When he
18 stood up to turn this wheel this away like this here, when
19 he did that, I said Robert -- we don't call him Bob. I
20 said Robert what are you doing. And I went for the wheel,
21 the seat's not high like this, it's down. I said what are
22 you doing and I went for the wheel.

23 Q He was still sitting in the front of the -- he was
24 still in the chair standing up right in front of the
25 wheel, wasn't he?

1 A I don't know what happened to him. All I know he was
2 trying to turn the wheel. I don't know what happened.

3 Q Because if it would have hit, he'd gone left and Mr.
4 Moye would have found Robert there and not you?

5 A The stuff that was on him and the way he was wedge
6 and this is just hearsay Melissa them ---

7 Q You can't say hearsay.

8 A Well, actually Moye was not even the first one on the
9 seen. He wasn't the first one on the scene. He was the
10 oncoming vehicle that had to go down and turn around the
11 vehicle behind me. There was a guy that had warrants out
12 for him was the one pull me out and left before the cops
13 got there.

14 Q Say what?

15 A There was a guy that was pulling me out when they
16 went down to turn around come back and then Moye come and
17 ran and helped pull me out as the other guy was already
18 pulling me out.

19 Q When have you ever told that to anybody before?

20 A That was told by Joseph Viper the first man on the
21 scene. And if you look in the police reports, there's
22 others that were on the scene?

23 THE COURT: You got to tell what you know.

24 BY MR. MEADORS:

25 Q You're now saying that Andrew Moye didn't pull you

1 out of that truck?

2 A No, I did not say that. He did help pull me out of
3 that truck. He was not the first one on the scene.

4 Q I thought you couldn't remember anything after the
5 accident?

6 A Because the Joseph Viper man -- this was later after
7 I was out of the hospital, I met Joseph Viper. Him and
8 his girlfriend -- the one that said that they pulled me
9 out, but he had warrants out for him and he left before
10 the cop there. And that's in the accident report and it's
11 also in the incident.

12 Q And he pulled you from the driver side?

13 A Him and Andrew pulled me from the driver side.
14 That's the only side they could get anybody out of that
15 RV.

16 Q That ain't got nothing to do with nothing, does it?
17 They pulled you out of the driver side. And you remember
18 that?

19 A No, I don't remember that. I couldn't remember that.
20 You keep asking me that. I don't remember that. I wish I
21 could tell you I remember.

22 Q When did you do methamphetamine? When did you smoke
23 it? How did you ingest it?

24 A Well, it wasn't even methamphetamine. It was
25 Adderall, which is a methamphetamine.

1 Q You're saying the chemist didn't know what he was
2 talking about when he said it was methamphetamine?

3 A No, I'm not saying that at all. I didn't say that at
4 all. Methamphetamine comes -- if you abuse Adderall, it
5 comes out of Adderall also and it also states it in the
6 papers that -- his papers. It states that in his papers.

7 Q You were under the influence of methamphetamine?

8 A Which is an Adderall ---

9 Q First of all, ain't no question excuse me for the
10 record. There's no question that you weren't under the
11 influence of methamphetamine on February 12th 2017 when
12 this happened, is there?

13 A No question about it.

14 Q No question whatsoever?

15 A No question whatsoever.

16 Q And there's no question that you should not have been
17 driving a motor vehicle?

18 A I was not driving the motor vehicle.

19 Q There's no question that you shouldn't have been
20 either, right? You knew you had too much, right? You
21 knew you shouldn't be driving a motor vehicle?

22 A No, it doesn't work like that with methamphetamine.
23 I wish my lawyer could ask some more questions, but he's
24 not a paid attorney, he's a state paid attorney.

25 MR. MEADORS: Objection, Your Honor.

1 THE COURT: That's not responsive. I'm going to
2 have to make you listen to the questions and answer
3 Mr. Meadors' questions.

4 BY MR. MEADORS:

5 Q You were under the influence of methamphetamine?

6 A Yes.

7 Q And you should not have been driving a motor vehicle.
8 I know you claiming you weren't, but you knew you
9 shouldn't have been driving a motor vehicle?

10 A I wasn't driving.

11 THE COURT: That wasn't the question, Mr. Evans.
12 He's asking you did you know you should not have been
13 driving?

14 A Do I know I should not have been driving?

15 Q You were not in the condition ---

16 THE COURT: Well, now, wait a minute let him
17 answer that question. You ask him that question.

18 MR. MEADORS: I'm sorry.

19 THE COURT: Mr. Meadors ask you the question you
20 knew you should not have been driving a vehicle?

21 A If I say, yes, then that's admitting that I'm
22 driving.

23 THE COURT: No, it's not. That is not. Did you
24 know you should not have been driving?

25 A Correct.

1 Q That's all I'm asking. You were under the influence
2 and then you had too much to drive. I'm not saying you
3 were driving, but you were under the influence, that's an
4 element, okay. You were under the influence, that's all.
5 You're admitting you're under the influence?

6 A Just ask me that and I'll tell you that.

7 Q Well, I was trying to. You were under the influence
8 of methamphetamine?

9 A Yes.

10 Q It affected your ability to think. It affected your
11 ability to respond. It affected your ability to
12 potentially drive. I say you were. You say you weren't.
13 You agree with that?

14 A Yes, sir.

15 Q Okay. And you had done it shortly before this,
16 hadn't you? Within -- I can't do that. You had done it
17 within few hours, hadn't you, taking methamphetamine of
18 this accident? I'm not trying to ask you where you got
19 it. I don't care, that's not my point.

20 A I understand that and -- no, I have not done it
21 because I went to sleep and I went to sleep late Saturday
22 night. And I woke up Saturday -- I was woken up been told
23 that we need to go help Melissa and Robert there at a van
24 at a gas station. So I was asleep before that. I did
25 Friday night, yes, we partied. We partied hard Friday

1 night.

2 Q Now, you told Mr. Griffith on direct that you met at
3 a gas station across from Shaw's. Is that near
4 Cherlynn's? Cherylynn for the record.

5 A From what I understand, I only been there like twice
6 is at one end of Shaw Air Force Base and the gas station
7 that I met them at had an abandon gas station is at the
8 other end, but on the same side of the road.

9 Q So they -- according to your testimony, they got the
10 camper there somehow, right?

11 A Robert drove it.

12 Q And so she let Robert drive it to there?

13 A Yes.

14 Q So she didn't have a problem with Robert driving.
15 You said she didn't want Robert to drive. She didn't have
16 a problem with Robert driving up to that point?

17 A Yes.

18 Q Okay.

19 A But there was a motive behind what she wanted.

20 Q But Robert was driving to that point?

21 A Yes.

22 Q And then after that you're saying she didn't want him
23 to drive and you started driving?

24 A Yeah, I drove from there to that Saint Paul Church
25 Road.

1 Q And that's where -- I think you said that -- you said
2 this should not be on the road?

3 A Yes.

4 Q Okay. And you never said that before, have you?

5 A I don't remember if I had told Melissa that. I just
6 did tell her that the tires were dry rotted and it's been
7 sitting too long that it needs to be checked out real good
8 before it moves.

9 Q Then you said Robert said, well, I'll drive it. Kind
10 of the way you said it, I'll drive it. You said you felt
11 sorry for him?

12 A Yes, because she embarrassed him.

13 Q Okay. Well, they're still behind you, aren't they?

14 A At that point we're standing outside the door, the
15 driver's side door.

16 Q But they were following you in the camper to where
17 you were going? Melissa ---

18 A They wasn't driving in the camper at that point. I
19 was in the camper.

20 Q I understand that. That wasn't my question. If I
21 said it wrong, I apologize. They were following y'all in
22 the camper?

23 A Yes.

24 Q And she had ask you to drive because she didn't want
25 him to drive?

1 A Yes.

2 Q And they were still behind you as you were going?

3 A I'm not sure.

4 Q Okay. Well, would you ---

5 A They should have been. They should have been.

6 Q So you decided to stop when he says I'll drive and
7 you'll just let him drive even though you said she didn't
8 want him to. He was driving bad this shouldn't be on the
9 road and they're behind you?

10 A Yes, the girl sitting in the second row and Melissa
11 Flowers.

12 Q So they saw you according to you stopping to switch
13 drivers?

14 A I don't know if they saw it or not. If they did,
15 they didn't pull over.

16 Q Well, that doesn't make sense, does it? You said she
17 said she didn't want him to drive. You said, okay, I'll
18 drive, but then you stop a little while later and let him
19 drive right before the accident where he was killed?

20 A No, it was a good distance before he was killed. He
21 was at one end of Saint Paul Church Road where he started
22 driving. And at the other end of Saint Paul Church Road
23 is where the accident happened.

24 Q They were behind you and didn't stop say, hey, what
25 are you doing why you switching?

1 A No, I didn't see them. I didn't talk to them.

2 Q So you just decided, well, I'll let him drive even
3 though she didn't want him to drive even though it was
4 hard to drive?

5 A Because he said, man, I can get it. I got it. I
6 said okay.

7 Q So you decide to let him drive it then?

8 A Yeah.

9 MR. MEADORS: Beg the Court's indulgence.

10 THE COURT: Yes.

11 (WHEREUPON, a pause in the proceedings.)

12 BY MR. MEADORS:

13 Q You said you and Robert -- what did you call him
14 Robert?

15 A Yes.

16 Q You said y'all were close?

17 A Yes.

18 Q If you can remember this, you remember not -- you
19 couldn't even remember his name hardly when the trooper
20 ask you what his name was?

21 A I don't remember talking about his name or anything
22 like that. I remember when he was in another bad accident
23 quite before that, sometime before that.

24 Q Now, that you bring that up, did he have a bag?

25 A Colostomy bag, yes, sir.

1 Q And actually he wasn't suppose to drive because of
2 that you knew that?

3 A Yes, sir, I did.

4 Q He was not suppose to drive with that colostomy bag
5 and he wasn't driving?

6 A He was driving.

7 MR. MEADORS: That's all. Thank you.

8 THE COURT: Redirect.

9 MR. GRIFFITH: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. GRIFFITH:

12 Q Mr. Evans, just to clarify again, Robert was driving
13 and you were standing behind him; isn't that right?

14 A Yes, sir.

15 Q When he stood up and tried to turn, you leaned over
16 the seat, didn't you?

17 A I went for the steering wheel I said Robert what are
18 you doing. I said what are you doing.

19 Q Next thing you know accident, right?

20 A Boom that was it.

21 Q When he was standing up trying to turn this thing,
22 was it really hard to turn?

23 A Yes, Mr. Griffith, you're unorthodoxed. When he
24 stood up and turning, you look kind of funny doing it.

25 When he stood up to turn, his whole body and his arms was

1 trying to turn the steering wheel. At that point from
2 what I seen so far is he was trying to get back into his
3 lane. Now, did I see him over there, no, I did not. I
4 said what are doing and I went for the steering wheel
5 because didn't want him to snatch it too much off the
6 road. And when I went for the steering wheel, that's when
7 we glide off the road and hit the tree.

8 MR. GRIFFITH: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. GRIFFITH:

11 Q I'm coming up behind you there, Mr. Evans. Go ahead
12 and stand up like he was trying to turn that thing. Go
13 ahead and be there and you're Robert, you're trying to
14 turn that thing and you're behind him here. Now, so you
15 reached over to say -- you're saying what now?

16 A The seat is shorter.

17 Q This was a lot shorter, wasn't it?

18 A Yes. He's pulling the steering wheel like this right
19 here. He's pulling it.

20 Q This was a lot shorter so you were able to lean over
21 from where you were standing over to test the steering
22 wheel, right?

23 A Yeah, to grab the steering wheel.

24 Q It was a lot shorter?

25 A Yes.

1 Q And did you lean over ---

2 MR. MEADORS: Objection to leading.

3 THE COURT: He's your witness, Mr. Griffith.

4 BY MR. GRIFFITH:

5 Q Which side did you reach around him?

6 A Just that side just as you showing, just like that on
7 that side for the steering wheel because he was this way.
8 He had me block this way standing directly behind. When
9 he leaned over this right here, he became directly in
10 front of me. At that point he was not in front of me.
11 And then when he went like this right here to pull the
12 wheel because he couldn't no further because of the
13 console right here, that's when I said Robert what are you
14 doing and I went for the wheel. I look under and went for
15 the wheel and then boom.

16 Q That chair was a lot shorter than the one you're
17 talking about?

18 A Even this part here was even shorter because I could
19 sit in that chair with my feet flat and my legs wasn't
20 resting on the seat. I had some room where I can move my
21 legs up and down.

22 MR. GRIFFITH: I have no further questions.

23 THE COURT: Recross.

24 RECROSS-EXAMINATION

25

1 BY MR. MEADORS:

2 Q Did you then flip over and get in underneath the...

3 A Mister ---

4 Q No, sir, you can't ask questions.

5 A There was never no acrobatic move. No, there was
6 never a flip. If I would have flipped, I would have
7 probably broke my back and suffer my back not the front my
8 chest and my clavicle sternum.

9 Q And a minute ago you were over there, but
10 Mr. Griffith just had you over there, correct?

11 A Could you please come show me?

12 MR. MEADORS: I don't have anything else. Thank
13 you.

14 THE COURT: All right. Thank you, sir. You may
15 step down.

16 (WHEREUPON, the witness leaves the witness
17 stand.)

18 THE COURT: All right, Mr. Griffith.

19 MR. GRIFFITH: Your Honor, the defense rest.

20 THE COURT: All right. Defense rest. Anything
21 in reply?

22 MR. MEADORS: Your Honor, if we could just have
23 a quick five minute break to determine that.

24 THE COURT: All right. Ladies and gentlemen, if
25 you would go to your jury room for a few minutes while we

1 take up this matter that Mr. Meadors wants us to consider
2 and we'll send for you very shortly. Don't begin any
3 discussions of the case at this point.

4 (WHEREUPON, the jury retire to the jury room.)

5 MR. MEADORS: Your Honor, we're going in this
6 conference room to confer for two minutes.

7 THE COURT: Yes, sir.

8 (WHEREUPON, a break was taken.)

9 THE COURT: We're back on the record with regard
10 to the matter of the State vs. Evans. Mr. Evans is
11 present with his counsel. Mr. Meadors is present on
12 behalf of the State. The defense have rested. And the
13 next issue is their reply on behalf of the State, Mr.
14 Meadors?

15 MR. MEADORS: Yes, sir.

16 THE COURT: All right. What is that?

17 MR. MEADORS: Lance Corporal Trotter.

18 THE COURT: And this will be reply testimony to
19 the defendant's testimony.

20 MR. MEADORS: Yes, sir.

21 THE COURT: Okay. All right. Anything you want
22 to put on the record, Mr. Griffith, before we bring the
23 jury in?

24 MR. GRIFFITH: Not at this time, Your Honor.

25 THE COURT: All right. Go ahead and mark it

1 what is it?

2 MR. MEADORS: This is going to be 38. It's on
3 the MAIT team disk. We're going to have to put it on a
4 separate disk just for the jury, but for right now, it
5 will be 38.

6 THE COURT: All right. Exhibit Number 38. And
7 what is that?

8 MR. MEADORS: It's a interview of the defendant
9 on February 13th 2017 in Richland Memorial hospital.

10 THE COURT: By?

11 MR. MEADORS: Lieutenant Trotter -- by
12 Lieutenant Lance Corporal Trotter in response to the
13 questions I asked the defendant.

14 THE COURT: And you don't have any problem with
15 the authenticity of this, Mr. Griffith?

16 MR. GRIFFITH: He told me he was going to call
17 up the trooper to authenticate it, Your Honor.

18 THE COURT: Well, I mean, if he identifies this
19 as being the disk that he made, you don't question that?

20 MR. GRIFFITH: I don't question the
21 authenticity.

22 THE COURT: Okay. All right. Ready to go, Mr.
23 Meadors.

24 MR. MEADORS: Yes, sir.

25 THE COURT: All right. Bring the jury in.

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: All right. Ladies and gentlemen,
3 you heard the State -- I mean, the defense announce
4 before the recess that they had concluded their case and
5 now the State will have the right to put in any testimony
6 or evidence it wishes to put in by way of reply. You may
7 proceed, Mr. Meadors.

8 MR. MEADORS: Thank you, Your Honor. Lance
9 Corporal Trotter.

10 THE COURT: Come around, Mr. Trotter. You are
11 already under oath, so it will not be necessary that you
12 be sworn again.

13 THE WITNESS: Yes, Your Honor.

14 MR. MEADORS: Please the Court.

15 THE COURT: Yes, sir.

16 WHEREUPON,

17 Brian Trotter,
18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MEADORS:

21 Q Lance Corporal, did you have an occasion to see the
22 defendant on February 13th 2017?

23 A Yes, sir, I did.

24 Q And where was that?

25 A It was Richland hospital. I believe it's on the

1 seventh floor.

2 Q And when you saw the defendant, you identified
3 yourself as a member of the South Carolina Highway Patrol?

4 A Yes, sir.

5 Q And were you able to confirm that he was the
6 defendant?

7 A Yes, sir.

8 Q Gene Evans?

9 A Yes, sir.

10 Q And did you record this conversation you had with the
11 defendant?

12 A Yes, sir, I did.

13 MR. MEADORS: Your Honor, at this time we ask --
14 ask, Your Honor, without objection to publish State's 38.

15 THE COURT: Any objection?

16 MR. GRIFFITH: Without objection, Your Honor.

17 THE COURT: All right. It will be -- you may
18 publish the exhibit. It is admitted into evidence without
19 objection and you may publish the exhibit.

20 (WHEREUPON, State's Exhibit No. 38 was admitted
21 into evidence.)

22 (WHEREUPON, audio being played for jury.)

23 BY MR. MEADORS:

24 Q You and the defendant there and there was a reference
25 to somebody name Jamie. Was another individual in the

1 room?

2 A Yes, sir.

3 Q This is the person you talked to that day Gene Evans?

4 A Yes.

5 MR. MEADORS: That's all. Thank you.

6 THE COURT: Cross-examination, Mr. Griffith.

7 MR. GRIFFITH: Please the Court, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. GRIFFITH:

10 Q Trooper Trotter, listening to that, sounds pretty
11 clear he was out of it, wasn't he?

12 A He was acting that way, yes.

13 Q Were you aware he had a concussion?

14 A No, I'm saying whether he was out of it or not, I
15 have no idea, but he was acting out of it, yes.

16 Q Were you aware that he had a concussion?

17 A No, sir.

18 MR. GRIFFITH: I have no further questions.

19 THE COURT: Redirect?

20 MR. MEADORS: No, sir.

21 THE COURT: Thank you. You may step down.

22 (WHEREUPON, the witness leaves the witness
23 stand.)

24 THE COURT: Anything else in reply, Mr. Meadors?

25 MR. MEADORS: No, sir.

1 THE COURT: All right. Ladies and gentlemen,
2 you have now heard all of the testimony in this case. And
3 there only two things that remain to be done. Those are
4 the arguments of counsel and the instructions on the law
5 by the Court. Before I can get to that, however I do need
6 to take up certain matters of law with the lawyers
7 involved in it and to see what our scheduling situation
8 is. And so I'm going to ask that you go to your jury room
9 while I take up these matters of law and we get them
10 resolved, after which I will bring you back into the
11 courtroom.

12 Again, I would tell you it is still premature
13 for you to begin any discussion about this case. You have
14 not heard the arguments of counsel nor have you heard the
15 instructions on the law by me. So do not begin any
16 discussion or deliberations about this case at this time
17 and I'll send for you very shortly. Please go to your
18 jury room with the bailiff. Thank you very much.

19 (WHEREUPON, the jury retire to the jury room.)

20 THE COURT: All right. Mr. Griffith, motions on
21 behalf of the defendant.

22 MR. GRIFFITH: Your Honor, I believe we would
23 move for a direct verdict.

24 THE COURT: Grounds?

25 MR. GRIFFITH: The State has failed to show

1 beyond a reasonable doubt that it couldn't have happened
2 any other way.

3 THE COURT: Is that the test?

4 MR. GRIFFITH: Excuse me?

5 THE COURT: Is that the test at a directed
6 verdict stage? It's not that they have to show me beyond
7 a reasonable doubt. They have to have any evidence in the
8 record.

9 MR. GRIFFITH: Yes, Your Honor.

10 THE COURT: Rule 19 does require that the Court
11 grant a directed verdict if there is no evidence in the
12 record to support the charges. I think that there is both
13 direct and circumstantial evidence that the elements of
14 this offense have been met for me to impose my judgment in
15 granting directed verdict would be invading the province
16 of the jury and that I cannot do. So I would respectfully
17 deny the motion for directed verdict.

18 MR. GRIFFITH: Thank you, Your Honor.

19 THE COURT: All right. Counsel under the law as
20 it stands right now with regard to arguments, what is your
21 position, Mr. Meadors, as far as opening and closing and
22 then I'll hear from Mr. Griffith as to what his position
23 is.

24 MR. MEADORS: Done a few since the change. I'm
25 still not 100 percent sure, but I guess since he put

1 something up, I still get last argument.

2 THE COURT: No question about that.

3 MR. MEADORS: Then the question is to the extent
4 of the last argument I get whether or not I have to open
5 in full.

6 THE COURT: That's right.

7 MR. MEADORS: Just reply to him and I
8 respectfully disagree with it -- not the Court, but I
9 think that's the law. I'm not sure.

10 THE COURT: What would you say is the correct
11 position, Mr. Griffith, under the law as it stands right
12 now?

13 MR. GRIFFITH: Your Honor, under the rules, he's
14 given the opportunity to close first and then reply after
15 my close afterward as is states.

16 THE COURT: Is it your position he has to open
17 in full?

18 MR. GRIFFITH: I'm not sure on that, Your Honor.
19 He is allowed to reply and so whether he would say he was
20 opening in full or not would be kind of hard to tell.

21 MR. MEADORS: I think I'm suppose to open in
22 full.

23 THE COURT: You are.

24 MR. MEADORS: I'm still a little leary about how
25 I can just reply to certain things quite frankly, but I'm

1 trying to get better.

2 THE COURT: All right. I think that under the
3 law as it stands now the State does open in full and then
4 the defense argues and then the State has the right to
5 reply to the defense argument. What do you anticipate in
6 the way of time, Mr. Meadors? And, Mr. Griffith, and
7 let's kind of see where we are or what kind of schedule we
8 want to try to keep this afternoon. What are your
9 thoughts on it, Mr. Meadors?

10 MR. MEADORS: Obviously, whatever, Your Honor,
11 prefers, we'll be happy, but I would love do it tomorrow
12 since it's already 3:25.

13 THE COURT: How much time do you think you going
14 to need to argue.

15 MR. MEADORS: 30 to 35 minutes.

16 THE COURT: What are you going to need?

17 MR. GRIFFITH: I don't need more than 30 minutes
18 at all, Your Honor.

19 THE COURT: All right. Well, see those two
20 alone would run us 'til 4:30 and then with charge it will
21 be five o'clock before we could get it to the jury. I
22 don't like to charge even before -- even after four
23 o'clock. And I don't think there's any way that we can
24 get this matter to the jury this afternoon before four
25 o'clock with the things that we have left to do. So I am

1 going to excuse the jury and ask them to be back in the
2 morning and we will argue and charge at that time.
3 Unless, you all like to argue this afternoon and let me
4 charge in the morning?

5 MR. MEADORS: If you tell me to, that's fine. I
6 never have like doing that, but whatever you say.

7 THE COURT: I never have found a lawyer yet that
8 likes to do that. I don't have any problem with putting
9 it over until in the morning. It's 20 minutes to four.
10 Even if we went to arguments, we be running 5:30, so
11 that's running pretty late anyhow. So I think it's
12 appropriate that we recess for the afternoon. Counsel,
13 come up just a moment and look at the proposed verdict
14 form.

15 MR. MEADORS: Your Honor, you talking about 9:30
16 in the morning?

17 THE COURT: Yeah.

18 (WHEREUPON, a bench conference was held.)

19 THE COURT: All right. I'll ask again -- I'll
20 ask again let's run over the charges just so we make sure
21 that I've got my charges together of what I'm going to use
22 tomorrow, but other than that, why ---

23 MR. MEADORS: Judge, can I ask one question just
24 to be thinking about it?

25 THE COURT: Sure.

1 MR. MEADORS: Your reply means just reply to a
2 new matter that he brings up that I didn't. I'm limited
3 to that?

4 THE COURT: You're limited to matters which he
5 argues not to -- and reasonable inferences therefrom I
6 think. I don't think that you can ---

7 MR. MEADORS: Rehash the ---

8 THE COURT: Rehash the whole case over again.

9 MR. GRIFFITH: Or bring up new argument.

10 THE COURT: Or bring up new things.

11 MR. MEADORS: Thank you.

12 THE COURT: All right. Bring the jury in
13 please.

14 (WHEREUPON, the jury came into open court.)

15 THE COURT: All right. Ladies and gentlemen,
16 thank you and I have some good news for you. And I'm
17 sure you have all heard the expression that the wheels of
18 justice turn slowly and sometimes they do, but at the same
19 time I know that as I have said before that you have a
20 life outside of this courtroom. And we do have two things
21 left to do and those are the arguments of counsel and the
22 instructions on the law by the Court.

23 Those two things together would probably take us
24 an hour and 15, an hour 20 minutes, that would be right at
25 five o'clock before you would get this case. And I think

1 that's too late in the afternoon for you to begin your
2 deliberations. So I have decided that the better part of
3 -- better way to handle this matter is to go ahead and
4 adjourn for the afternoon. Allow you to be in at 9:30 in
5 the morning at which time we would do arguments and charge
6 at that time. So I'm going to ask you to go to your homes
7 and families again with the same admonitions that I have
8 given to you throughout the trial of this case. And that
9 is do not let anyone talk with you about the case and do
10 not talk about the case among yourselves while you're away
11 from the courthouse. Do not read any news stories or
12 listen to any television or radio reports about it. And
13 do not do any research on the computer or in any other
14 source whatsoever, but simply put this matter out of your
15 minds. Do not discuss it with your family or your friends
16 or with anyone else. And come in in the morning with
17 rested and a fresh mind and you will hear the arguments
18 of counsel. And I will instruct you on the law after
19 which you will be given the opportunity to retire and
20 deliberate your verdict. So you are excused for the rest
21 of the afternoon remembering the same admonitions that I
22 have given you throughout the trial of this case. Have a
23 pleasant evening. I'll see you tomorrow morning at 9:30.
24 Thank you.

25 (WHEREUPON, the jury was excused for the day.)

1 THE COURT: All right. Counsel just again for
2 purposes we're all on the same page with regard to the
3 charge. The Court will charge as general felony charge
4 which includes presumption of innocence, reasonable doubt,
5 burden of proof. Then I will charge the felony DUI
6 section 56-5-2945 and also the elements which the State
7 must prove as being that the defendant drove the vehicle.
8 That while driving he was under the influence of alcohol
9 or drugs. That while driving in an impaired condition he
10 did do an act forbidden by law which be where the
11 statutory violations would come in and I would charge
12 56-5-1810 and 56-5-1880. And that the act of neglect must
13 be the proximate cause of the death of the defendant in
14 this case. And finally that the offense must have
15 occurred at the place and time specified in the
16 indictment. I would also charge circumstantial evidence
17 as the court has told us to do under State vs. Logan. And
18 I will give an expert witness charge. Those I believe
19 cover all the things that need to be charged. Do you have
20 anything else, Mr. Meadors?

21 MR. MEADORS: No, sir.

22 THE COURT: All right. Mr. Griffith.

23 MR. GRIFFITH: Nothing, Your Honor.

24 THE COURT: All right. We'll be in recess.

25 Please be here a few minutes before 9:30. As soon as all

1 of the jurors are here, I want to start promptly at 9:30.
2 Also, I would ask you to do probably be this afternoon or
3 maybe probably this afternoon would be the best time to go
4 over the exhibits and make sure that they -- any exhibits
5 that you want to use in your argument are available and
6 you can put your hands on them. And be ready to argue
7 without delay with the jury at 9:30. Thank you. We'll
8 see you tomorrow.

9 MR. MEADORS: We will need to make a copy to put
10 this -- can we take it to the office and make a disk?

11 THE COURT: Ms. Reed, you can let him take that
12 exhibit of the tape and burn a copy and bring it back to
13 you and introduce the burn copy.

14 MR. MEADORS: And it's still in, so we'll leave
15 it in there. Thank you.

16 THE COURT: Anything else before we adjourn for
17 the afternoon?

18 MR. MEADORS: Nothing from the State.

19 THE COURT: All right.

20 MR. GRIFFITH: Nothing, Your Honor.

21 THE COURT: We'll be in recess until 9:30 in the
22 tomorrow morning.

23 (WHEREUPON, the proceedings were concluded for
24 the day to be reconvened on February 22, 2018.)

25 THE COURT: All right. We're back on the record

1 with regard to the matter of the State vs. Evans.
2 Mr. Evans is present with his attorney Mr. Griffith. The
3 State is present and represented by the Solicitor's office
4 Mr. Meadors. We have concluded all the testimony in this
5 case and now prepared to go forward with arguments and
6 charge. Anything before we bring the jury in,
7 Mr. Meadors?

8 MR. MEADORS: Your Honor, I was looking -- I
9 cite, Your Honor, 18 -- 56-5-1810 and 56-5-1880.

10 THE COURT: Yes, sir.

11 MR. MEADORS: And clearly 1810 is I think
12 correct. 1880 is -- I don't know if we need both of them.
13 It says further limitation on ---

14 THE COURT: I don't think it's necessary. I
15 will charge it, but I don't think it's necessary. I think
16 56-5-1810 is sufficient.

17 MR. MEADORS: I do to. I looked at it last
18 night and this morning. I thought ---

19 THE COURT: All right. Anything else?

20 MR. MEADORS: No, sir.

21 THE COURT: Mr. Griffith.

22 MR. GRIFFITH: Nothing further, Your Honor.

23 THE COURT: All right. Bring the jury in
24 please.

25

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: All right. Good morning, ladies and
3 gentlemen, and thank you for your promptness in being back
4 here. We are now ready to proceed. I need to ask you
5 again today as I have every time that you been away from
6 the courthouse if anyone has approached you or attempted
7 to talk with you about this matter or anyone who has
8 anything to do with it. Please signify by raising your
9 right hand? Thank you.

10 Has anybody learned anything about the case or
11 anyone involved in the case in the print or broadcast
12 media or from any source whatsoever other than what you
13 have heard in this courtroom, if so please raise your
14 hand? Thank you.

15 Has any juror done any research or consulted
16 any -- the internet through Google, Bing or other means or
17 done any investigation or research into the facts, law or
18 the people involved in this case, if so please raise your
19 right hand? Negative response again, that is good.

20 Okay. Ladies and gentlemen, I told you
21 yesterday that you have now heard all of the testimony in
22 this case. There are only two things that remain to be
23 done. Those are the arguments of counsel and the
24 instructions on the law by the Court. I would tell you
25 now as I did at the first of this case that the arguments

1 of the lawyers in this matter are not evidence. They are
2 simply the lawyers views of what they think the evidence
3 shows. You will decide this case based upon the evidence
4 that you have heard from this witness stand and from any
5 exhibits that have been introduced into evidence. But the
6 lawyers do have the right, but not only the right, but the
7 duty on behalf of their clients to address you now and to
8 give you their views of what they think the evidence
9 shows.

10 You will hear first from Mr. Meadors on behalf
11 of the State and then from the Griffith on behalf of the
12 defendant. And then Mr. Meadors will have the right to
13 reply or do a rebuttal argument. After they have
14 completed their arguments to you, I will then instruct you
15 on the law of South Carolina as it pertains to the issues
16 in this case. And then you will be allowed to go to your
17 jury room to deliberate your verdict. In that connection,
18 we are ready to begin the closing arguments and for that
19 purpose I will recognize Mr. Meadors. Mr. Meadors.

20 MR. MEADORS: May it please the court.

21 THE COURT: Yes, sir.

22 MR. MEADORS: Mr. Griffith. Mr. Foreman, ladies
23 and gentlemen, good morning. First of all, thank you
24 again for being here and for listening. I'm not a jury
25 watcher at all sit there and stare at jurors, but when I

1 glanced over, I have seen that y'all were listening and
2 watching the witnesses and that's all we can ask and thank
3 you.

4 I'm not going to bring this over and I couldn't
5 find a black pen, but the law is relatively simple in this
6 case. The State must prove that the defendant drove a
7 motor vehicle in Sumter County and that he was under the
8 influence of alcohol or drugs. In this case, drugs.
9 We're asserting methamphetamine and that he did an act
10 forbidden by law or neglected a duty imposed by law. In
11 this case, we alleging he did an act forbidden by law and
12 that act being driving the left of center in the wrong
13 lane. And that as a result of that, as a result of that
14 violation or the act forbidden by law. It proximately
15 resulted in the death of Robert Skidmore. That's it.
16 That's what we have to prove. And His Honor's told you
17 and I'm sure we both commented on it, but the burden is
18 proof beyond a reasonable doubt, not beyond all doubt.
19 You can never prove anything beyond all doubt. The law
20 doesn't require that. If it did, we don't need this new
21 courthouse. The judge will tell you that. We don't have
22 to prove beyond all doubt. We have to prove beyond a
23 reasonable doubt.

24 I respectfully submit we have gone forward in
25 that and have proven beyond all doubt, but that's not our

1 burden. It's beyond a reasonable doubt and whether we met
2 it is up to y'all. I use to tell stories about reasonable
3 doubt. The older I get I realize that with the few
4 exceptions brevity is the key to life. It's common sense
5 if we prove beyond a reasonable doubt these elements.

6 I been doing this 30 years, 30 years. Eight of
7 them in this courtroom. Primarily, the rest of them in
8 Columbia, the Midlands and I love it. Most of the cases I
9 deal with are murders or homicides or deaths, that's not
10 what I love. I mean, that's the tragedy. A lot of them
11 preventable. Felony DUIs is one of the most preventable
12 offenses like DUIs there is and I'll get to that later.
13 But that's not what I love about this job. I don't love
14 the tragedy dealing with families when the loss of loved
15 ones. I like doing that, but that's not why I like this
16 job. What I like about it is you get to meet and
17 encounter people and personalities you wouldn't have
18 otherwise. And we all have great jobs, but this is a
19 little unique.

20 And I've always -- people that are first
21 responders, paid first responders, firemen, police. I've
22 got a daughter in EMS in Columbia. Those paid first
23 responders who decide I want to get paid to do this. I
24 want my life to be a responder. We all thank them for
25 doing that. And I enjoyed that, but then there are times,

1 not a lot, but when you get amateur -- I hate to use that
2 word. Amateur first responders or volunteer first
3 responders. People that just react to the situation.
4 That's what we got in this case. And that's part of what
5 I love about this job.

6 It doesn't do the world no good, it's so much
7 badness. People don't care about each other and that's
8 bull. There's a lot of good in this world. There a lot
9 of good people in this world. And we got to see two of
10 them. Lot more than good people, I don't mean that, but
11 I'm talking about we got to see two volunteer first
12 responders. And it goes to the credibility,
13 believability.

14 Shonda Brown and Andrew Moye were going to a
15 pond. I don't know they were going somewhere in Wateree
16 relaxing, going to enjoy the day. And as they're
17 traveling on Saint Paul Church Road -- and you cannot only
18 hear people's words, you can see their body language. Did
19 you see Shonda said they were in your lane. Yes, they
20 were in my lane. He was coming right at me, no other
21 cars. That's the act forbidden by law. Double lane
22 coming at me in my lane. That's what the law says we have
23 to prove. I submit we've done that, but she says he's
24 coming at me. What happened? She goes off to the right a
25 little bit. She then says that car goes off the side of

1 the road and it hits a tree.

2 Credibility, believability, direct evidence,
3 circumstantial evidence, she said she gets close enough to
4 see he's driving, that's direct evidence. That's evidence
5 one gathers with their senses, their hands, their nose.
6 In this case, her eyes. And she came in here said, yeah,
7 he looks different, but I saw him in the camper when I was
8 driving. He was driving. That's not the only evidence we
9 have of him driving. That's certainly direct evidence of
10 somebody who was coming right at us in their lane, that's
11 pretty good. I saw him. She doesn't know these people.
12 They didn't want to have to stop. They stopped. How many
13 people in life don't stop. How many times have I not
14 stopped when I saw something. Maybe not a bad crash like
15 this. Hopefully we all stop with something like that, but
16 they stopped number one. They chose to stop. And then
17 what happens Andrew I ask him was it out of instinct, not
18 thinking about his safety, not thinking about who's in
19 there. What type of person they were, who they were,
20 where they from. It didn't matter he just responded.

21 We got a great country. We got great people.
22 He just responded. And what does he do when he gets
23 there. And credibility believability folks, they stopped.
24 They don't know anybody. They don't know this was going
25 to happen. What does he tell you? He tells you I get to

1 the door and the defendant, the person I pulled out is
2 behind the wheel, not to the right, not over here. He's
3 behind the wheel. And what does he say? I took his seat
4 belt off. I took his seat belt off. Why would he make
5 that up.

6 Now, on cross, Mr. Griffith, say you sure it was
7 locked. I think it was, but I know it was over him. I
8 know I had to move it. Why would Andrew lie? He doesn't
9 know these people. He stopped. Messed up his day. He
10 saved his life. I mean, he saved his life. Why is he
11 gone do that and then lie about a seat belt being there,
12 credibility, believability. Does he get more credible?
13 What did you do? I pulled him out. I pulled him out to
14 safety, put him on the bed of a truck. Second evidence of
15 driving, great evidence of driving. I pulled him from
16 behind the steering wheel with his seat belt on. No
17 motive to lie. None. He saves him. Well, here's what I
18 saw, he was in the driver's seat. Shonda says, well, I
19 also saw -- I don't know how far she was from him. I also
20 saw his arm over the wheel, credibility, believability.

21 I don't want to jump ahead, I probably
22 shouldn't, but when the defendant took the stand -- and I
23 think he knew how good Andrew -- what a good witness
24 Andrew was and I'm asking about that. And I'm asking
25 about the seat belt and then out of the blue -- and I

1 submit to you this was realtime fabricating respectfully,
2 realtime fabricating. He said, well, tell you the truth
3 Andrew didn't pull me out. Do what? He didn't pull you
4 out. That came up right then. He said, well, somebody
5 else helped me pull me out, somebody with warrants.
6 Andrew didn't pull you out. He doesn't want you to think
7 that. He's trying to change the facts as he has through
8 this because he know Andrew is a good witness. Pulled the
9 seat belt off of him, caught him behind the door. He
10 didn't -- he didn't -- I'm going to choose to tell y'all
11 he didn't pull me out. Actually, it was somebody else
12 credibility, believability.

13 So what happens after that? And I don't care.
14 I do. I don't mean I don't care, but what do they do.
15 Shonda and Andrew they stay around. Think about this and
16 I see a traffic accident, some of us may not want to stop
17 for a traffic accident. They stay around. They save a
18 life.

19 What else? Andrew goes back and he tries to
20 save Robert. Doesn't know who he is? He goes back and
21 tries to save him. He's a great American. We talk about
22 heros. He's a hero. He saved him. He's now trying to
23 say I wasn't driving, but he saved him, tried to save
24 Robert. Then it got too hot and he couldn't. He tried.
25 You know he wanted to.

1 If his theories was correct, he would have saved
2 Robert right off the bat and I'll get to that in a minute.
3 But then they stayed around. They stayed around to talk
4 to Trooper Boland. The day become hours because they
5 stopped and they cared. And then they talked to Lance
6 Corporal Trotter and gave him a statement. Yeah, this is
7 what happened. They were in my lane, I saved him. I
8 pulled him out from the driver side. Credible,
9 believable, no motive to lie.

10 The defendant's flown to the hospital. Trooper
11 Boland goes to the hospital and you heard Trooper Boland
12 say I came in and I asked him if I can get a voluntary
13 blood draw. Trooper said he nodded his head and gave him
14 permission to take a voluntary blood draw said he didn't
15 remember what happened. He took a blood draw. That
16 blood -- and this isn't a chain case where there's a
17 question about where the chain went, where the blood went.
18 It went from the nurse Jennifer Marchese, who was here
19 then excused. We stipulated on the chain. There's not an
20 issue of the chain of blood of the defendant. It went
21 from the nurse to the trooper, to his evidence locker, to
22 the MAIT team's locker, to SLED. You'll see it's in
23 evidence. It's the chain, that is his blood. We have to
24 show that. You don't want to get some blood say careful
25 with the chain. It went all the way in the chain to SLED.

1 And then the toxicologist Kevin Selinsky got it
2 and tested it and tested the blood. And it came back .78
3 milligrams per liter methamphetamine and then a smaller
4 dosage of amphetamine, which he then said correlated and
5 that determines the methamphetamines within few hours when
6 blood draw was. Would he have been under the influence?
7 Special Agent Selinsky, yes, sir. Rapid, not thinking
8 clearly, not driving good, shouldn't have been on the
9 road, shouldn't have been driving a vehicle. That's what
10 we have to prove. That he drove a vehicle in Sumter
11 County, several people said it happened in Sumter County
12 Saint Paul Church Road y'all know that, but we got to
13 prove these to you. Did an act forbidden by law under the
14 influence of methamphetamine, couldn't control his
15 actions, couldn't control the car. He's in the wrong
16 lane. Any doubt about that? Any doubt about what he's
17 under the influence. He even admitted it. He gone admit
18 what he knows he can't deny. Yet, he's driving right up
19 until it's bad. And I'll get to that in a minute.

20 The reason DUIs and felony DUIs were the most
21 preventable because he chose to do it. I mean, he chose
22 -- I mean, I'm no angel. We've all made mistakes in life,
23 but he chose to ingest methamphetamine and he chose to get
24 behind the vehicle when he was impaired and that's
25 against the law enforcement. And as a result of that, he

1 got in a wreck and Robert Skidmore is dead. It's the most
2 preventable because you can say I can't drive. I've had
3 too much. I'm under the influence, but he chose to do
4 that. He chose to do that. He could have prevented that.
5 Bob Skidmore ought to be alive. He's dead. I mean,
6 sometimes I forget the forest -- he is dead because he
7 injected methamphetamine and drove the car. He don't want
8 to admit he was driving, but he did and Bob Skidmore is
9 dead. That is beyond a reasonable doubt he's under the
10 influence.

11 So we got really an example of most types of
12 evidence. The direct evidence from Shonda. The direct
13 evidence from Andrew. Circumstantial evidence from the
14 blood and what was in it. And when he ingested it. What
15 else do we have? Is that it? No, sir.

16 We got physics. Logic, common sense as to why
17 the defendant was the driver. You heard Lance Corporal
18 Trotter. I'm a lawyer because I'm not a science major.
19 I'm not good at science or math. My wife and children
20 are. I'm not. He is qualified as an expert and you can
21 consider that help you aid in your decision. No skid
22 marks they didn't try to break. Goes off the right side
23 of the road, hits the tree and State's 33 is the result.
24 State's 33 is the result, hits and goes to the right a
25 little bit.

1 Well, what does that mean trooper. Well, it
2 means everything would have gone forward. He talks about
3 Newton and all of that we all learned in high school. You
4 going forward. You gone go forward. In this case, if you
5 hit something and you're going forward, you're going
6 forward. And in this case you went forward and go left,
7 you going to go forward and go left. I do understand
8 that. And I think he explained it excellently. And this
9 shows the car's going to the right and hits and then goes
10 right. So I'm going forward and then left. Well, okay.
11 Under the defendant's scenario which respectfully makes no
12 sense, the defendant would have had to have been excuse me
13 -- the victim Bob Skidmore would have been in front of you
14 either had to be the right somehow and Bob Skidmore would
15 have gone straight and to the left. He would have been to
16 the left of the defendant. There's no other way around
17 it. That's why it's impossible, impossible based on
18 science that what he's saying is correct. They either be
19 on top of each other or Bob Skidmore would be straight and
20 to the left. And Bob Skidmore would have been pulled out
21 by Andrew. Bob Skidmore would have been there at the
22 door.

23 Science says there's no other way, we got
24 science in this showing who the driver is. Is there any
25 doubt about that? And then go look at the pictures.

1 State's Exhibit Number 7 there's Bob Skidmore. Look where
2 his torso is, where did Andrew say he was. Well, he's
3 over on the passenger side leaning over like he would have
4 been with the wreck and then going left. Did his head
5 turn? We don't know how he got that. Pathologist said it
6 could have been -- who knows you're in a wreck and do like
7 that, but his torso and his body says, ladies and
8 gentlemen, it says to y'all Bob Skidmore. Bob Skidmore.

9 You know, it just hit me. That happens to me
10 sometimes. Bob Skidmore is speaking to us right now,
11 right now. And Bob Skidmore saying, hey, y'all I left you
12 a piece of evidence me. I wasn't driving. Ladies and
13 gentlemen, look at me, look where my body is, look where
14 my head is. I was not driving. Bob left himself to show
15 you that. Bob said don't let me get away with saying he
16 wasn't driving. He was driving. Don't let him get away
17 with it.

18 Bob Skidmore has got a colostomy bag. Sometime
19 you can see body language. He got a colostomy bag. He
20 brought it up. I say, yeah, he wasn't suppose to be
21 driving, wasn't he, no. His girlfriend didn't want him
22 driving. He wasn't suppose to. No, he wasn't suppose to.
23 If he was driving, his body would be over here and the
24 defendant would be on the other side, that's not what this
25 shows. That's not what Andrew saw. That's not what

1 Andrew took off the seat belt is there any doubt. His
2 torso on the right side. I don't know what the next
3 evidence number is, but I'm going to say State's 39 or 40
4 is Bob Skidmore talking to us right now and I offer it
5 into evidence for y'all.

6 Andrew didn't take me out. It was somebody
7 else. He tells the trooper, well, I don't remember. I
8 wasn't driving, but I don't remember what happened. Then
9 he tells y'all, well, we met at some place, a gas station.
10 Well, Bob was driving there even though she didn't want
11 him to drive. Well, that doesn't make sense. And then
12 Bob -- well, I took off driving from there I did. I took
13 off driving from there. They were behind us his
14 girlfriend and somebody else. And I said to Bob you know
15 this isn't driving good. This story is that the owner
16 wanted him to drive because she didn't want Bob to drive
17 inferentially we know why, but he starts driving and he
18 said this isn't driving too good. Bob says, well, I'll
19 drive it, that's what he says. So he pulls over right
20 after he takes off with the people behind him. People he
21 knows, his friends. Well, did say they see you. I don't
22 know. Well, you pulled over. Well, I let him drive.
23 Does that make any sense? Well, I let him drive. And
24 then he starts driving and then he get in the wreck.
25 Well, he's driving until it's bad. That makes no sense.

1 That makes no sense because it's not credible in and of
2 itself based on the facts that even his story they didn't
3 want him to drive the owner and then he stops and lets him
4 drive. That doesn't make common sense. Doesn't make
5 sense based on Andrew getting him out of the wheel with
6 his seat belt on or around him. It doesn't make sense
7 with the science that would have him next to the door. It
8 just doesn't make sense. We gone beyond a reasonable
9 doubt.

10 This is actually much quicker than I usually
11 finish, but this is important. Gene Evans chose to take
12 methamphetamine. He chose to drive. Andrew chose save to
13 him. And now he's choosing to saying I wasn't driving.
14 It comes a point in life where responsibility -- and
15 that's for y'all. I was taught early on by my father.
16 Your greatest power is your power to chose. You chose.
17 Good man. You chose, but you live with the consequences.
18 And there are consequences. Consequences to good. Andrew
19 save somebody. He made a choice. Consequences to bad.
20 Their consequences in life. We got the freedom to chose
21 what we want to do. He chose to ingest methamphetamine
22 and drive and Bob Skidmore is dead. And now it's time for
23 you to chose to exercise your greatest power and decide
24 what the truth is.

25 And we respectfully submit the truth is that the

1 defendant needs to be held responsible for driving the RV
2 on February 12th of last year. And he shouldn't have been
3 when he was under the influence of methamphetamine and
4 that his actions killed Bob Skidmore and it's time to say
5 Mr. Evans you were driving. You are responsible. We're
6 going to find you guilty. Thank you.

7 THE COURT: Mr. Griffith.

8 MR. GRIFFITH: Thank you, Your Honor. Please
9 the Court. Mr. Meadors. I'm going to get this little
10 stand over here. Mr. Meadors made several statements
11 about Mr. Skidmore being here. Mr. Skidmore is -- it was
12 a tragic, tragic death, but Mr. Skidmore is not here. We
13 do wish he was here. Mr. Evans says he was not driving.
14 He described the events that happened. One day after the
15 accident, the next day he was in the hospital. He had a
16 concussion. Trooper Trotter came up to talk to him. You
17 heard the audio. He told the exact same story that he
18 told yesterday on that stand. The great thing about the
19 truth is that you don't have to remember what you said.

20 I was in church one time and the pastor use to
21 call me when he needed something done because I was from
22 West Virginia. He said poor people got poor ways. He
23 figured I could figure out how to do it cheaper, so he
24 call me up.

25 What happened was as we heard in the evidence

1 Mr. Evans and some friends the night before woke up and
2 said, okay, you going to have to help us. They wanted him
3 to help move an old RV because lady was being kicked out
4 of the RV park. So Mr. Evans told us he didn't load up
5 the RV. It was already loaded up. He loaded it up packed
6 it up. Filled up the passenger seat, took seat belts, and
7 wrapped it all around it, bungee cords everywhere. And
8 Mr. Skidmore drove it to where he met Mr. Evans. And his
9 girlfriend didn't want him driving because it was on old
10 RV and hard to drive, terrible condition. So he ask
11 Mr. Evans to drive.

12 As you heard, he drove it and said this thing
13 should not be on the road, pulled off. Mr. Skidmore was
14 going to go ahead and drive. So as he testified Mr. Evans
15 crawled over the seat because you couldn't get in from the
16 passenger side and got behind the seat. And Mr. Skidmore
17 got in to drive.

18 You heard him say that it was kind of like a bus
19 steering wheel not like this. Trooper Trotter he said
20 that the steering wheel was gone, but, yeah, it was that
21 kind. So Trooper Boland told us that there were no skid
22 marks, no marks from anybody putting on breaks. Nobody
23 put on the breaks. Car's going out of control. You're
24 sitting in the driver's seat and he didn't push on the
25 breaks most likely.

1 Mr. Evans said that Mr. Skidmore loss control of
2 the vehicle, old vehicle. The tires were bad, went on the
3 wrong side of the road and he stood up to try to pull it
4 back over because it was on this side of the road, so he's
5 trying to pull it back over this way and he was standing
6 up and that's why there are no breaks because he was
7 standing up. And the same story he told the day after the
8 accident, exactly the same story he told up here. That he
9 reached around to try to help him with it and he hit a
10 tree. He doesn't remember anything after that.

11 Trooper Trotter was here and he was telling us
12 the physics and I asked him what if the driver had been
13 standing up on this side of the steering wheel would he
14 have fallen like depicted in these pictures and he said,
15 yes, if it had happened that way.

16 The State has their theory of what happened, but
17 they were not there. Mr. Evans admitted that at one point
18 he was driving. It's too dangerous said he just couldn't
19 do it. He couldn't sit down, the passenger seat was full.

20 Mr. Evans probably not the best witness. He's
21 nervous, of course, he is. He's upset. Mr. Skidmore was
22 his friend and he perished in this terrible accident. The
23 folks that passed by -- well, when I'm in my car and I'm
24 driving and somebody's on the wrong side of the road, you
25 know it happened. And they go by, I don't study their

1 face, but there two guys in there and she said she saw
2 Mr. Evans, but it happened pretty quick. I mean, these
3 people are going down the road. And it was wonderful what
4 they did to help. She could be mistaken as to who was
5 drive. It was two fellows in there. And her boyfriend
6 who bravely got out, ran there to help. He talked about
7 seatbelt. And when I talk to him he said, well, I move
8 the seatbelt. He didn't say anything about unclicking it.
9 Mr. Evans told us there were seatbelts and bungee cords
10 all over the place holding everything down. So, you know,
11 could be that what Mr. Evans told us is exactly what
12 happened.

13 You have to be in judge of all these facts. You
14 have to look at it. You have to picture in your mind
15 possibly what could have happened and make a decision.
16 Mr. Evans story has been consistent all along. He's told
17 this story to officers. He had a concussion. He told us
18 here. He told it otherwise and never changed.

19 The Solicitor can say all kinds of bad things
20 about Mr. Evans. He can show us pictures that will make
21 us cringe. It was a tragedy, a tragedy occurred. A death
22 occurred, but that doesn't mean Mr. Evans was driving.
23 That just means a death occurred, a horrible accident
24 occurred, more than one person was in the car. If he been
25 in the car by himself and then hit somebody, that would be

1 a different story, but that's not what happened. It was a
2 1983 RV that shouldn't have been on the road.

3 Mr. Evans didn't say that Andrew didn't pull him
4 out. He said he heard that there was somebody else help
5 him pull him out too. He didn't remember anything at the
6 accident. He didn't remember what happened. And he told
7 us that over and over said I don't know what happened. He
8 said I heard this and that. So you have to look at the
9 possibility that Mr. Evans was not driving. This is a
10 very important and serious case. This is about someone's
11 liberty, but at the same time it's serious. No one wants
12 to say, well, I put the wrong man in jail. You have to
13 have come to a conclusion that there's no way that it
14 could have happened the way Mr. Evans said it did. Well,
15 you just have to say there's no way that happened, but
16 there is a way. Trooper Trotter told us if he was
17 standing up, yeah, that is exactly where he fall.
18 Mr. Evans told us, yeah, I beat me chest on that seat that
19 was leaning over and I got a broken sternum to prove it.
20 Andrew told us that he pulled him out of the driver side.
21 He didn't say he pulled him out of the driver seat said I
22 pulled him out of the driver side.

23 I would just ask you to consider all of these.
24 If you can see that Mr. Evans may have been telling the
25 truth, then there's reasonable doubt. I wasn't there. No

1 one actually testified that for an absolute fact Mr. Evans
2 was driving that car. We did hear from the lady who said
3 when she passed in a hurry that she saw him in the seat.
4 There were two people in there very similar.

5 So we would ask, of course, that you consider if
6 there is a reasonable doubt or a possibility that
7 Mr. Evans is telling the truth -- we all want to put
8 ourselves in the same situation when somebody else of
9 course. We want to have an idea that we can imagine that
10 crazy things happen, but sometimes just things happen.
11 Sometimes things happen, terrible things that are not
12 expected, not planned. This is some people just trying to
13 help each other, but at the same time not everything is
14 cut and dry as you might think.

15 Trooper Trotter said, yeah, if been standing
16 there, he fallen then there's is a possibility. If
17 there's a possibility, then we tell him, oh, well, we're
18 just not going to accept that possibility. We're just
19 going to send you to jail, that's not what we're about.
20 We're about if there's a possibility, that's why the
21 police can't arrest you, take you to prison. You have to
22 have a trial to determine whether or not a group of your
23 peers can say we see a little doubt could have been more
24 or a lot of doubt.

25 I submit that based on what Mr. Evans has told

1 us, based on the scientific evidence, the physics it could
2 have happened. And so as you go back there and you begin
3 to deliberate, don't make up your mind without considering
4 that Mr. Evans is telling the truth.

5 There were no break marks. There's some
6 scientific evidence for you. Nobody was pushing on the
7 breaks. Nobody had their feet on the breaks. So it could
8 be somebody was standing up. When he said he was standing
9 up, he said he was pulled like this over to that side.
10 When he hit, physics our expert said, yeah. Mr. Evans
11 said he reached around him. Yeah, that's put him in the
12 driver side. So we would ask that you find Mr. Evans not
13 guilty because the State has not proven beyond a
14 reasonable doubt that he in fact is guilty of driving
15 under the influence resulting in death. They have not
16 proven that he was driving at the time of the accident.
17 Thank you.

18 THE COURT: All right, Mr. Meadors.

19 MR. MEADORS: May it please the Court.

20 THE COURT: Yes, sir.

21 MR. MEADORS: Very briefly, ladies and
22 gentlemen. Mr. Griffith said that his story has never
23 changed. We respectfully take exception to that based on
24 the evidence. When he first told lance corporal at the
25 hospital he said he left from Jamie's house. Didn't talk

1 about stopping at a gas station. Didn't talk about
2 switching, driving, said we left from Jamie's house.
3 That's a big difference. Don't remember exactly what
4 happened is what he told him.

5 The victim was the last driver that I remember
6 trooper, credibility, believability. I don't remember
7 what happened after that after Jamie's house. And the
8 last question on there when the trooper said you weren't
9 the driver. Not that I know of, sir. From that to the
10 station to stopping or switching drivers, to him saying it
11 doesn't drive good. Oh, I'll drive. Him getting in a
12 wreck. No, sir, those aren't the same. You remember
13 lance corporal's testimony. Lance corporal's testimony
14 was that if he had been the driver. He would have gone
15 straight and forward to the left. He would have been on
16 the left. The defendant would have been to the right of
17 him. That's what physics and logic says, that's what he
18 said. Look at his body back there consistent with being
19 on the right side, the passenger side and coming over.

20 You may have questions in life, but sometimes
21 questions are just questions. That doesn't mean a
22 reasonable doubt if that's what he's trying to do. It can
23 never -- we don't have a video of the whole thing. You'll
24 never have that and that's not what the law requires. It
25 requires common sense. It requires listening to the

1 evidence. And in this case direct evidence,
2 circumstantial evidence and physics it all say he was the
3 driver beyond a reasonable doubt. That's y'all's decision.
4 We submit the State has proven it.

5 He cried yesterday said he lost his good friend.
6 On the tape to lance corporal he had to ask what's his
7 name, what's his name. That wasn't real. What's real is
8 that Bob Skidmore would have never ever share in his
9 family's birthdays, celebrations, Christmas ever. That's
10 what's real. And it's because of his actions and he needs
11 to be held accountable.

12 Finally there's one response to his -- there's
13 one. His Honor's going to charge you presumption of
14 innocence. It's beautiful. It's beautiful in the law.
15 The defendant is presumed innocent unless and until the
16 State proves him guilty beyond a reasonable doubt. That
17 stays with him until you go back to your jury room and you
18 start deliberating. And the law says once you get back in
19 the jury room, you can start talking about this evidence.
20 The direct evidence of Shonda seeing him driving. And
21 Andrew did say I got him out of the driver seat. He had
22 the seatbelt around him, locked at first, but it was on
23 top of him. How does that seatbelt get underneath him.
24 He's on the bungee cords now. How does that get on top of
25 him, he was driving. But as you go through each piece of

1 evidence and the methamphetamine, you know, to his
2 scenario he would have had to go from the victim to the
3 right back left and he would have had to cross over. I
4 actually was thinking about demonstrating that here, but I
5 didn't want to look ridiculous, but based on the logic,
6 that's what would have to happen. They have to
7 crisscross. They really would, which is no way when you
8 hit going left, that can't happen. That is beyond all
9 doubt. But as you get back there and you're talking about
10 the evidence, you're allowed to take off that robe, that
11 presumption of innocence. And I suggest to you each piece
12 of evidence you'll be taking it off. It's like a blanket
13 of protection. You take it off. And once you do,
14 sometimes you can throw it away, but save it, save that
15 blanket. And when you come back in with your guilty
16 verdict, let's give it to his family members, so they can
17 look at one of these pictures and cover his torso with it,
18 cover his torso with it because Bob Skidmore is the one
19 who's innocent. Thank you.

20 THE COURT: All right. Ladies and gentlemen of
21 the jury, if you would give me your attention. You have
22 followed very patiently and listen very attentively to the
23 presentation of the evidence in this case and also to the
24 able arguments made by the Solicitor Mr. Meadors on behalf
25 of the State and Mr. Griffith on behalf of the defendant

1 and I thank you for that. It now becomes duty of the
2 trial judge under our law and under the Constitution of
3 this State to charge and instruct you in the law
4 applicable to this case. And it is your duty as jurors to
5 accept and apply the law as the Court will now state it to
6 you. And as jurors it is your exclusive duty to decide
7 all of the issues in this case and for that purpose to
8 determine the affect, the value, and the weight of the
9 evidence. Both the State and the defendant have the right
10 to expect that you will conscientiously consider and
11 evaluate the evidence and apply the law of the case
12 thereto to the end that both the State of South Carolina
13 and the defendant will receive and obtain a fair and
14 impartial trial.

15 Now, when I use the word defendant, I refer, of
16 course, to Mr. Gene David Evans, Jr. The State of South
17 Carolina by the bill of indictment in this case charges
18 the defendant, Mr. Evans, with the offense of known in the
19 law as felony DUI with a death resulting. And the
20 indictment reads in part that in Sumter County, South
21 Carolina on or about February 12th 2017, while driving a
22 vehicle under the influence of alcohol or drugs or both
23 alcohol and drugs, the defendant, Gene David Evans, did an
24 act forbidden by law or neglected a duty imposed by law in
25 the driving of a vehicle, specifically driving left of

1 center and driving off the right side of the roadway
2 striking a tree and such act proximately caused the death
3 of Robert Skidmore.

4 To this charge and to this indictment, the
5 defendant has entered a plea of not guilty. This plea of
6 not guilty by the defendant places the burden of proof on
7 the State to prove by evidence the guilt of the defendant
8 beyond a reasonable doubt before you can find the
9 defendant guilty. The defendant, Mr. Evans, is presumed
10 in the law innocent of the charge contained in the
11 indictment. It is a cardinal and fundamental rule of the
12 law of evidence that a defendant irrespective of the
13 enormity of the charge against him will always be presumed
14 innocent of the crime for which he is indicted, unless and
15 until the guilt of the defendant has been proven by
16 evidence which satisfies you, the jury, of his guilt
17 beyond a reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory. It is not just a legal phrase. The presumption
20 of innocence is a substantial right to which every accused
21 is entitled. Our Supreme Court has declared that the
22 presumption of innocence is like a robe of righteousness
23 placed about the shoulders of a defendant and it remains
24 with him and assigns to him that class, the innocent,
25 until that presumptive robe of righteousness has been

1 stripped from his person by evidence that satisfies you,
2 the jury, of the guilt of the defendant beyond a
3 reasonable doubt.

4 The presumption of innocence accompanies the
5 defendant from the time of his arrangement and appearance
6 in this courtroom and it continues with the defendant
7 after you retire to your jury room to deliberate your
8 verdict. The presumption of innocence remains with the
9 defendant and continues in existence to the benefit of you
10 until the jury reached the conclusion that the State has
11 prove the guilt of the defendant beyond a reasonable
12 doubt.

13 Now, the State is not required to prove the
14 guilt of a defendant beyond all doubt or beyond every
15 doubt, but beyond a reasonable doubt. What is a
16 reasonable doubt? It is not an imaginary fanciful doubt
17 or weak doubt. It is a substantial doubt. A doubt for
18 which you can give or sign a reason based upon the
19 testimony and evidence in this case. You and I know from
20 every day life experiences that you may have a sort of
21 doubt about any matter that arises no matter how trivial
22 it may be or how serious it may be. A reasonable doubt is
23 a doubt which makes an honest, sincere, conscientious
24 juror hesitate to act.

25 Proof beyond a reasonable doubt is proof that

1 leaves you firmly convinced of the defendant's guilt. You
2 have a doubt for which you can give or assign a reason as
3 to the guilt of the defendant, then he is entitled to a
4 verdict of not guilty.

5 Reasonable doubt may arise from evidence which
6 is in the case or from the lack of evidence or absence of
7 evidence in the case. You, the jury, must make the
8 determination of whether or not reasonable doubt exist as
9 to the guilt of the defendant. The very fact however that
10 the jury engages in a full and free discussion of the
11 issues of guilt or non-guilt in the case with the normal
12 conversational ebb and flow on these issues does not
13 automatically mean that reasonable doubt exist in this
14 case or in any case.

15 I charge you that the defendant is entitled to
16 every reasonable doubt arising in the whole case or
17 arising in any defenses asserted by the defendant. If
18 upon any fact essential to conviction and a verdict of
19 guilty, you have a reasonable doubt as to now that issue
20 should be resolved, it would be your duty to resolve that
21 doubt in favor of the defendant.

22 A defendant, ladies and gentlemen, is not
23 required to prove his innocence, but the State is required
24 by law to prove every essential element of the offense
25 charge against the defendant by evidence which satisfies

1 you, the jury, of the guilt of the defendant beyond a
2 reasonable doubt before you can convict him and find him
3 guilty. If then upon the whole case, you have a
4 reasonable doubt as to the guilt or innocence of the
5 defendant, he is entitled to that reasonable doubt and
6 would be entitled to a verdict of not guilty. But on the
7 other hand if upon the whole case you find the State has
8 proven the evidence which satisfies you, the jury, of the
9 guilt of the defendant beyond a reasonable doubt, then in
10 such circumstances it would equally be your duty to
11 convict the defendant and find him guilty.

12 Now, I instruct you that the indictment in this
13 case which I have in my hand is not evidence and cannot be
14 considered by you as evidence in this case. It is simply
15 the formal written instrument which contains the charge
16 against the defendant and it serves as a formal document
17 by which this case is brought to trial.

18 During this trial, each of us you and I have
19 certain duties to perform. As the trial judge, it is my
20 responsibility to preside over the trial of this case and
21 I also have the duty to rule upon or pass upon the
22 admissibility of evidence offered during the progress of
23 the trial. You are to consider only the evidence before
24 you. And you are to disregard and disabuse from your mind
25 any testimony ordered stricken from the record of this

1 case during the progress of the trial if there be any.
2 And you are to consider only the evidence which has been
3 presented from this witness stand together with any
4 exhibits admitted into the record of the case and any
5 stipulations of counsel if there be any.

6 I have the additional duty to charge you the
7 applicable law of this case. As the presiding judge, I am
8 the sole judge of the law of the case. And it is your
9 duty to accept and apply the law as I now state it to you.
10 If you have a preconceived idea as to what the law is or
11 what the law ought to be and it does not agree with what I
12 tell you the law is, you are obligated under your oath to
13 abandon this pre-conception on your part because you're
14 sworn to accept the law precisely as I now state it to
15 you.

16 In every case in this court tried before a jury,
17 the jury becomes the sole and exclusive judge of the facts
18 of the case. You, the jury, are the judge of the facts in
19 this case. The Court is the judge of the law. The
20 Constitution of this State has declared a trial judge
21 shall by intimate, state, comment upon or make any
22 statement to a trial jury about the facts in the case.
23 Since you are the sole judge of the facts, you're not to
24 infer from anything that I have said during the progress
25 of this trial in ruling upon the admissibility of evidence

1 or otherwise or anything that I say to you now during
2 course of this charge that I have an opinion about the
3 facts of the case. The law does not permit me to have an
4 opinion about the facts in the case. That is a matter
5 solely for you, the jury, to determine.

6 As jurors then, it is your duty to determine as
7 I have stated to you the effect, the value and the weight
8 of the evidence presented during the course of this trial.
9 Necessarily then, you must assess the credibility of the
10 witnesses who have testified in this case. Credibility is
11 simply a legalistic term which means believability. It
12 becomes your duty then to analyze and evaluate the
13 evidence and to determine the evidence which convinces you
14 of its believability.

15 I charge you that in determining the question of
16 credibility or believability of the witness, you may
17 believe one witness as against several witnesses or
18 several witnesses as against one witness. You may believe
19 part of a witness -- part of the testimony of a witness
20 and reject the remaining part of the testimony of that
21 same witness. You may believe the testimony of a witness
22 in its entirety or reject the testimony of a witness in
23 its entirety. You may consider whether any witness has
24 exhibited any interest, any bias or any prejudice in the
25 case. You may consider the demeanor of the witness, that

1 is the appearance of the witness from the witness stand.
2 And you may consider the opportunity for knowledge
3 concerning those things about which the witness testified.
4 These considerations you do not exercise arbitrarily, but
5 if in your good judgment, there is sound reason for so
6 doing because your objective, ladies and gentlemen, is to
7 fairly weigh the evidence whether it comes from a witness
8 or witnesses for the State of South Carolina or a witness
9 or witnesses for the defendant. And in doing so in
10 exercising your mental process and in considering what
11 you -- and considering what you consider to be believable,
12 the law simply requires that you exercise your good
13 judgment, your common sense, your sense of logic and
14 reason and your experiences in life. You then apply these
15 attributes of ability to the evidence and determine what
16 you consider to be the credible and believable evidence.
17 And to these facts as determine by you, the jury, you then
18 take and apply the law as I will state it to you and thus
19 arrive at a verdict.

20 Now, as I said the defendant in this case has --
21 is charge with the offense of felony -- what we commonly
22 refer to as felony DUI or driving under the influence with
23 death resulting. I will now define this offense for you.
24 Under section 56-5-2945 of the code of laws of South
25 Carolina, which is the felony statute. It is unlawful for

1 any person to drive a vehicle while under the influence of
2 alcohol, drugs or a combination of both and while driving
3 to do any act forbidden by law or to neglect to do any act
4 imposed by law which act or neglect proximately cause
5 great bodily injury or death to any person other than
6 himself.

7 The State must prove beyond a reasonable doubt
8 six elements. These elements are first that the defendant
9 drove the vehicle. This requires more than just sitting
10 behind the steering wheel of a car. The law requires the
11 vehicle be in motion while the defendant driver was behind
12 the wheel of the vehicle. Secondly, while driving, the
13 defendant was under the influence of alcohol or drugs or a
14 combination of alcohol and drugs, for the purpose of this
15 section drugs mean illicit or licit drugs, a combination
16 of licit or illicit drugs or a combination of alcohol and
17 illicit drugs. In connection with this, the element of
18 the offense, I would charge you that driving under the
19 influence means driving a motor vehicle while under the
20 influence of alcohol or drugs or both which materially or
21 appreciably impairs the mental or physical faculties of
22 the driver. The offense is exactly the same whether the
23 driver's condition resulted from the ingestion of alcohol
24 or drugs or a combination of them.

25 And to prove the second element of impaired

1 facilities, it must be shown that the defendant was
2 sufficiently under the influence to impair his ability to
3 operate a vehicle in the same manner that a person of his
4 ability as a driver who had not pertaken of these
5 substances could have operated it under the same
6 circumstances.

7 A person is under influence within the meaning
8 of the statute when he has ingested sufficient quantities
9 of alcohol or drugs or both to materially and appreciably
10 impair the normal control of his bodily or mental
11 faculties. Proof that the defendant had at sometime
12 previous to the occasion ingested a quantity of alcohol or
13 drugs is not sufficient in and of itself. The State must
14 prove a material impairment.

15 The third element is that while driving in the
16 impaired condition the defendant did an act forbidden by
17 law or neglected a duty imposed by law. Now, what would
18 constitute an act forbidden by law. In South Carolina, we
19 have various statutes that govern the operation of motor
20 vehicles on the roads in this state. I'm going to read to
21 you one statute. And in reading this law to you, I do not
22 mean to intimate in any way that the defendant violated
23 the provisions of this section. Whether a statutory
24 violation occurred or not, it is for your sole
25 determination as jurors. I'm simply informing you of the

1 law and what laws do exist as may pertain to this case.
2 Section 56-5-1810 code of the laws of South Carolina
3 provides as follows, Upon all roadways of sufficient width
4 a vehicle shall be driven by upon the right half of the
5 roadway except as follows: When overtaking and passing
6 another vehicle in accordance with the rules governing
7 such movement, when an obstruction exist making it
8 necessary to drive left of center, upon a roadway divided
9 into three mark lanes for traffic under the rules
10 applicable thereto. And upon a roadway restricted to
11 one-way traffic.

12 Now, the fourth element of driving under the
13 influence is that the act or neglect must be the proximate
14 cause of the injury. The term proximate cause means the
15 real or efficient cause. It is a cause but for which the
16 injury or death would not have occurred. The alleged
17 conduct must be the proximate cause of the injury or death
18 and the touch stone is proximate cause of proximate cause
19 is foreseeability. Foreseeability of some injury from an
20 act or omission is pre-requisite to the proximate cause to
21 being the proximate of the injury. Standard for which
22 foreseeability is determined is that of looking at the
23 natural and probable consequences of the complained act.

24 The fifth element is that the victim must have
25 died or suffered great bodily injury and the sixth element

1 is that the offense must have occurred in the place and at
2 the time specified in the indictment.

3 So in summary the sixth elements of felony DUI
4 are one that the defendant drove the vehicle, two that
5 while driving he was under the influence of alcohol or
6 drugs. Third that while driving his -- his condition was
7 materially and appreciably impaired. Fourth that his act
8 and neglect proximately caused the death of another
9 person. And fifth that the defendant -- that the victim
10 died as a result of the injuries and six that it must have
11 occurred in the place specified in the indictment.

12 Now, ladies and gentlemen, there are generally
13 two types of evidence which are generally presented during
14 a trial direct evidence and circumstantial evidence.
15 Direct evidence proves the existence of a fact and does
16 not require deduction. Circumstantial evidence is proof
17 of a chain of facts and circumstances indicating the
18 existence of a fact. Crimes may be proven by
19 circumstantial evidence. The law makes no distinction
20 between the weight or value to be given to either direct
21 or circumstantial evidence. However, to the extent that
22 the State relies on circumstantial evidence, all of the
23 consequences must be consistent with each other. And when
24 taken together, point conclusively to the guilt of the
25 accused beyond a reasonable doubt. If these circumstances

1 merely portray the defendant's behavior as suspicious, the
2 proof has failed.

3 The State has the burden of proving the guilt of
4 the defendant beyond a reasonable doubt and this burden
5 rest with the State regardless of whether the State relies
6 on direct evidence, circumstantial evidence, or a
7 combination of the two.

8 Now, ladies and gentlemen, there has been expert
9 testimony in this case. A expert may base his opinion
10 upon the factual evidence presented at trial. You must
11 consider expert testimony in the same manner as you do any
12 other testimony and give it such weight as you may believe
13 it to be entitled when considered with all of the other
14 evidence in this case. Such testimony is given for the
15 purpose of helping you understand the evidence and not for
16 the purpose of controlling your judgment.

17 The value and effect of expert testimony is a
18 matter solely for you to determine. In determining the
19 weight to be given to such expert testimony, you should
20 consider the qualifications and credibility of the expert
21 and the reasons given for his opinion. You are not bound
22 by any at such opinion, give it such weight, if any, as
23 you determine that it is entitled to.

24 Now, ladies and gentlemen, I am about finish my
25 instructions to you and I would tell you that you are not

1 partisans or advocates for the State of South Carolina or
2 for this defendant. You have no friends to reward or no
3 enemies to punish, obviously such a perverted system of
4 justice would be intolerable.

5 You have been selected by both State and this
6 defendant as fair and impartial jurors. It is your duty
7 by your joint deliberations to decide the issues in this
8 case and arrive at a verdict. Giving to the defendant the
9 benefit of every reasonable doubt on each and every issue.
10 And then to the facts which you determine to be credible,
11 you then take and apply the law which has been given to
12 you by this court and thus arrive at a verdict.

13 The word verdict has a Latin derivative, it
14 means true saying. And when you have accomplished these
15 responsibilities, you will have satisfied your oath as
16 jurors and you will have discharged your duty to the
17 Court.

18 Now, I want to instruct you on your forms of
19 verdict in this case. If you find that the State has
20 proven the guilt of the defendant beyond a reasonable
21 doubt, your verdict would be one word guilty. If you find
22 that the State has not proven the guilt of the defendant
23 beyond a reasonable doubt, your verdict would be not
24 guilty. The verdict that you render in this case must be
25 an unanimous verdict. It must be all 12 of you must agree

1 on a verdict which you authorize the foreman to write.

2 Now, Mr. Foreman, I have prepared a verdict form
3 which you'll take to your jury room with you, but I want
4 to say that the order in which I have put the possible
5 verdicts on this form, has absolutely no significance
6 whatsoever. And you should not infer from the order in
7 which I have possible verdicts on here that I have any
8 opinion as to what your verdict should be. The law does
9 not allow me to have an opinion, but obviously when
10 putting something down on paper, I had to put something
11 first and something second. So across the top up here, we
12 have the State and the county and the Court and the
13 caption of the case State vs. Evans and verdict form. And
14 it is we, the, jury by unanimous consent find the
15 Defendant Gene David Evans, Jr. on the charge of driving
16 under influence resulting in death in parenthesis felony
17 DUI guilty or not guilty. And you would either check or
18 put an X by it whichever one of those is the verdict of
19 all 12 of you. Sign your name and date it and notify us
20 and we will return you to the courtroom.

21 Now, it is going to be necessary -- I mean, I'm
22 going to go ahead and send you to your jury room. I'm
23 going to ask you not to begin your deliberations just yet.
24 As I told you, all of the matters that have been
25 introduced into evidence, all the various physical

1 documents and things that have been introduced into
2 evidence, you have the right to take with you to the jury
3 room and, of course, the photographs and papers you can
4 take. If there's something that you need that was in the
5 form of a video and you wish to see that more, then we can
6 return you to -- or audio either. We can return you to
7 the courtroom and have you -- and play that equipment for
8 you. You will not have sufficient equipment in your jury
9 room to view that or listen to that, but if you want to
10 hear it more, we can bring you back in and we can play it
11 for you. Otherwise, you will be able to take all the
12 exhibits into the jury room with you.

13 Now, I'm going to send you to your jury room.
14 I'm going to ask that you not begin deliberations just
15 yet. The law does require that I take up certain matters
16 of law with the attorneys involved. If it is not
17 necessary for me to give you additional instructions, the
18 bailiffs will bring you the exhibits. They will bring you
19 the verdict form and tell you to begin your deliberations.
20 The bailiff will be stationed outside of your jury room
21 door for security during the juries deliberations. As
22 soon as you have reached a verdict, simply knock on the
23 door and we will return you to the courtroom. If you need
24 to communicate with me about anything, you will have a --
25 Mr. Foreman, you will have a pen and a note pad and just

1 write that question or note on that note pad and we will
2 try to resolve that issue. And so give it to the bailiff
3 and he'll bring it to me and I'll try to resolve that
4 issue. So if you would go to your jury room now, please
5 do not begin your discussions just yet. And we'll tell
6 you when to begin your deliberation. I'm going to ask
7 that everyone go except the alternate. And if you'll stay
8 where you are. The rest of the 12 principal jurors may go
9 to your jury room. Thank you very much for your
10 attention.

11 (WHEREUPON, the jury retire to the jury room
12 10:47 a.m.)

13 THE COURT: Any additions or exceptions, Mr.
14 Meadors?

15 MR. MEADORS: Excellent job, no, sir.

16 THE COURT: Mr. Griffith.

17 MR. GRIFFITH: No additions, Your Honor.

18 THE COURT: All right. Mr. Bailiff -- counsel
19 check the exhibits and make sure that everything is here
20 that you need that suppose to go to the jury room and
21 here's the verdict form. And while you doing that -- you
22 don't need to take this down, Ms. Keshia, I'm just going
23 to speak to the alternate.

24 (WHEREUPON, a pause in the proceedings.)

25 (WHEREUPON, the alternate is dismissed.)

1 THE COURT: Here's the verdict form. You tell
2 the jury to begin deliberation.

3 MR. MEADORS: Your Honor, I forgot to put number
4 one in, so it starts with number two.

5 THE COURT: What is number one?

6 COURT REPORTER: SLED urine blood collection
7 report.

8 MR. MEADORS: I don't think that's an issue
9 that's fine.

10 THE COURT: Okay.

11 MR. MEADORS: Or either I did it intentionally
12 not put it in.

13 THE COURT: Give those to Mr. Tomlin along with
14 the verdict form. Mr. Tomlin, you can tell the jury to
15 begin their deliberations.

16 MR. MEADORS: Thank you, Judge, appreciate it.

17 (WHEREUPON, the jury began deliberations at
18 10:52.)

19 (WHEREUPON, Court's Exhibit 3 was marked for the
20 record.)

21 THE COURT: All right. We're back on the record
22 with regard to the matter of State vs. Evans. Mr. Evans
23 is present in the courtroom with his counsel Mr. Griffith.
24 Mr. Meadors is here on behalf of the State. We have a
25 note from the jury that -- let me see it, Ms. Reed.

1 Simply says we want to listen to the video and the bailiff
2 has already brought the video back into the courtroom.
3 And I believe it is set up on the equipment; is that
4 right? Mr. Meadors, is it set up?

5 MR. MEADORS: The audio, yes, sir.

6 THE COURT: The audio. That's they said.
7 Audio. I said video, it's audio. All right. My
8 intention counsel would be just bring them in and play it.
9 And then let them go back out. My only hesitation what I
10 was thinking about was lunch, but I think be better not to
11 say anything about that at this time. Let me go ahead and
12 let's see what happens after they hear the video. How
13 long is it about ten minutes?

14 MR. GRIFFITH: Eight minutes long.

15 MR. MEADORS: Mr. Miller just go without saying
16 anything and start it.

17 THE COURT: Yeah, that will be fine. Bring the
18 jury in please.

19 (WHEREUPON, the jury came into open court at
20 11:40 a.m.)

21 THE COURT: All right. Mr. Foreman, we have
22 your note and we have, of course, gotten the audio disk
23 back from you. And it is set up and we will now play it
24 for you. All right.

25 (WHEREUPON, jurors listening to the audio disk

1 State's Exhibit Number 38.)

2 THE COURT: All right. Ladies and gentlemen,
3 that is the audiotape and so you may return to your jury
4 room and resume your deliberations.

5 (WHEREUPON, the jury continued deliberations at
6 11:48 a.m.)

7 THE COURT: Mr. Meadors, any exception to the
8 method of handling the juries question?

9 MR. MEADORS: No, sir.

10 THE COURT: Mr. Griffith.

11 MR. GRIFFITH: No, Your Honor.

12 THE COURT: All right. Counsel what I want to
13 do don't get too far out of pocket. I'm going to wait
14 probably give them a 15 or 20 minutes to see if we hear
15 from them again. And if we don't bring the foreman in and
16 maybe see what they want to do about lunch and then we'll
17 go from there. My intention would be to if he thinks he's
18 going to be more than say 45 minutes. If they need more
19 than 45 minutes, I want them to take as much time as they
20 need, that we would go ahead and order lunch because it
21 would take us about an hour to get it here. So let's give
22 them until ten after 12 and see if we've heard from them.

23 MR. MEADORS: Judge, we'll be right here in this
24 room.

25 BAILIFF: Your Honor, may I please?

1 THE COURT: Sir?

2 BAILIFF: Jamie just spoke and said that they'll
3 order for the court next door and they'll order us here
4 to.

5 THE COURT: They going ahead and doing it?

6 BAILIFF: Yes, sir, he's already started.

7 THE COURT: Well, just go ahead and order lunch
8 then. That will be -- if it gets here, we'll serve them.
9 If they jury comes back, they can take their with them.
10 We'll be at ease until we hear from the jury or to
11 whenever lunch comes whichever comes first.

12 (WHEREUPON, court at ease.)

13 (WHEREUPON, Court's Exhibit No. 4 was marked for
14 the record.)

15 THE COURT: Okay. We are finally back on the
16 record with the State vs. Evans. Mr. Evans is present
17 with his counsel. The State is represented by
18 Mr. Meadors. Counsel just some administrative matters as
19 much as anything else, but I didn't want to do it without
20 a defendant being in the courtroom. First of all, we got
21 a note from the jury that said can we have a 20 minute
22 break. I've marked that as Court's Exhibit Number 4.

23 The other thing is that the clerk called me and
24 advised that they had previously ordered lunch and lunch
25 is here for the jury. And we are going to, of course,

1 feed them, but I'm just -- I'm not sure what the note
2 means by a 20 minute break. I wonder if they mean a 20
3 minute break from deliberation or if they got some smokers
4 that want to go outside or maybe thinking about running to
5 McDonald's and getting a hamburger.

6 I propose to bring the foreman in and ask him
7 what he means by the note and tell him that we got lunch
8 in and do they still need a break away from the jury room
9 or they ready to go for lunch. And tell them if they
10 ready to eat lunch, they can eat and continue talking as
11 long as everybody is there or if it is somebody that they
12 got some smokers that want to take a break. We can give
13 them five minutes and let the bailiff accompany them
14 outside to whatever smokers they are and tell them not to
15 deliberate during that period of time. Is that agreeable
16 with you, Mr. Meadors?

17 MR. MEADORS: Yes, sir.

18 THE COURT: Mr. Griffith.

19 MR. GRIFFITH: Yes, Your Honor.

20 THE COURT: Just bring foreman in. Tell the
21 remaining jurors to quick talking while he's out of the
22 room.

23 (WHEREUPON, the jury foreman came into open
24 court at approximately at 12:53.)

25 THE COURT: Mr. Foremen, let me address your

1 inquiry that you got. I just want to find out exactly
2 what you meant by this note can we have a 20 minute break.
3 Did you mean you got some smokers that need a break or you
4 need a break from each other?

5 JURY FOREMAN: I think we need a break from each
6 other. It's really ---

7 THE COURT: Don't tell me that. Here's the
8 situation, we have ordered lunch and it's here. And we
9 can bring it to you and y'all can continue to eat in the
10 jury room and quit talking for a little while. We can --
11 I really have to keep all the jurors together and can't --
12 unless, I give everybody a break and everybody stops and
13 we leave the courthouse and come back in 30 minutes or
14 something like that we can do that, but we got lunch here
15 ready to feed you. What are your suggestions? What do
16 think without give me any inclination as to where you are
17 in your deliberations or what the vote is or anything like
18 that just tell me what you think would be the best way to
19 handle it? We got lunch here. And we can bring it to you
20 and feed you or we could take a break and let everybody --
21 would there be any objection if the entire jury took a
22 break away from the courthouse and came back in 15 or 20
23 minutes what's your thoughts?

24 MR. MEADORS: None from the State?

25 MR. GRIFFITH: I have no objection.

1 THE COURT: All right. What would be
2 preference?

3 JURY FOREMAN: I would like that.

4 THE COURT: Like which? Take a break away from
5 the jury room. What about lunch? We have lunch here.

6 JURY FOREMAN: I don't believe that everyone's
7 going to be away long. I think everyone just needs some
8 breathing room for a little bit and then they can come
9 back and they can eat if they like.

10 THE COURT: Come back and eat.

11 JURY FOREMAN: Uh-huh.

12 THE COURT: All right. Well, we can do that.
13 It's pizza. It's not always good when it gets cold. All
14 right. Why don't I do this if it's agreeable to counsel
15 why don't I do this. Bring the jury in and tell them that
16 we'll let them take a break. They can walk outside and
17 walk around and be back in about 15 minutes and come back
18 into the jury room. If they want to eat lunch at that
19 time, they can eat lunch and deliberate continue
20 deliberating while they're eating. Will that work?

21 JURY FOREMAN: Yes, Your Honor.

22 THE COURT: All right. Bring the rest of the
23 jury in please. Any objection to that procedure, Mr.
24 Meadors?

25 MR. MEADORS: No, sir, Your Honor.

1 THE COURT: Mr. Griffith.

2 MR. GRIFFITH: No, Your Honor.

3 THE COURT: All right.

4 (WHEREUPON, the jury came into open court at
5 approximately 12:55.)

6 THE COURT: All right. Ladies and gentlemen,
7 thank you. I have your foreman's note about can we have a
8 20 minute break. And I will tell you this is bit
9 unprecedented, but the lawyers have allowed me to do this.
10 That I will give you a break away from the jury room and
11 let you go and take a walk and come back in. I want to
12 ask you to be back in the jury room please at 1:15.

13 Now, while you are away from the courthouse, do
14 not talk with each other and do not talk with anyone else
15 about this case. If you just need a little air and a
16 little breathing room, then you can walk around outside or
17 go around the block or get in your car and take a little
18 short drive, but be back in the jury room please at 1:15.

19 I will also tell you that we have ordered lunch
20 and lunch is here. So when you get back, we'll be
21 prepared to serve lunch. So you don't need to worry about
22 getting something to eat while you're away from the
23 courthouse. We have lunch here for you and we will have
24 that for you at 1:15. But I cannot stress the importance
25 of just staying to yourselves during this period of time.

1 Don't talk to each other. Don't talk to anyone else.
2 Don't allow anyone to talk to you. And just take the
3 break that you're asking for. As I say, it's a bit
4 unprecedented, but the lawyers have agreed that that's
5 agreeable with them. And so that's what we going to do.
6 So if you want to, go ahead and take a break. Come back
7 and be back in your jury room at 1:15. And we'll be
8 prepared to serve lunch and you can continue to deliberate
9 while you're are eating lunch. Is that agreeable, Mr.
10 Foreman?

11 JURY FOREMAN: Yes, Your Honor.

12 THE COURT: All right. Okay. You're free to
13 go. Thank you.

14 (WHEREUPON, the jury retire for a break at 12:57
15 p.m.)

16 THE COURT: Counsel any objection to that method
17 of handling the jury's request?

18 MR. MEADORS: No, sir. Can you order everybody
19 in the courtroom stay still a little while so they can get
20 out.

21 THE COURT: Yeah, if everyone here will stay in
22 the courtroom for a couple minutes. I'll release you in a
23 few minutes, but I want them to spread out.

24 MR. MEADORS: No objection from the State?

25 MR. GRIFFITH: No objection.

1 THE COURT: Okay. That is a bit unprecedented
2 in 22 years I don't believe I've ever had that request.
3 And what I'm going to do counsel as far as y'all are
4 concern as soon as we do break, that I'm going to say
5 y'all are clear for 30 minutes. That will give you to 12
6 to 12:30 because if they come back -- I mean, one to 1:30.
7 If they come back at 1:15, they can eat and do some other
8 things. So we won't need you all again until 1:30.

9 MR. MEADORS: Thank you.

10 THE COURT: Mr. Bailiff, how about check and
11 make sure that the -- let me know when the jurors on the
12 elevators and on the way out of the building.

13 I would caution all spectators, lawyers and
14 anybody else in the courtroom that if you encounter any
15 jurors outside, that you cross the street and go the other
16 way and not speak to them in any manner whatsoever.

17 (WHEREUPON, a pause in the proceedings.)

18 THE COURT: All right. Counsel we will be in
19 recess until 1:30 at least. We don't need to be back up
20 here, but be available from 1:30 on.

21 (WHEREUPON, a lunch break was taken.)

22 (WHEREUPON, the jury started back deliberating
23 at 1:15 p.m.)

24 THE COURT: All right. We are back on the
25 record with regard to the matter of The State vs. Evans.

1 Mr. Evans is present in the courtroom with his attorney
2 Mr. Griffith. The State is present and represented by the
3 Third Circuit Solicitor's office Mr. Meadors. Counsel I
4 have been advised that the jury has reached a verdict.
5 And we'll bring them in in just a moment. I do want to
6 say to everyone in the courtroom that I know this is an
7 important matter to everyone. I'm going to have to
8 require that order and decorum be maintained in the
9 courtroom. If there's anybody that thinks they cannot sit
10 quietly when the verdict is published, then I would ask
11 that you leave now. Otherwise, I will expect everyone to
12 not show any demonstrations of emotion or clapping or
13 anything else if when the jury verdict is published. And
14 if you feel like you cannot do that, then please leave
15 now. Okay. Anything before we bring the jury in?

16 MR. MEADORS: No, sir.

17 MR. GRIFFITH: Nothing, Your Honor.

18 THE COURT: All right, bring the jury in please.

19 (WHEREUPON, the jury returned to the courtroom
20 with a verdict at 1:43 p.m.)

21 THE COURT: All right. Thank you, sir. All
22 right. Mr. Foreman, have been advised by the bailiffs
23 that you reach a verdict; is that correct?

24 JURY FOREMAN: Yes, Your Honor.

25 THE COURT: All right. Would you hand it up to

1 the bailiff please. All right. From the standpoint of
2 form, the verdict appears to be correct.

3 Mr. Griffith, would you and your client, Mr.
4 Evans, please stand. And, Mr. Tomlin, you may publish the
5 verdict.

6 BAILIFF: May it please the court, Your Honor.

7 THE COURT: Yes, sir.

8 BAILIFF: The State of South Carolina, County of
9 Sumter in the Court of General Session Third Judicial
10 court, indictment 2017-GS-43-1104. The State of South
11 Carolina vs. Glen (sic) David Evans, Jr., the defendant.
12 We, the jury, by unanimous consent find the defendant Glen
13 (sic) David Evans, Jr., on the charge of driving under the
14 influence resulting in death of felony DUI guilty signed
15 by John T. Mooney February, 22nd 2018. Verdict has been
16 published, Your Honor.

17 THE COURT: Thank you, sir. Ladies and
18 gentlemen of the jury, if this be your verdict, so say you
19 all please signify by raising your hand.

20 (WHEREUPON, all jurors hands were raised.)

21 THE COURT: All right. You may be seated.
22 Anything before the jury is excused, Mr. Griffith?

23 MR. GRIFFITH: Nothing, Your Honor.

24 THE COURT: All right. All right. Ladies and
25 gentlemen of the jury, I am going to excuse you with just

1 a few statements in connection with this case and then
2 some general statements. I will tell you that in my view
3 the jury's role in the fact finding process is so
4 important that the trial judge should not comment on the
5 verdict of a jury even after a jury has reached a verdict.
6 And I make it a practice to never to comment on the
7 verdict of a jury. Keep the defendant -- have the
8 defendant seated please. We are not in recess. So I made
9 it a practice never to comment on the verdict of a jury.
10 It's the jury's prerogative and I will tell you that there
11 was evidence in the record by which you could have reached
12 your decision. I am going to excuse you from any further
13 service in this case. And I will tell you that once you
14 have been excused as a juror in this case, there is
15 nothing illegal about your talking with anybody about your
16 service. There's nothing illegal about anybody talking to
17 you about it or you're talking with anyone else. It's a
18 practice of which I strongly disapprove and I strongly
19 discourage that is people talking to the jurors, but it's
20 not illegal. But you have the right to talk to anybody,
21 but you also have the right not to talk to them. So if
22 anybody wants to talk to you about your service on this
23 case and you don't want to talk with them about it and
24 they continue to harass you after you tell them you do not
25 wish to talk with them about it, then you let the court

1 personnel know and I will deal with them, but it's your
2 call as to whether you do or do not wish to talk with them
3 about your service on this case. I know jurors are always
4 interested to know what the ultimate outcome of a case is
5 and, of course, you have found the defendant guilty in
6 this case. And we going to go into the sentencing phase
7 of the case right now. If you would like to stay after I
8 excuse you, you can go out this way, give your badges and
9 everything to the bailiff and come back in and have a seat
10 in the back of courtroom while we go into the sentence
11 phase. You don't have to. You can leave if you would
12 like, but you're welcome to come back in and have a seat
13 in the back of the courtroom for the sentencing phase
14 which won't take very long. And then I will assure you, t
15 that I will excuse you and allow you to clear the building
16 and get to your automobiles before anyone else is released
17 from the courtroom. So if you would like to stay, you're
18 welcome to do so, but you don't have to.

19 Now, the other part of the news is this is the
20 last case that we going to need a jury for this week. The
21 rest of the jury panel has already been excused, so it
22 will not be necessary that you come back any more this
23 week. And I do want to thank you on behalf of the county
24 and the State for your service this week. I know that it
25 is never convenient to serve on a jury, but it is

1 important that we have good citizens willing to come
2 forward and serve when they are requested to do so, even
3 though it may not be the thing that they would like to do.
4 But it is a very important part of our democracy and our
5 judicial system and I certainly appreciate your being
6 here. I hope that as a result of having serve this week,
7 you have a better appreciation of the criminal justice
8 system. I think you have probably found that it's a great
9 deal different than it is on television. I have said this
10 many times to jurors, it never ceases to amaze me that on
11 television they can have a crime committed and an
12 investigation, preparation for trial, trial and verdict
13 all in 60 minutes less commercials. It doesn't work that
14 way in real life. But I do hope you have a better
15 appreciation of our judicial system. The bailiffs will
16 have a certificate for you to show that you were serving
17 on the jury, if you need to take to your employer. Also
18 next you will receive a small check from the county. It
19 will no way compensate you for the time that you have been
20 up here this week, but it is a small token of appreciation
21 on behalf of the county for your services. So with those
22 comments and all you are free to go and give the badges to
23 the bailiffs. And if you would like to come in and have a
24 seat in the back courtroom, you may do so and I will
25 release before anybody else is release, but you don't have

1 to. You are free to go and you are discharge from any
2 further responsibilities of this court. Thank you, sir.
3 Thank you all.

4 (WHEREUPON, the jury is dismissed.)

5 MR. MEADORS: Judge, I'm going right down to get
6 my file.

7 THE COURT: Yeah, go ahead. Wait just a minute,
8 Mr. Meadors. I got something I need to put on the record.
9 When the bailiff read the verdict, he mention that -- he
10 said that by unanimous consent find the Defendant Glen
11 David Evans, Jr. He just misread it. It's actually on
12 the verdict form. It is Gene David Evans, Jr, so he just
13 misread that, okay. Go ahead and come on back and bring
14 the -- have the defendant have a seat please.

15 (WHEREUPON, a pause in the proceedings.)

16 THE COURT: As soon as the Solicitor gets back
17 with the information that I need, we'll be ready to go
18 forward.

19 (WHEREUPON, a pause in the proceedings.)

20 THE COURT: All right. Mr. Meadors, you have a
21 sentencing sheet?

22 MR. MEADORS: Yes, sir, beg the Court's
23 indulgence.

24 THE COURT: Okay.

25 (WHEREUPON, a pause in the proceedings.)

1 THE COURT: All right. Mr. Meadors, I'll be
2 glad to hear from you before we bring the defendant up
3 please.

4 MR. MEADORS: Judge, and if you'll bear with me,
5 I'm sorry, but as far as a prior record, if I'm wrong,
6 please correct me. It looks like as far back as back in
7 '89 with the vehicle theft and these may be in Florida. A
8 burglary in '90 in Florida. I'm just saying the ones
9 where I can determine there was a conviction. Appears
10 another vehicle theft. It appears as a grand theft auto
11 in '91 in Florida, had a parole violation on that. It
12 appears to be another burglary in that time period in
13 Florida.

14 THE COURT: When was that?

15 MR. MEADORS: It appears to '90. If I'm wrong,
16 I apologize.

17 THE COURT: Okay.

18 MR. MEADORS: Grand theft from '95 I believe
19 that's in Florida conviction, escape conviction Florida
20 '95, larceny. Appears he got three years. I think that's
21 from Florida in 1995.

22 THE COURT: You may be seat for right now if you
23 want to, Mr. Griffith, and, Mr. Evans. I'll call on you
24 in just a minute.

25 MR. MEADORS: There's numerous other charges,

1 but without being 100 percent sure, I'm not going to tell
2 you.

3 THE COURT: All right.

4 MR. MEADORS: Grand theft there is another
5 conviction for that in 2007, another conviction in 2007
6 for burglary, that may have been the one Your Honor said I
7 could bring in front of the jury and I just quite frankly
8 forgot. Driving without a license conviction in 2007,
9 another vehicle theft conviction 2007, burglary 2007,
10 resisting arrest 2007. It appears to be a drug conviction
11 of 2012 unless I'm -- from Colorado.

12 THE DEFENDANT: Never been to Colorado.

13 MR. MEADORS: I'll withdraw then. A possession
14 of paraphernalia conviction that also show from Colorado,
15 but if that's not him, we'll take his word at it. I'm
16 almost through, Judge. I know there was the burglary in
17 2015 that we talked about was also admissible and then the
18 possession of stolen vehicle, I think which was 2012,
19 which, of course, we couldn't go back to ten years and
20 that's all I did prior to this and I apologize. Judge, in
21 addition, at the appropriate time, I been doing this 30
22 years and we actually have a family member here who I
23 don't know if she wants to address ---

24 THE COURT: All right. I'll talk to her. The
25 victims rights amendment to the Constitution the State of

1 South Carolina that was passed a number of years ago and
2 the implementing legislation provided for certain rights
3 for victims or their families in a crime. Among those is
4 the right to be present whenever there's anything going on
5 in connection with the case and also the right to address
6 the Court. So as representative of the victim's family in
7 this matter, you certainly have the right and I'll be glad
8 to hear from you if there's anything you would like to
9 tell me just give the court reporter your name. I'll be
10 glad to hear from you.

11 MS. SKIDMORE: My name is Carrie Ann Skidmore
12 and I just want to say first of all thank you. I feel
13 like justice has been served today.

14 THE COURT: Was the victim your husband?

15 MS. SKIDMORE: He was my ex-husband and father
16 of our children. During -- since we lost Bob, it's been
17 very very hard on our family. We had our youngest
18 daughter was expecting. And it's been very hard for her
19 'til this day. She has not been able to mourn because she
20 has just blocked it out. And now Bob's gone and we have a
21 grandbaby that he'll never be able to see and she'll never
22 be able to know her grandfather because of this tragedy.
23 And I just want the Court to know how hard this has been
24 on the family, especially my children, Bob's mom. Left
25 behind was two handicap brothers that Bob help take care

1 of. He was very extremely close to. He had a sister that
2 he was extremely close to. I mean, he had a very big
3 large -- he had a large loving family that cared a great
4 deal about him. I know he wasn't perfect by no means, but
5 he was important to us and we lost him in a very terrible
6 way. I mean, we weren't able to give a proper burial for
7 him. And it's just hard. It's been very hard on our
8 family, very hard.

9 THE COURT: Well, I appreciate you being here.
10 And I thank you being here. There's nothing that I could
11 say or do here today that will ease your pain. And I do
12 empathize with you and I do hope that the conclusion of
13 this proceedings will bring some closure to you and your
14 family. Thank you for being here.

15 MS. SKIDMORE: Yes, sir. Thank you, Your Honor.

16 MR. MEADORS: Your Honor, if I can have just a
17 few final comments.

18 THE COURT: Yes, sir.

19 MR. MEADORS: Judge, I think it's speaks volumes
20 of the family. They were divorced, but they had one child
21 in common, two children from another marriage. They
22 stayed close. They stayed in contact. One of the other
23 daughters Bobbie wanted to be here, but just couldn't, but
24 she had planned on coming here. But they did stay close
25 and she is still family. I want to thank here.

1 Judge, in addition to that, there's -- the jury
2 spoke and I want to thank the jury for their verdict. I
3 want to thank troopers of the highway patrol for an
4 excellent job they did. One of the other witnesses the
5 lady who -- the girlfriend of Mr. Skidmore at the time
6 Ms. Flowers was at the scene and Trooper Boland had talk
7 to her. And she said that the defendant was driving the
8 whole way. They were behind them the whole way. I know
9 that didn't come out here. We tried to get Ms. Flowers,
10 we just couldn't locate her. But for the benefit of those
11 in the courtroom and all that was another witness that
12 said he was driving and they never stopped. We couldn't
13 find her, that didn't come out, but I want to thank the
14 jury for the verdict. With the physics and eyewitness
15 testimony we had, we just really think it was the right
16 verdict. We want to thank them. Judge, these are tough
17 cases driving under the influence just affects so many
18 people and so many lives. And we want to thank Your Honor
19 for the way you handled this trial and that's all we have.

20 THE COURT: All right. Mr. Griffith, you and
21 Mr. Evans come up please. Be glad to hear from you and
22 anybody you want to present on his behalf.

23 MR. GRIFFITH: Your Honor, Mr. Evans is 48 year
24 old fellow. And you heard the testimony, of course, you
25 were present. This was not an accident where strangers

1 ran into each other of course. It was a tragic accident.
2 His friend was killed as well. He's been in jail over
3 there about a year. Of course, it's not easy for him
4 either. He does have -- his dad was here yesterday. He
5 is not here today. He is 48 years old. We ask the Court
6 to -- he wanted to speak to address the Court himself, but
7 Your Honor, he would ask the Court to consider his age and
8 the facts of the case and show some leniency. I know it's
9 a one to 25.

10 THE COURT: It does carry minium one, maximum 25
11 years in prison. If you explain to him classified as a
12 violent and a serious offense, have you explain to him
13 what those mean?

14 (WHEREUPON, a pause in the proceedings.)

15 THE COURT: Violent, of course, affects your
16 parole eligibility and the amount of time you must serve
17 and the serious falls under our two strike, three strike
18 law and provides that if you were to have -- Mr. Evans, if
19 you were to have three serious offenses or two most
20 serious offenses that you be subject to life in jail and
21 this would be one strike on the serious offense. You
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. And you also understand that
25 this is a no parole offense, that means that you will have

1 to serve 85 percent of whatever I sentence you to before
2 you would eligible for any kind of release on community
3 supervision. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. All right. I'll be glad to
6 hear from you, Mr. Evans, or anyone else that you like to
7 present.

8 THE DEFENDANT: Ms. Skidmore, I like to
9 apologize for anything for the way this has happened. I
10 mean, I'm not going to get into detail. I would have been
11 found guilty, but I had no reason to lie. But he did
12 speak about you. He did speak about his kids and he did
13 want to amend. I was trying to help him to amend believe
14 it or not. I was trying to because he was helping me and
15 Ms. Flowers. We all had a meth problem. And he help me
16 in a lot of ways of being clean. And I help him in a lot
17 of ways of being clean. I was actually trying to get him
18 away from Ms. Flowers. After the accident, Ms. Flowers
19 came really really close to me and she even help me after
20 four days in the hospital. Said I wasn't ready to leave
21 the hospital, but that's when I found out that Robert had
22 passed away and I left the hospital like I was. I didn't
23 take no pain medicine. I didn't take anything.

24 THE COURT: Mr. Evans, excuse me you've already
25 made your statement to Ms. Skidmore if you will address

1 the Court please.

2 THE DEFENDANT: And since then I been -- two
3 months after that when I got arrested, I been having a
4 very very hard time. I do have an associate in Christian
5 doctrine, but I have been a hard time with the Lord. And
6 I been in and out of mental institution since I been in
7 jail. I've snatched veins out of my arms and I swallowed
8 razor blades. So it does bother me and it's bothering me
9 now very much. I would tell you my thoughts is not good
10 for myself. And I am paying for it. I am paying for it
11 and I am going to pay for it for the rest of my life
12 because that's not what I represented. That's not what I
13 stand for. I stand for helping my people my brothers. I
14 got nephews. I got younger brothers. I got a father
15 that's got 13 major heart attacks and he's not going to
16 make it this time while I'm locked up. And I know this
17 and that's the only reason I was here. And it force me --
18 Robert was introduced to my dad and my dad liked Robert a
19 lot everybody did. Just like everyone is drawn to me, the
20 same thing, but we had a problem. But on the real tip, on
21 honest to God is that me and Robert was trying to help
22 each other. And there was group of us that also was in
23 this was trying to come together and start something new
24 here in Sumter, South Carolina. That's it, that's all I
25 got. Just please take into consideration that I am having

1 a hard time and you seen the papers yourself that I'm in a
2 mental ill hospital and the only reason I'm in that is
3 because they're charging me -- from the way I see it for
4 killing Robert and that's not true.

5 THE COURT: All right. Thank you, sir. Anybody
6 else, Mr. Griffith, wants to address the Court?
7 Apparently not. Anything else, Mr. Griffith, on your
8 behalf?

9 MR. GRIFFITH: Your Honor, we would ask, of
10 course, he had been about a year and had been -- he
11 obviously is suffering with remorse. Your Honor, we would
12 ask for some leniency and that is he is 48. His father is
13 quite elderly.

14 THE COURT: All right, sir. Those of you who
15 have been before me before and I have been in this job now
16 for about 22 years have heard me say that the hardest
17 thing that we circuit court judges have to do is criminal
18 sentencing. I was told this before I went on the bench in
19 1996 and nothing has happened in the last 22 years to
20 change that. I think it is the most difficult thing we
21 have to do.

22 These types of cases felony DUIs are probably
23 the worse. While it is difficult for me to sentence
24 anyone, sometimes I don't have as much problem with
25 sentencing say somebody that goes in the convenience store

1 and shoots a clerk or takes that kind of intentional
2 action. And those are little bit easier to sentence, but
3 a felony DUI are generally the worse because we generally
4 have an innocent victim, completely innocent victim. And
5 a lot of times a defendant who is not bad a person, but
6 has simply either had too much to drink or taken too many
7 drugs, so that he or she shouldn't have been driving a
8 vehicle. But as the Solicitor said in his argument, he
9 had a choice. He didn't have to drive and he didn't have
10 to take drugs before he was driving. So he does have to
11 take responsibility for his actions as determine by the
12 jury.to.

13 The sentences that we impose seldom satisfy
14 everyone. Sometimes they don't satisfy anyone. All we
15 judges have no crystal ball. We are not -- omnipotent we
16 can't see the future. We don't know what the future holds
17 for anybody. All we can do is to impose a sentence that
18 we think is just according to the facts and the parties
19 involved and our experience. And as I said sometimes it
20 seldom satisfies everyone, but sometime satisfies no one.

21 As far as the victim's family is concern, I
22 would tell you as I did Ms. Skidmore when she was up here,
23 that I empathize with you. And there is nothing that I
24 can say that would ease your pain, but I hope that the
25 proceedings today will bring you some closure and you will

1 be able to move forward.

2 As far as the defendant is concern, I have given
3 a great deal of thought. I'm a little concerned about
4 criminal record although they did involve burglaries.
5 They did not involve violent acts toward anyone. And so
6 I'm -- that's mitigating in your favor.

7 However, I do think that because of driving a
8 vehicle when you should not have been driving it and
9 resulting in the death of someone deserves substantial
10 sentence. And there will be a substantial sentence here
11 although it will not be the maximum.

12 The sentence of the Court is the defendant is
13 committed to the state department of corrections for a
14 determinate term of 12 years, provided he's given credit
15 for one year that he has served. Good luck to you,
16 Mr. Evans. I hope you can get this time behind you and
17 come out and be a productive citizen.

18 THE DEFENDANT: Thank you, Mr. King.

19 MR. GRIFFITH: Thank you, Your Honor.

20 THE COURT: Thank you. The jurors may be
21 excused. No one else.

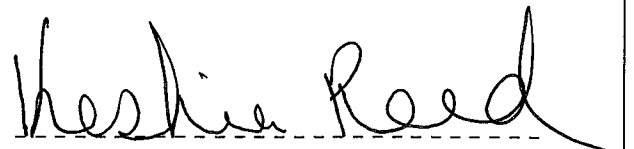
22 END OF REQUESTED TRANSCRIPT
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 386, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Sumter County, South Carolina, on the 20-22 days of February, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 9th day of January 2019.

A handwritten signature in cursive script that reads "Keshia Reed". The signature is written in dark ink and is positioned above a horizontal dashed line.

Keshia Reed, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of

Sumter

RECORDED

IN THE COURT OF COMMON PLEAS

JUN 24 A 11:46

Gene D. Evans, Jr. 375509

Full name and prison number (if any) of Applicant

CERTIFIED TRUE COPY
OF ORIGINAL FILE

2017-CP-43-933

v.

Balau Stager
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw C.I., H. - , 4848 Goldmine
Highway, Kershaw SC 29067
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2017-GS-43-464, DUI, Resulting In Death

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Feb. 22, 2018, 12 years confinement
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty No
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere No
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appellate Case No. 2018-001365
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Statute Unconstitutional

(c) "See" Memorandum In Support of Application

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See: "Memorandum In Support of Application"

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) First time challenged (PCR Issues)
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Timothy J. Griffith, Esq. - Public Defender
For Sumter County
 ii. 11 11 11 11 11 11
11 11 11
 iii. David Alexander, Appellate Defender, Division of
Appellate Defense, P.O. Box 11589, Columbia, S.C. 29211-1589
 (b) the proceedings at which each such attorney represented you:
 i. Trial And Sentencing
 ii. 11 11 11 11 11 11
 iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

Convicted and Sentence vacated;
Reversed For New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Gene D. Evans, Jr., 375509, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Gene D. Evans, Jr.

SWORN to and subscribed before me this _____
 day of _____.

 Notary Public (L.S.)

My Commission Expires: _____

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Gene D. EVANS Jr., 375509, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gene D. Evans Jr.
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____.

Notary Public

My Commission Expires: _____

RECORDED
 2020 JUN 24 A 11:47
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

State Of South Carolina }
County Of Sumter }

In The Court Of Common Pleas
Case No. 2017GS4301104
RECORDED

Gene D. Evans, Jr., 375509, }
Applicant, }

2020 JUN 24 A 11:47

Memorandum Of Law In
Support Of Application

V.
State Of South Carolina, }
Respondent. }

Appellant was indicted by the Sumter County on February, 2017 for Felony Driving Under The Influence Resulting In Death. Appellant was tried and convicted as charged by a jury and before Judge Howard P. King who sentenced Applicant to a term of twelve (12) years imprisonment. Applicant appealed his conviction and sentence which was subsequently affirm. Now comes an Application For Post-Conviction Relief with a Memorandum Of Law Thereof.

Ground One: Ineffective Assistance Of Counsel For Not
Challenging The Blood Draw And Test As A
Fourth Amendment Violation.

Defense Counsel Griffith moved to suppress the blood test taken from Applicant because the State failed to comply the implied consent statute, S.C. Code, §56-6-2950(b) which obviously did not apply to this case in the first instance because Applicant was not under arrest at the time of the blood draw. (Tr. p. 28- Trp. 29; Trp. 66, lns. 1-11). Under the circumstances, Defense Counsel should have been challenging the voluntariness of the consent to search and seize Applicant's blood. This unlawful blood draw and test of Applicant's blood was used by the Highway Patrolman to fabricate and manufacture probable cause for Applicant's arrest, thereby making the arrest unlawful as well.

Counsel was indeed ineffective for not at least researching and arguing this issue for he had nothing to lose by doing so. Let us review further.

There is an abundant case law stating that a formal arrest is not required for police to conduct a limited warrantless search of Applicant's blood if probable cause exist. S.C. Code Ann. § 56-6-2946; Mitchell v. Wisconsin, 139 S.Ct. 2524 (2019). In this case, Applicant was not being arrested or detained and the Court ruled that the implied consent statute did not apply. (Trp. 64 - Trp 67). Therefore, the search of Applicant's blood cannot be justified as a search incident to his arrest or on the basis of implied consent. Birchfield v. N.D., 136 S.Ct. 2160 (2016). Furthermore, natural dissipation of drugs cannot by itself qualify as an exigency under exigent circumstances exception to the warrant requirement under the Forth Amendment.

A warrantless search is perse unreasonable unless it falls within one of the specified established and well-delineated exceptions to the warrant requirement, including a valid consent to the search. U.S. v. Manafort, 323 F. Supp. 768 (2018) E.D. Virginia; U.S. v. Simons, 206 F.3d 392, 399-400 (4th Cir. 2000); Fernandez v. California, 571 U.S. 292, 298, 134 S.Ct. 1126 (2014). Consent searches are part of the standard investigatory techniques of law enforcement agencies and are a constitutionally permissible and wholly legitimate aspect of policy activity. Schneckloth v. Bustamonte, 412 U.S. 218, 228, 231-232, 93 S.Ct. 2041 (1973).

Kevin Boland, a trooper with the South Carolina Highway Patrol, testified that Applicant gave a voluntary consent for a blood sample be drawn from him (Trp. 39, Ln. 19 - Trp. 40, Ln. 12). Although, Trooper Boland claimed Applicant gave a voluntary consent to draw his blood, this was very far from the truth. Boland claimed Applicant was consenting to the draw by nodding his head yes. (Trp. 40, Ln. 7 - Trp. 41, Ln. 10). This was impossible for the following reasons.

Applicant was unable to sign the Blood Consent Order and Blood Draw Form, dated February 12, 2017 at 1500, approximately three (3) hours after the wreck of the R.V. (Trp. 41,

Ln. 14-Trip. 43, Ln. 2; Trip. 45). At that time Applicant was in a Head Brace lying on a board with a concussion and serious head injuries as well as many broken body parts and under the influence of Fentanyl. (Trip. 46, Lns. 1-8 and Lns. 20-22; Trip. 271, Lns. 13-16; Trip. 273, Ln. 9-Trip. 274, Ln. 12; Trip. 277, Ln. 21-Trip. 278, Ln. 12; Trip. 278, Lns. 19-22; Trip. 304, Ln. 21-Trip. 306, Ln. 12). Boland also stated Applicant was mumbling because of the Fentanyl. (Trip. 48, Lns. 1-4). If truth be known, Applicant was unconscious through-out this period of time. See, (Attachment, A), see also, Fn. 1.

A warrantless search is reasonable within the Fourth Amendment when voluntary consent is given to search. The existence of voluntary consent is determined from the totality of the circumstances. State v. Alston, 422 S.C. 270, 811 S.E.2d 747 (2018). The "totality of the circumstances" test applies whether the consent was given in a non-custodial or custodial situation. Applicant was in a non-custodial situation. State v. Brannon, 347 S.C. 85, 552 S.E.2d at 175 (2001). When the defendant disputes the voluntariness of his consent, the burden is on the State to prove the consent was voluntary. State v. Probst, 405 S.C. 101, 747 S.E.2d 453 (2013). As afore-argued, Applicant could not have voluntarily consented to the search of his blood when he was totally incapacitated at that time. The did not meet its burden of proof that the consent was anywhere near voluntary. Trooper Boland's testimony was so incredible that if Counsel had done his duty any Judge would have determined the consent involuntary. State v. Mattison, 352 S.C. 577, 852 (S. App. 2003). Furthermore, Applicant was not given his Miranda warning and he was not cautioned that results of the blood draw could be used against him. Although Miranda warnings and knowledge of the right to refuse a consent search does not make it involuntary, but are two (2) factors in determining the voluntariness of a consent. See in regards. (Trip. 43, Lns. 3-6; Trip. 276-Trip. 279). State v. Wallace, 238 S.E.2d 675 (1977).

Under the circumstances, the consent to search was not voluntary and therefore the search was unlawful and thereby invalidating the arrest because without the illegal search of Applicant's blood, probable cause for DUI Resulting In Death, did not exist. Counsel could not have been seen as effective in this case. For not challenging Trooper Boland's manufacturing of probable cause for arrest was definitely ineffective assistance of Counsel. Strickland v. Washington, 466 U.S. 668 (1984).

This case should be reversed for a new trial.
Footnote 1. This is argued further in Ground Two of this Memorandum.

Ground Two, Ineffective Assistance Of Counsel For Failing To Prepare For Trial.

Defense Counsel could not have made much effort preparing this case for trial. The first indication of Counsel's poor performance was his frail attempt to have the Blood Test Results excluded because of the State's failure to comply with the implied consent statute, S.C. Code, §56-6-2950(b) which did not even apply in the first instance. This statute did not apply because Applicant was not under arrest or being arrested at the time of the Blood Draw. (Trp 66-Trp 67) It is unknown to Applicant why Counsel would argue a pointless theory when he stood a much chance to have the Blood Test Results excluded due to the consent was not voluntary and the blood draw violated the Fourth Amendment against the unlawful search. Counsel could not have researched the law in regard to the involuntary consent nor did he interview the nurses at hospital or subpoenaed any of the hospital records to show just how out of it Applicant was during the time of the alleged consent to search Applicant's blood. Counsel was not prepared in this instance, but also, not in many other areas of Applicant's case for trial. Let us review more.

Applicant was ordered to undergo a competency evaluation on May 17, 2017 by Judge Fernell Cothran. Supposedly, Dr. Donna Maddox, Judge Cordell Maddox's Wife, found Applicant competent for trial, but without any Mental Evaluation Documentation (Trp 69, Lns 8-20). This had to be totally false, because Applicant had a Probate Court Order on the day of the Trial for a competency hearing See: (Attachment B). Counsel claimed he was just made aware of this "Order" during trial. (Trp 268-Trp 261). This was a "Court Order" that was totally ignored by all. The State snatched Applicant out of the Just Care mental facility three (3) days prior to trial. (Trp. 70, Lns 7-12).

Counsel had an obligation to his client to make sure he was competent to stand trial and to keep up with any and all proceedings affecting his client's case, however, it is obvious that he did not as it appeared that Counsel could have cared less. He knew his Client had a severe head injury in a very traumatic experience. There are more examples of Counsel's failure to prepare for trial.

There was much concern by the Prosecutor in proving Applicant was driving the RV that wrecked, struck a tree(s) ultimately killing Robert Skidmore. The State had only two (2) witnesses whom could testify to the theory of the Applicant as the driver, however, there were indications that these witnesses were incorrect. (Trp. 289-Trp. 291). Although there were at least six (6) other

potential eye witnesses that could have refuted the State's theory of Applicant as the driver, none of these people were interviewed, subpoenaed, or called as defense witnesses.

Another example of Defense Counsel's poor performance is his failure to supply and review any Rule 5/Brady material or any other evidence with Applicant. Applicant was caught by surprise with so many photographs that he was only made aware of at trial and never had a opportunity to discuss or review in preparation for trial. (Trip 163, Ln. 25-Trip 165, Ln. 20; Trip 176, Ln. 25-Trip 178, Ln. 15; Trip 222, Lns. 1-11; Trip 277, Ln. 21-Trip 278, Ln. 2). Defense Counsel can be found ineffective for any of these instances of his failures to prepare for trial or all instances as a cumulative effect, U.S.V. Chronic and Strickland V. Washington.

Ground Three: Ineffective Assistance Of Counsel For Failing To Request The Wreckless Driving Jury Charge.

Both State's Witnesses testified to Applicant driving wrecklessly and losing control of the RV in this incident. (Trip 158, Ln. 18-Trip 159, Ln. 3; Trip 163, Lns. 1-5; Trip 170, Lns. 3-9; Trip 298, Ln. 25-Trip 299, Ln. 7). There were plenty of evidence tending to prove the offense of Wreckless Driving, but Defense Counsel did not request this charge be given to the Jury as part of the Jury Instruction. (Trip 250, Ln. 22-Trip 251, Ln. 25; Trip 314-Trip 315). Counsel was indeed ineffective as Counsel can not demonstrate any strategy or tactic in not request the Wreckless Driving Instructions.

Ineffective Assistance Of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence. Frasier V. State, 35 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), S.C.R.C.P.). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produce a just result. Strickland V., 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler V. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry V. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry, 300 S.Ct. 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.Ct. at 117-18, 386 S.E.2d at 625. "A reasonable probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.Ct. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

It is obvious by the examination of the trial transcript of this case that Counsel performance was very deficient in every area of his representation, so that is prejudiced Applicant from receiving anything near a just result. If not for Counsel's poor performance, the outcome of the proceedings would likely have been different. There cannot be any confidence in the outcome of this trial in this case. Strickland.

Ground Four: Whether The Driving Under Influence With Death Resulting Statute Is Unconstitutionally Unreasonable, Arbitrary And Ambiguous?

During cross examination Counsel posed a very interesting point about the intoxication level requirement of Methamphetamine compared to that of alcohol. There is a certain intoxication level one must reach before they can be considered legally intoxicated and before their driving abilities are impaired from alcohol. (Tr. p. 242, lns. 9-24; Tr. p. 243, lns. 19-25). Although illegal drugs are illegal, they are drugs and so is alcohol, but the statute provides an intoxication level for alcohol, but not other drugs, before one can be actually guilty of Driving Under The Influence. Thus, without an intoxication level to be reached for the other drugs to be lawfully intoxicated would obviously lower the State's burden of proof upon every essential element of the Driving Under The Influence With Death Resulting, as Applicant was charged, beyond a reasonable doubt as required by the Federal Constitution. This overlook in the Statute make it unconstitutional.

Substantive Due Process under the Fifth Amendment Due Process Clause is not merely a procedural safeguard; it reaches those situations where a deprivation of life, liberty, or property is accomplished by legislation which can destroy the enjoyment of any of the three. Substantive due process demands that the law shall not be unreasonable, arbitrary, or capricious, and the means selected shall have some relation to the object

sought to be attained. In other words, a deprivation of life, liberty, or property is constitutionally supportable only if the conduct from which the deprivation flows is proscribed by reasonable legislation reasonably applied. McMullan V. Intern. Ass'n Of Iron Workers, 858 F. Supp. 529 (D.S.C. 1994)

In interpreting a statute, we first examine its language to determine whether the legislature has directly spoken to the precise question at issue. Chevron, U.S.A. Inc. V Natural Resources Defense Counsel, Inc., 467 U.S. 837, 842-43, 104 S.Ct. 2778, 2781-82 (1983). The issue here has not been spoken by the legislature within the statute of whether a certain intoxication level is required or should be required before a person can be found guilty of Driving Under The Influence when the Driver (person) is under the influence of Methamphetamines. Whereas the Statute provides a level of intoxication for the drug, alcohol, to be reached before they can be guilty of Driving Under The Influence beyond a reasonable doubt, but it is silent upon the intoxication level of any other drug before they are guilty of Driving Under The Influence. This ambiguity makes for an unreasonable assumption that any amount no matter how slight could be guilty of driving under the influence involving in this case, methamphetamines. This is unreasonably unfair when the statute allows a driver intoxicated on alcohol to intake a certain amount of alcohol before they are considered too intoxicated to drive, but not so for other drugs, although more automobile accidents involving or resulting in death are created by alcohol use more so than the use of all other drugs in total. This fact cannot be refuted. It is difficult to figure why the legislature overlooked this issue. This oversight has given a person accused of Driving Under The Influence Of Alcohol more opportunity in putting a defense up against DUI Resulting In Death than another accused of Driving Under The Influence Of Methamphetamine (Resulting In Death) because the State does not have to prove an unlawful level of intoxication, but prove only that the person accused of Driving Under The Influence Of Methamphetamine has any amount of that stimulant, which lessens the State's burden of proof of that essential element beyond a reasonable doubt. Essential

elements are those which must be specified with precise accuracy in order to establish the illegality of an act. U.S. v. Iddo, 982 F.Supp. 1046 (D Md. 1997) (quoting U.S. v. Bledsoe, 898 F.2d 436, 437 (4th Cir. 1990)).

The concept of vagueness, ambiguity or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The primary issues involved are whether the provisions of a penal statute are sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid its penalties and to apprise the judge and jury of standards for the determination of guilt. If the statute is so obscure that men of common intelligence must necessarily guess at its meaning and differ in its applicability, it is unconstitutional. State v. Albert, 257 S.C. 131, 184 S.E.2d 605 (1971); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973); State v. Mochau, 355 S.C. 73, 583 S.E.2d 756 (2003).

The Statute involved in this case has ambiguity; is unreasonable, and leaves Applicant to guess at the essential elements of driving under the influence of methamphetamine because there is no definite amount of methamphetamine to be proven for a level of intoxication. It is Applicant's contention that the statute which he was convicted upon is unconstitutional and/or applied in an unconstitutional manner. Therefore, Relief should be granted.

Conclusion

For the facts and legal principles argued within this Memorandum Of Law In Support Of his Application, Applicant should be given a new trial, conviction and sentence vacated, or a judgment of acquittal entered.

Respectfully Submitted
 X Gene D. Evans 373509
 Gene D. Evans, 375509
 Kershaw C.I., H#-179
 4848 Goldmine Hwy.
 Kershaw, SC, 29067

State Of South Carolina }
County Of Sumter }

In The Court Of Common Pleas
Case No. 2017GS4301104
RECORDED

Gene D. Evans, 375509, }
Applicant, }
v. }
State Of South Carolina, }
Respondent. }

2020 JUL 24 A 11:47

Motion To Address All Issues
COURT FILED

The Applicant, Gene D. Evans, 375509, hereby request the Honorable Court to require the attorneys involved in this Post-Conviction Relief Action to be meticulous in the preparation of any Order prepared in this matter.

Specifically, the Applicant requests that each and every issue raised in the application or any amendment thereof in this matter, at the hearing, to be addressed in the Order of the Court to be issued at the conclusion of the evidentiary hearing in this matter.

This Motion is requested pursuant to S.C. Code, § 17-27-80; and citing, Pruitt v. State, 423 S.E.2d 127 (1992); Bryan v. State, 493 S.E.2d 500 (1997),

Wherefore, the Motion should be granted

Respectfully Submitted
Gene D. Evans 375509

Gene D. Evans, 375509
Kershaw C.I., HC-178
4848 Goldmine Hwy.
Kershaw, S.C. 29067

State Of South Carolina
County Of Sumter

In The Court Of Common Pleas
Case No. 2017GS4301104

RECORDED

Gene D. Evans, Jr., 375509

JUN 24 A 11:47

Applicant, } Motion For Leave To Conduct
V. } Discovery
State Of South Carolina, }
Respondent. }

Applicant, Gene D. Evans, Jr., 375509, hereby moves, pursuant to S.C. Code §17-27-150, for leave to conduct discovery in this Post-Conviction Relief action. In support of this motion, Applicant states the following:

Applicant is presently serving a twelve (12) year sentence for D.U.I. Resulting In Death, imposed on February 22, 2018. Applicant has never received or reviewed any Rule 5/Brady material from the State's evidence against him.

Therefore, discovery is necessary to expedite Applicant's preparation for the evidentiary hearing, thus saving time and State resources and will likely eliminate the need for a number of witnesses to be called to testify at the Post-Conviction Relief hearing. Permitting discovery will substantially reduce the likelihood that a last minute continuance of the Post-Conviction Relief proceedings will be necessary and to reduce an interruption of judicial economy. Furthermore, allowing a pre-hearing discovery will facilitate full preparation by Applicant and clear the way for the presentation of all facts supporting his claims for relief to be presented at a single evidentiary hearing.

Wherefore, for all the foregoing reasons, Applicant submits that he has presented good cause for the invocation of discovery, and therefore respectfully requests, pursuant to S.C. Code, §17-27-150, that the Court authorize him to conduct discovery as prescribed by the South Carolina Rules of Civil Procedure,

Respectfully Submitted,
~~Gene D. Evans, Jr.~~ 375509
Gene D. Evans, Jr., 375509
Kershaw C.I., H# 119
4848 Goldmine Hwy,
Kershaw, S.C. 29067

State Of South Carolina
County Of Sumter

In The Court Of Common Pleas
RECORDED
Case No. 2017GS4301104
2020 JUN 24 A 11:47

Gene D. Evans, Jr., 375509 }
Applicant's First Request
For Production

V.
State Of South Carolina,
Respondent.

Please Take Notice that Applicant, Gene D. Evans, Jr., 375509, respectfully requests that the Attorney General produce, within thirty (30) days, all documents within the Attorney General's and Sumter County Solicitor's Office possession, custody or control as requested herein.

Please take further notice that Applicant reserves the right to serve supplemental and additional requests for production of documents as needed.

Request For Production

Applicant request that the Attorney General produce the following documents and tangible items;

1. The Solicitor's entire file related to the prosecution of Applicant for the DUI Resulting In Death Case No. 2017-GS-43-1104;
2. Any document concerning the Solicitor's office policy, or the Solicitor's personal policies, or when and how the decision is made to seek prosecution in the case, including, but not limited to any statistical data kept about how prosecution begins;
3. Audio copies of any and all radio transmissions on any frequency and/or any recorded telephone calls via 911 or any other telephone call to and from any involved law enforcement agency regarding events contemporaneously associated with the occurrence of the incident forming the basis of Applicant's prosecution and/or contemporaneously associated with Applicant's arrest;

4. All jail records concerning Applicant's behavior in the jail or detention center(s), including but not limited to disciplinary records, documents showing the various locations in which Applicant was housed and the reasons for any relocation to a different cell, documents concerning Applicant's mental health, and documents concerning any time Applicant spent on suicide watch;
5. Any and all written or recorded statements made by Applicant;
6. A copy of Applicant's prior criminal record;
7. All documents concerning any results or reports of physical or mental examination of Applicant;
8. All documents concerning any results or reports of any scientific or physical test or experiments conducted on any item of evidence or any other object in connection with Applicant's case in any way including, but not limited to, polygraph examinations, fingerprint comparisons, DNA analysis, Blood tests and any serological evidence;
9. Documents concerning any and all proficiency testing conducted in regards to compliance standards place by any state agency or any independent expert who conducted any type or degree of analysis or testing of any physical evidence in any way related to this matter;
10. Documents concerning any and all compliance standards by licensing or accreditation board or committee applicable to any person or agency described in the paragraph immediately proceeding to this one;
11. All written or recorded statements made by any witness or potential witness in connection with Applicant's case in any way;
12. The name and addresses of any witnesses who have given written or oral statements or information concerning Applicant's case in any way;
13. A copy of the original incident report and any supplemental reports produced by the arresting and investigating agencies;
14. Any other information or evidence that tends to indicate the innocence of the Applicant or that tends to mitigate any punishment;
15. The names and addresses of any person within the chain of custody for any item gathered at the scene of the crime, or at the Applicant's home, from the Applicant himself, or otherwise in connection with Applicant's case in any way;
16. Copy of all Chain Of Custody and Chemical Analysis forms in connection with Applicant's case in any way;

In Applicant's First Request For Production, Applicant specifically request all physical and mental records from Palmetto Richland Hospital and Just Cane-Grafts-Farrow Campus, both in Columbia, South Carolina as they relate to Applicant's case,

Whereas, the Court should order Respondent to produce the afore-stated documents,

Respectfully Submitted,
Gene D. Evans, Jr. 375509
Gene D. Evans, Jr. 375509
Kershaw C.I., HA-170
4848 Goldmine Hwy,
Kershaw, S.C. 29067

Attorney General's Office - For The Sumter County Solicitor's Office
 P.O. Box 11549
 Columbia, S.C. 29201

2020 JUN 24 A 11:47

JAMES P. HANSELL
 ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Re: Freedom of Information Act Request

Attention: Attorney General and Sumter County Solicitor,

I am writing, pursuant to the Freedom of Information Act, S.C. Code §30-4-10 through 110, to request you provide any and all information in the possession of the Solicitor's Office regarding the investigation and prosecution of Gene D. Evans, Jr., 375509 and the events surround the DUI Resulting In Death, Case No. 2017-GS-43-1104.

Specifically, I request all information in your custody, care, or control that in any way relates to the investigation surrounding Applicant's arrest for DUI Resulting In Death Of Robert Skidmore on February 12, 2017. This request includes all correspondence with South Carolina Highway Patrol, Sumter County Sheriff's Office, the South Carolina Attorney General's Office, the Sumter County Solicitor's Office, and any other State or Federal agency regarding these matters. This request further includes all information, files, notes or any other documentation relating to forensic analyses performed in connection with these investigations, including, but not limiting Blood and DNA analyses. Lastly, this request includes photographs and crime scene re-enactment diagrams etc. which relate in any way to the investigations referenced above.

The release of this information from your agency will not reveal the identities of any informants, is not premature release of information to be used in a prospective law enforcement action, will not disclose investigatory techniques, and will not endanger the life, health, or property of any persons.

As you know, the FOIA allows you to reduce or waive search and/or copying fees when release of the requested information would be "in the public interest." At a minimum, the FOIA mandates, "If the records must be furnished at the ~~most~~ lowest possible cost to the person requesting the records." S.C. Code §30-4-30. Because Gene D. Evans, Jr., 375509 is an indigent Inmate, I request that you waive the fees.

The public interest requires confidence in the judicial system that operates in the public's name and on its behalf. The United States Constitution requires "heightened scrutiny" in the review of unlawful sentences. The public interest includes oversight of governmental functions. National Ass'n of Atomic Veterans V. Director, Defense Nuclear Agency, 583 F.Supp. 1483 (D.C. 1984). To ensure public confidence in Gene D. Evans, Jr.'s conviction and sentence it is necessary to fully explore all information and issues, both direct and incidental, surrounding the events which resulted in its imposition. Therefore, the public interest is served by a full and complete examination of all aspects of the crime and the sentence. I therefore request that you comply with this request as soon as practicable.

Thank you for your prompt and kind services.

Sincerely,
Gene D. Evans, Jr. 375509
 Gene D. Evans, 375509
 Kershaw C.I., H-170 HC-119
 4848 Goldmine Hwy,
 Kershaw, S.C. 29067

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE PROBATE COURT

EX PARTE:
BRENDA FRAZIER

(Petitioner/Applicant)

NOTICE OF HEARING
APPOINTMENT OF COUNSEL
APPOINTMENT OF GUARDIAN AD LITEM
APPOINTMENT OF DESIGNATED EXAMINERS

IN THE MATTER OF:
GENE EVANS

(A Person Alleged to be Mentally Ill)

NOTICE OF HEARING

TO: Petitioner/Applicant - BRENDA FRAZIER
Person Alleged to be Mentally Ill - GENE EVANS
Counsel of Record - GENA P ERVIN
Guardian Ad Litem - GENA P ERVIN
Designated Examiners - MICHAEL FERLAUTO, MD
Other Interested Persons Know to the Court -

LYNN MERRITT, LMSW

GENE EVANS, SR.
JAMIE RABON

YOU ARE HEREBY NOTIFIED that, based on the Petition or Application filed in this matter and upon the report of the designated examiner or certificate of a licensed physician following an examination of the above-named person alleged to be mentally ill, finding at the said person is mentally ill, a hearing will be held on the 20th day of February, 2018 at 11:30AM at JUST CARE-CRAFTS-FARROW CAMPUS, COLUMBIA, SC for the purpose of taking testimony as to the mental condition of said person alleged to be mentally ill, at which time you may appear, testify and within the discretion of the Court, present and cross-examine witnesses and have an opportunity to present to the court any and all relevant and material evidence bearing on this matter, appearing either in person or by counsel.

YOU ARE FURTHER NOTIFIED that the person's detention at JUST CARE-COLUMBIA, SC, a facility for the mentally ill is based on conclusions and the underlying facts as contained in either the Petition for Judicial Admission and Reports of Designated Examiners or the Application for Emergency Admission, the Certificate of Licensed Physicians, a copy of which is attached.

YOU ARE FURTHER NOTIFIED that you have the right to request the names of the designated examiners and such other persons who will be called to testify and the substance of their proposed testimony.

YOU ARE FURTHER NOTIFIED that it must be proved by the presentation of clear and convincing evidence that said person alleged to be mentally ill is mentally ill, needs treatment and because of his/her condition:

- * (1) Lacks sufficient insight or capacity to make responsible decisions with respect to his/her treatment; or
- * (2) There is a likelihood of serious harm to himself/herself or others.

TRUE COPY

M. W. Merritt

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

APPOINTMENT OF COUNSEL

IT IS HEREBY ORDERED that GENA P ERVIN, esquire, Attorney of the South Carolina Bar, is hereby appointed as counsel of and for the person alleged to be mentally ill and is hereby charged with all the duties, responsibilities, powers and privileges conferred and made incumbent upon an Attorney at Law in such cases. Provided, however, that should a privately retained counsel be obtained by or for the said person alleged to be mentally ill and this Court is so notified, then, in that event, the aforesaid court-appointed counsel shall be discharged as counsel in this case.

APPOINTMENT OF GUARDIAN AD LITEM

IT IS ORDERED that GENA P ERVIN who is capable of understanding the rights of the person alleged to be mentally ill and who has no interest in conflict with or adverse to the rights of the person alleged to be mentally ill, is hereby appointed Guardian ad Litem of said person alleged to be mentally ill for the purpose of appearing for and acting on behalf of said person in all the proceedings herein, the said Guardian Ad Litem having consented to act as Guardian Ad Litem for said person alleged to be mentally ill for the purpose of the above-entitled action.

EXAMINATION BY TWO DESIGNATED EXAMINERS

IT IS ORDERED that MICHAEL FERLAUTO, MD a licensed physician and LYNN MERRITT, LMSW shall examine the person alleged to be mentally ill and report without delay to this Court their respective written findings as to the mental condition of said person alleged to be mentally ill and his/her need for treatment.

IT IS SO ORDERED.

Dated this 13TH day of

FEBRUARY, 2018

DARLINGTON, SOUTH CAROLINA

Maurice D. Quinn (Seal)
Judge of Probate Court

ORDER OF SUBSTITUTION

The corresponding appointments listed above are hereby rescinded by the following substitute appointments:

Counsel: _____

Guardian Ad Litem: _____

Designated Examiner (Licensed Physician): _____

Designated Examiner: _____

Date

Judge of Probate Court

TRUE COPY

Maurice D. Quinn

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

Dear Clerk,

Please find enclosed my Application For Post-Conviction Relief with a "Memorandum Of Law In Support Of Application, a "Motion To Address All Issues", a "Motion For Leave To Conduct Discovery", Applicant's First Request For Production", a "Freedom Of Information Act Request with a "Certificate Of Service".

Please file an original and clock-stamp a copy and serve it to the Attorney General's Office because with the COVID-19 situation, the Applicant cannot get copies made in order to accomplish this.

Thank you for your kind services

Respectfully,
~~Gene D. Evans~~ 375509
 Gene D. Evans, 375509
 Kershaw C.I., HC-119
 4848 Goldmine Hwy,
 Kershaw, S.C. 29067

RECORDED
 2020 JUN 24 A 11:17
 JAMES C. CAMPBELL
 CLERK OF COURT
 SUMNER COUNTY, SC

State Of South Carolina }
County Of Sumter }

In The Court Of Common Pleas
RECORDED Case No. 2017GS4301104

2020 JUN 24 A 11:48

Gene D. Evans, Jr., 375509 }
Applicant, }

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Certificate Of Service

V.

State Of South Carolina, }
Respondent, }

I, the Applicant in the above-captioned matter, do hereby under oath and penalty of perjury certify that I have served, an Application For Post-Conviction Relief with a Memorandum Of Law In Support, thereof. Also served with the Application and Memorandum is a, "Motion To Address All Issues", a "Motion For Leave To Conduct Discovery", Applicant's First Request For Production", a Freedom Of Information Act Request with a Certificate Of Service upon the below listed parties on the same date.

(1) Office Of The Attorney General (2) Clerk Of Court, Sumter County
P.O. Box 11549
Columbia, S.C. 29067
James C. Campbell
215 N. Harvin Street
Sumter, S.C. 29150

Sworn To Before Me, This
1st Day Of July, 2020,
Notary Public For South Carolina,
Catherine A. Amos
My Commission Expires,
Dec 22, 2029

Respectfully Submitted,
~~Gene D. Evans, Jr. 375509~~
Gene D. Evans, 375509
Kershaw C.I., #1704C-119
4848 Goldmine Hwy,
Kershaw, S.C. 29067

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Gene D. Evans, Jr., SCDC #375509

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2020-CP-43-1104

**RETURN AND PARTIAL MOTION TO
DISMISS**

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on June 24, 2020, would respectfully show this Court:

I. Procedural History

Gene D. Evans, Jr. (Applicant) is presently confined in the South Carolina Department of Corrections. During its October 2017 term, the Sumter County Grand Jury indicted Applicant for DUI / Felony Driving Under the Influence, Death Results (2017-GS-43-1104). Timothy L. Griffith, Esquire, represented Applicant. Then-Assistant Solicitor John P. Meadors, of the Third Circuit Solicitor's Office, prosecuted the case. On February 20, 2018, Applicant's jury trial commenced before the Honorable Howard P. King. On February 22, 2018, the jury found Applicant guilty as indicted. Judge King sentenced Applicant to twelve years of imprisonment.

Applicant appealed his conviction and sentence. On July 3, 2019, Assistant Public Defender David Alexander filed a brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), on behalf of Applicant. By unpublished opinion, the South Carolina Court of Appeals dismissed Applicant's appeal. State v. Evans, Op. No. 2020-UP-119 (S.C. Ct. App. filed April 29, 2020). The Remittur was sent to the circuit court on June 30, 2020.

II. Factual Background

Trooper Kevin Boland of the Sumter County Highway Patrol arrived at the scene of a single vehicle accident in Sumter County. The driver was driving southbound in the northbound lane toward Pine Wood Road. (ROA, p. 117, 118). Boland testified the collision sparked a fire due to the magnitude of the collision. (ROA, p. 118). Several witnesses observed the accident. (ROA, p. 120). Applicant was taken to Richland Memorial Hospital, where Boland eventually arrived and questioned Applicant. (ROA, p. 133). During Boland's visit with Applicant, Applicant gave his clear consent to a voluntary blood sample. (ROA, p. 135). Applicant's blood sample was then taken. (ROA, p. 136). A SLED analysis showed Applicant was under the influence of methamphetamine at the time of the incident. (ROA, p. 237).

Forensic pathologist Dr. Janis Ross testified Victim suffered from, among other things, a severe hit to the head, resulting in a broken neck. (ROA p. 101-102). Although a fire resulted from the incident, Dr. Ross testified Victim died from the blunt force injuries, and was unaware of the fire at the time of his death. (ROA, p. 104). Dr. Ross testified she was of the opinion to a reasonable degree of medical certainty that Victim's cause of death was from blunt force of the head due to a motor vehicle collision. (ROA, p. 105).

III. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for various reasons, which Respondent interprets as the following:

1. Ineffective Assistance of Counsel
 - a. "For Not Challenging the Blood Draw and Test as a Fourth Amendment Violation"
 - b. "Failure to Prepare for Trial"
 - c. "For Failing to Request the Wreckless Driving Charge"
2. "Whether the Driving under the Influence with Death Resulting Statute is Unconstitutionally Unreasonable, Arbitrary, and Ambiguous?"

As requested relief, Applicant seeks a new trial. Attached to this Return and incorporated by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the PCR application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts several allegations of ineffective assistance of counsel. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced

Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test for any of his allegations of ineffective assistance of counsel. However, these allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response to Allegation of Unconstitutionality of Driving Under the Influence Statute and Request for Summary Dismissal of this Allegation

In his PCR application, Applicant alleges the DUI statute is unconstitutional. Respondent submits this is not a cognizable allegation under the Uniform Post-Conviction Procedure Act, and accordingly, requests this allegation be summarily dismissed.

Pursuant to the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160, an applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20 (1976).

Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). Because an application for post-conviction relief is not a substitute for a direct appeal, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”) (citing Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999)); but see Fortune v. State, 428 S.C. 545, 837 S.E.2d 37, 44 (2019) (instructing that, in some circumstances, an applicant may argue a claim for post-conviction relief based on constitutional violations other than a violation of his Sixth Amendment right to counsel due to the ineffective assistance of counsel. The Supreme Court found Fortune’s was “one of those cases” because the State argued in closing that, among other things, a solicitor’s job is to find the truth, unlike the job of a normal lawyer, and that a defense attorney’s job is to manipulate the truth, shroud the truth, and confuse jurors). Errors that could have been reviewed on direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (citing Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975)). A challenge to the unconstitutionality of the DUI statute could have been brought on direct appeal and cannot be brought by Applicant by way of an application for Post-Conviction Relief. Accordingly, Respondent requests this allegation be summarily dismissed.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been

appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

IX. Request for an Evidentiary Hearing and Partial Motion to Dismiss

WHEREFORE, having made its return, Respondent requests that an evidentiary hearing be held on the allegations of ineffective assistance of counsel. Respondent further requests the allegation challenging the constitutionality of the DUI statute be summarily dismissed for failing to state a cognizable PCR claim.

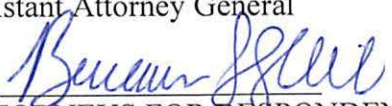
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549

March 10th, 2021

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

2020-CP-43-933

GENE D. EVANS, JR., #375509,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC.
Post Office Box 1058
Charleston, South Carolina 29402

DATED this the 10th day of March, 2021.


Kaitlyn S. Slice, Legal Assistant
For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	Case No. 2020-CP-43-00933
	)	
Gene D. Evans, Jr.,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

June 28, 2022
Sumter, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

A P P E A R A N C E S:

James K. Falk, Esquire
Attorney for the Applicant

Megan Jameson, Esquire
Attorney for the Respondent/State

Krystal J. Smith
Official Circuit Court Reporter III

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption

or change in thought

ellipses . . . trailing off

[ph] phonetically written

[sic] written as said

1 JUNE 28, 2021

2 (WHEREUPON, the proceedings began at 4:25 p.m.)

3 THE COURT: All right.

4 MS. JAMESON: May it please The Court, Your Honor.

5 THE COURT: Yes.

6 MS. JAMESON: Your Honor, the next matter -- Megan
7 Jameson on behalf of the State. This is the PCR matter of
8 Gene D. Evans, Jr., versus the State, Docket Number
9 2020-CP-43-0933.

10 On February 12th, 2017, Mr. Evans was driving an RV in
11 Sumter while under the influence of methamphetamine, lost
12 control of the vehicle and ran into a tree, fatally killing
13 the only passenger, his friend, Robert Skidmore. An analysis
14 of Mr. Evans's blood sample taken approximately three hours
15 after the wreck established he was under the influence of
16 methamphetamine.

17 He was arrested in April of 2017, and during the October
18 2017 term, the Sumter County Grand Jury indicted Mr. Evans for
19 felony DUI resulting in death. He was originally represented
20 by the Sumter County Public Defender's Office but was
21 eventually appointed Timothy Griffith to represent him in
22 December of 2017. At Mr. Evans' request, Mr. Griffith filed a
23 motion for a speedy trial, and the State called the case to
24 trial on February 20th of 2018 before Judge King.

25 At the outset of trial, Mr. Evans, through Counsel

1 Griffith, moved to suppress the drug analysis of applicant's
2 blood based on a failure to comply with statutory requirements
3 and a lack of consent to take applicant's blood sample.
4 Following a pretrial motions hearing, Judge King denied this
5 motion.

6 Applicant's case proceeded to trial, and he testified in
7 his own defense, arguing that he was not driving the RV when
8 the wreck occurred. And on February 22nd of 2018, the jury
9 convicted Mr. Evans as indicted, and Judge King sentenced him
10 to 12 years' imprisonment.

11 Mr. Evans timely sought direct appellate review, and the
12 Court of Appeals affirmed his conviction and sentence
13 following a review pursuant to *Anders v. California*. The
14 remittitur was issued on June 30th, 2020.

15 Mr. Evans initiated this instant post-conviction relief
16 action with the timely filing of a PCR application on June
17 24th of 2020, asserting the following grounds for relief.

18 First, that counsel was ineffective for not challenging
19 the blood draw and test as a Fourth Amendment violation.

20 That counsel was ineffective for failing to prepare for
21 trial, with specific allegations that counsel failed to
22 challenge the blood draw and failed to ensure that he was
23 competent to stand trial.

24 That counsel was ineffective for failing to request a
25 reckless driving instruction as a lesser-included offense.

1 And then as a standalone claim, whether driving under the
2 influence with death resulting statute is unconstitutional.

3 The State made a return and partial motion to dismiss,
4 asking for a hearing to resolve his claims of ineffective
5 assistance of counsel and moving for summary dismissal of his
6 claims challenging the statute is not proper claims for post-
7 conviction relief.

8 James Falk was appointed to represent the applicant, Mr.
9 Evans. No amendments have been filed, and it's the State's
10 understanding that we are going forward on those specific
11 claims as raised in his pro se application that I previously
12 put on the record.

13 And for the record, I wanted to confirm that Your Honor
14 was previously provided with a judge's packet with the General
15 Sessions record, the appellate record, including the record on
16 appeal with a full copy of the trial transcript, and the
17 records from the current PCR proceeding, which are already
18 part of the record in this case.

19 And, Your Honor, if I may approach, I noticed in the
20 record on appeal -- and I provided a copy of this to Mr. Falk
21 already -- two pages are omitted, page 251 and 252 from the
22 record on appeal. They appear later in the record on appeal
23 out of order. I've confirmed that the same error is in the
24 record on appeal that was filed with the Court of Appeals, but
25 I wanted to make sure Your Honor had those pages in order.

1 And at this time the State would move to dismiss the
2 allegation that counsel was ineffective for failing to request
3 a jury instruction on the lesser-included offense of reckless
4 driving, as reckless driving is not a lesser-included offense
5 of felony DUI. The case law is very clear that felony DUI
6 requires proof of three elements, none of which are also the
7 elements for reckless driving.

8 In *State v. Cribb*, a case from 1992, our Supreme Court
9 affirmed that reckless driving is not a lesser-included
10 offense of felony DUI resulting in death, and that was
11 affirmed four years later in *State v. Easler*. And so as a
12 matter of law, counsel cannot be ineffective for failing to
13 request a lesser-included jury instruction that applicant was
14 not entitled to, and so the State would move to dismiss that
15 allegation as a matter of law.

16 The State also moves to dismiss the standalone claims
17 challenging the constitutionality of the felony DUI resulting
18 in death for the reasons as set forth in our return and motion
19 to dismiss. That is not a proper PCR claim. I do not believe
20 that Mr. Evans has raised that claim under the guise of Sixth
21 Amendment ineffective assistance of counsel, and so the State
22 would move to dismiss that claim as well.

23 And then the ineffectiveness regarding the reckless
24 driving as a lesser-included, as the case law is abundantly
25 clear and has been for 30 years that that is not a proper

1 lesser-included offense. And I have copies of *State v. Cribb*
2 and *State v. Easler*, if Your Honor would like a copy.

3 THE COURT: Okay. I would.

4 And, Mr. Falk, your response?

5 MR. FALK: Your Honor, we don't dispute that the
6 challenge to the constitutionality of the statute is
7 appropriate for PCR, and we also don't dispute that reckless
8 is a lesser-included offense charge for which he was indicted.

9 THE COURT: All right. Wasn't there a third motion on
10 some -- one additional?

11 MS. JAMESON: Two motions, Your Honor. The State was
12 moving to dismiss the failure to request a lesser-included as
13 a matter of law based on *Cribb* and *Easler*.

14 THE COURT: He agrees with you on that.

15 MS. JAMESON: And then moving to dismiss the standalone
16 claim of challenging the constitutionality of the sentence is
17 not a proper PCR claim. Those were the two.

18 THE COURT: He agrees with you on that.

19 Is that right?

20 MR. FALK: That's correct.

21 THE COURT: So those are not disputed.

22 MS. JAMESON: Thank you, Your Honor.

23 THE COURT: All right. You may proceed.

24 MR. FALK: We'd call Gene Evans to the stand.

25 THE COURT: Yes, sir.

GENE D. EVANS, JR. - DIRECT BY MR. FALK

1 THE BAILIFF: Put your papers down, sir, right here.

2 Place your left hand, raise your right hand. State your full
3 name.

4 THE APPLICANT: Gene David Evans, Jr.

5 THE BAILIFF: Do you solemnly swear and affirm to your
6 testimony to this Court to be the whole truth and nothing but
7 the truth, so help you God?

8 THE APPLICANT: So help me God.

9 THE BAILIFF: Thank you. Step around, sir. State your
10 full name and spell your last name for the record, please,
11 sir.

12 THE APPLICANT: Gene David Evans, Jr. Last name is
13 Evans, E-v-a-n-s.

14 GENE D. EVANS, JR., being first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FALK:

18 Q: Mr. Evans?

19 A: Yes, sir.

20 Q: Can you tell me where were you immediately prior to the
21 first day of trial in this case?

22 A: At Just Care Mental Hospital.

23 Q: And what -- why were you there?

24 A: At the department -- I mean the detention center sent me
25 there. The jail sent me to the mental hospital.

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1 Q: Did they give you a reason why they sent you to the
2 mental hospital?

3 A: They said my medications wasn't right, and I was biting
4 myself and harming myself. And I got papers from the mental
5 hospital right here.

6 Q: So -- so tell me what -- have you been -- have you
7 received a diagnosis?

8 A: Yeah. It says -- yes. Yes, sir.

9 Q: And what's your understanding of your diagnosis?

10 A: At that time it was a lack of sufficiency, insight, and
11 capacity to make reasonable decisions with respect of his or
12 her treatment, and there's a likelihood of serious harm to
13 himself and others.

14 Q: So were you not compliant with your medications?

15 A: I'd never been on medications before. I didn't have
16 these problems until I got in the accident when I had the head
17 damage.

18 Q: Okay. And so you were at Just Care for mental health
19 care; is that correct?

20 A: Yes, sir.

21 Q: All right. I'm going to show you something that I
22 believe you filed in this case.

23 MS. JAMESON: Your Honor, if I may approach, I'm going to
24 hand you a copy of the pro se brief of appellant that Mr.
25 Evans filed after the Anders brief was filed. I'm not sure if

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1 this was included in your packet, and I want to make sure it's
2 part of the record, but no objection to what he's about to
3 show his client.

4 THE COURT: Is that correct?

5 MR. FALK: I beg your pardon?

6 THE COURT: No objection?

7 MR. FALK: No objection. That'll work. May I approach
8 the witness?

9 THE COURT: Yes, sir.

10 BY MR. FALK:

11 Q: I'm going to show you a document that was attached to
12 your pro se response to the Anders brief. Okay? Do you
13 remember doing that?

14 A: Yeah. It was in my -- yeah.

15 Q: Okay. And that contained a copy of an order from a
16 probate court. Does that sound correct to you? I'm going to
17 show that to you.

18 A: Yes. Right here.

19 Q: Okay. And so you received -- so can you tell me what
20 that document was and why you included that as part of your
21 Anders response?

22 A: Well, first off, I didn't -- we didn't know we had a
23 trial or anything like that, and I didn't know anything of the
24 probate court.

25 Q: Okay. Let's back up. Let's back up. What does that --

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1 what does that document say?

2 A: It says a notice of a hearing, appointment of counsel,
3 and appointment of guardian *ad litem*, and appointment of
4 designated examiners.

5 Q: Okay. So you thought that -- so somebody had set a
6 hearing for at some level of some type of mental health
7 evaluation of probate court; is that correct?

8 A: Yes. The two doctors that's quoted on here.

9 Q: And it was going to include whether or not you needed a
10 guardian *ad litem*?

11 A: Yes. I was assigned a guardian *ad litem*. Her name is in
12 here also.

13 Q: Okay. And what is the date of that hearing?

14 A: The 20th day of February 2018.

15 Q: Now, is that the same day that your trial started?

16 A: It's the exact same date of my trial started on January
17 the -- February the 20th, February 2018.

18 Q: Okay. Do you recall what kind of evaluation you went
19 through? Did your lawyer order anybody to evaluate you for
20 your competency to stand trial?

21 A: This was not ordered by my lawyer, no.

22 Q: Okay. So did he retain an independent expert to evaluate
23 you for competency to stand trial?

24 A: Not that -- not that lawyer. I had three different
25 lawyers.

GENE D. EVANS, JR. - DIRECT BY MR. FALK

1 Q: Okay. Okay. Did you understand what was going on on
2 February 20th?

3 A: No, I did not. Neither did my family. Nobody did.

4 Q: What was your expectation when you went to that
5 courthouse that day?

6 A: He came and seen me on the weekend at the county jail. I
7 was in a turtle suit or suicide suit. He came in on a
8 Saturday, I think it was, and he told me that I would be
9 making a court appearance, and that was it. He never said
10 anything about no preliminary hearing or trial or anything
11 like that. He said a court appearance, and that was it.

12 Q: Did you know whether or not he was talking about -- did
13 you know about this probate court appearance at that time?

14 A: No, I did not know about that probate court, not that day
15 I didn't.

16 Q: Okay. But you knew that there was a probate hearing
17 pending?

18 A: No, I did not know that. I didn't know that until these
19 papers were brought that day or that 20th day. The day I was
20 supposed to be here, my father and my girlfriend brought these
21 papers in --

22 Q: Okay. Okay.

23 A: -- from the hospital because they got them from the
24 hospital --

25 Q: I see.

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1 A: -- because they were supposed to be at this hearing also.
2 And so when they got the papers, they brang it straight up
3 here to the court, and that was -- that's when I found out.
4 Q: Okay. And was any explanation ever given to you why they
5 never had this probate hearing?
6 A: No, sir. There was never even an explanation of why they
7 took me from the hospital.
8 Q: Okay.
9 A: They just -- it was late Friday evening and they brought
10 me from the hospital and kept me on the floor in the county
11 jail, steady on the floor in the booking area until court, and
12 they kept me sleeping on the floor during court.
13 Q: And so you were in custody during the trial; is that
14 correct?
15 A: Yes.
16 Q: And were you back in the turtle suit after the first day
17 of trial?
18 A: Yes.
19 Q: So the whole time you were being held --
20 A: I was in a suicide suit.
21 Q: You were in the -- excuse me -- in the suicide suit?
22 Okay. All right. I'm going to show you a picture that you
23 had sent to me, and do you know who took that photograph?
24 A: Yes, sir. These are -- all my family came up there to
25 the hospital right when they life-flighted me in the

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1 helicopter. It was either my brothers or -- or the girl I was
2 dating, Jamie.

3 Q: So is that a picture of you?

4 A: Yes, sir.

5 Q: And that collar -- do you recall having that collar
6 around your neck?

7 A: I don't even remember that, none of that day.

8 Q: Okay. After that date, how long did you have the collar
9 around your neck?

10 A: I woke up and I remember waking up in the hospital. It
11 was, like, the second or third day when the reenactment
12 officer came up there and was speaking to me. That's when I
13 saw it.

14 Q: And did you still have the collar on?

15 A: No. I had a -- I was all bandaged up and everything and
16 my legs were all busted up and my face and my neck. I had a
17 bunch of broken bones in my back.

18 Q: Okay. So did you know whether or not you ever had that
19 collar on?

20 A: I don't remember none of that.

21 Q: And do you ever know whether or not you had it that there
22 was that strap across your head?

23 A: Yeah, I don't remember none of that.

24 Q: Okay. So now you understand that if you get relief
25 today, that the only thing that this judge can do would be to

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1 set this case up for another trial?

2 A: I understand that.

3 Q: And you are -- when I looked at SCDC, it looks like

4 you're set for release sometime in '27?

5 A: Yes, sir.

6 Q: Does that sound right to you?

7 A: Yes, sir.

8 Q: And you know that if you were granted relief, the case

9 would go back to trial, and you could get a longer sentence

10 than 12 years?

11 A: Yes, sir. Can I make a statement?

12 Q: I'm kind of leading up to that.

13 A: Okay.

14 Q: Okay. So you still want to go forward with this hearing;

15 is that correct?

16 A: Yes, sir.

17 Q: And you know that you would you face a significant risk

18 because you could certainly get convicted again; is that

19 right?

20 A: Yes, sir.

21 Q: And you could get a greater sentence than 12 years; is

22 that right?

23 A: Yes, sir.

24 Q: And so why do you want to still go forward?

25 A: Because I was not driving. If I'm responsible for

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1 Robert's death, I deserve 25 years, but I was not responsible
2 for his death. I was not driving the vehicle. Robert was
3 driving. And if there was anything I could have did to stop
4 it, I would have stopped it. And I'm not -- I just can't --
5 to be honest with you, it's hard living with me being
6 convicted of this here when I know I wasn't responsible for
7 that.

8 I call it my brother, my brother's death, because it's
9 more of a -- anyway, if -- if I was to get 12 -- if I got 12
10 years for driving that vehicle, that's a good bargain. I
11 think I would never fight it anymore if I'm guilty of it, but
12 I'm not guilty of Robert's death. I was not driving that
13 vehicle.

14 And if -- if it was done properly, they would have found
15 out that he was driving. I mean, they even had pictures of
16 him with his head stuck under the steering wheel with the seat
17 bent over him. And the only place I can come out of that
18 vehicle when they got me out was on the driver's side, and
19 that's what they're kind of depending on. I would have never,
20 ever did anything to jeopardize his life or my life that day.

21 Q: Okay. And just so I'm clear, I think what you were
22 saying is you're saying that if you were driving, if you had
23 been driving, you would have no --

24 A: Twelve years would have been a good deal.

25 Q: Okay. Fair enough. Fair enough. So how much

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1 conversation did you have with your attorney before the trial
2 started as far as what the plan was going to be?

3 A: I think he got appointed to me in December. He came in
4 December with the packet that he had. He had -- the only
5 thing he had was an accident report. The accident report,
6 which was also done by my girlfriend's ex -- ex-boyfriend, but
7 he had the accident report and he said that's the only thing
8 they have is an accident report.

9 And it was more of a new client visit. The second time I
10 seen him, he come on a Saturday, and that's when they had
11 brought me back late Friday from the mental hospital and --
12 and I was in a suicide suit, in the turtle suit. He came
13 Saturday and seen me and told me I was making a court
14 appearance and -- and that was it.

15 And then when I got here in the courtroom, they had a
16 pretrial hearing and jury selection started on the same day
17 and found out that there was a -- a speedy trial or whatever,
18 but we never -- no one knew. I never had any of my witnesses,
19 no evidence, no nothing. Never got -- and I still to this day
20 still haven't gotten discovery.

21 Q: Okay.

22 A: And I've got paperwork filing and filing, and I can't get
23 any --

24 Q: So how long were you at Just Care prior to the trial? So
25 -- so the -- you were in -- they took you from Just Care, I

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1 guess, on February 19th; right? You said the day before?

2 A: Well, I'm sorry. I'm -- back up. I was -- I was wrong.

3 I didn't leave from the county jail to Just Care. I left the

4 county jail to the hospital. I stayed in the hospital for two

5 weeks.

6 Q: Okay.

7 A: And from the hospital they sent me to the mental hospital

8 because I had swallowed razor blades, and they wanted to make

9 sure the blades pass through. They were X-raying me every

10 couple of hours --

11 Q: I see.

12 A: -- to make sure the blades pass through.

13 Q: Okay. So you went to the regular emergency room

14 hospital?

15 A: Right.

16 Q: And then they took you --

17 A: They kept me there for two weeks.

18 Q: Okay. And then you went where?

19 A: To Just Care.

20 Q: And so how long were you at Just Care?

21 A: A little over a week, I think it was.

22 Q: Okay.

23 A: They put me on medications and stuff like that.

24 Q: So for about the month prior to to the trial starting or

25 the three weeks prior to the trial starting, you were in one

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1 hospital or another?

2 A: Yeah. And also in the turtle suit. I was in the turtle
3 suit most of the time I was in the jail.

4 Q: Okay. Okay. And it's your testimony that you only met
5 with your -- your lawyer --

6 A: That was the first -- the new lawyer client visit and the
7 only -- he only had an accident report. And then that was the
8 first time and that was in December, I think it was. And then
9 in February when they transported me back, Just Care was kind
10 of upset. They didn't know why I was getting sent back.

11 But anyway, Friday, and then he came on that Saturday and
12 seen me because Monday was Presidents Day and then Tuesday
13 they had the pretrial, jury selection, and that's when it
14 started. And then the next day they dressed me out and put a
15 shock belt on me and had a trial. That's when they started
16 trial.

17 Q: Let me just get this back. So during the trial, did you
18 have lots of conversations with your lawyer?

19 A: No. He really wouldn't because I asked him about --
20 because I had had somebody call my family and told them I was
21 in court and some of them showed up, and I asked him if they
22 can testify. And he -- he told me -- he gave me -- slid me a
23 piece of paper and a pencil and he said write it down, and he
24 really didn't talk to me too much.

25 Q: Okay. So did you have people who you wanted him to talk

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1 to?

2 A: Yes, sir.

3 Q: And what types of people?

4 A: At that time, it was the girl that actually owned the RV
5 that her and Robert -- I guess they were living in it. At
6 that time, her and my -- my girlfriend, which was in the
7 vehicles behind us, they were following us, and the other
8 people which they got statements that they wanted to come to
9 court, but they wasn't letting nobody -- me have no witnesses.

10 But he did write a statement and got it notarized the
11 same day court was happening. He was actually the first guy
12 on the scene that helped pull me out of the vehicle. I think
13 you got a statement of that. And he's -- him and the other
14 guy, we found them on the Internet on Facebook because they
15 were posting pictures about the accident, and that's when we
16 found out who they were. We didn't know who they were after
17 the accident. We didn't know who they was until we --

18 MR. FALK: May I approach the witness?

19 THE COURT: Yes, sir.

20 BY MR. FALK:

21 Q: Is that the statement that you're talking about?

22 A: That's one of the statements. Him and his -- his -- this
23 guy here's girl, that one that was driving the vehicle that he
24 was in.

25 And also when I got to the hospital and the cop come to

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1 -- Kevin Boland come to the hospital and said he took my --
2 that I volunteered my blood and I talked to him and whatnot.
3 There's people and pictures and evidence saying that it was
4 impossible for me to talk to him. There's no way in the world
5 I could have talked to him, which then he admits in the
6 transcripts in court that I did not talk to him. He said I
7 mumbled the whole time, but I never said any words to him. I
8 mumbled and shook my head yes and no. That's when he was
9 saying about me in the neck brace and all that, saying that.

10 Q: Okay. But the statement I showed you was by somebody
11 named Edward Viperman; right?

12 A: Yes, sir.

13 Q: Okay.

14 A: Which later found out that before I got this statement or
15 whatnot, the reason why he didn't stay at that scene but the
16 witness, the other guy that pulled me out, witnesses him there
17 because he was -- he was there at the scene. He witnesses him
18 there and everything. He had a child support warrant or
19 something like that. That's why he said he didn't stay and
20 talk to the cop, but he is in the report from the other
21 witness talking about him.

22 Q: And you were not driving that RV that day?

23 A: No, sir. I was not driving that RV.

24 Q: So why were y'all -- why were y'all in the RV?

25 A: From what I understand, Melissa Flowers was staying up

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1 there across from Shaw Air Force Base at a motel at a little
2 RV place behind the motel. They got in some trouble and
3 didn't pay the rent or something like that, from what I
4 understand. I'm not sure. And they called my girlfriend that
5 day and said, hey, we need to come up here. And when we got
6 up there, they had already took the RV from that place from
7 where they were staying and took it to a gas station at the
8 other end of Shaw Air Force base, and that's where we met them
9 at. And Melissa got in the car with him, and I climbed in the
10 RV with Robert.

11 Q: And do you have any recollection of the accident?

12 A: No, I don't. I was hurt. All I do remember -- and I
13 hear it over and over -- is a boom. I heard a boom and that
14 was it. And I don't know if that boom was from hitting
15 something or from the explosion itself or whatever. I don't
16 know. I heard a boom. I'm thinking that it was a tire
17 because obviously the RV was sitting for so long, the tires
18 were dry rotted because they wanted me to remodel the RV and
19 fix the RV for her, and that was the whole point of me going
20 over there to help them.

21 MR. FALK: I have no further questions.

22 THE COURT: Ms. Jameson?

23 MS. JAMESON: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. JAMESON:

GENE D. EVANS, JR. - CROSS BY MS. JAMESON

1 Q: You originally were represented by a public defender;
2 correct?

3 A: Yes, ma'am.

4 Q: And I think you mentioned you had three attorneys. Did
5 you have someone else before Mr. Griffith?

6 A: Yes. I had -- the first one I had was a young guy that
7 just started here. God, I forget his name. I think his name
8 was Griff or Griff or Griffin or something like that. And
9 then they -- then they -- I guess he went to another district
10 or whatnot, and then the head solicitor, Mr. -- who's the head
11 solicitor?

12 Q: Solicitor Finney?

13 A: No. Is it Timothy or something like that?

14 Q: The public -- the head public defender?

15 A: Yeah.

16 Q: Timothy Murphy?

17 A: No, no. What's the assistant? Well, anyway, they gave
18 me him. They gave me another one, another public defender,
19 and then that public defender went for a bond hearing and they
20 -- they postponed it or whatnot, and there was some words
21 exchanged. And so he said being that I wasn't satisfied with
22 his service, they gave me a pro bono lawyer, Timothy.

23 Q: So the Public Defender's Office was relieved, and Mr.
24 Griffith was appointed to represent you?

25 A: Yes, ma'am.

GENE D. EVANS, JR. - CROSS BY MS. JAMESON

1 Q: You mentioned briefly a speedy trial, and I think you
2 testified you were unaware that a speedy trial motion had been
3 filed. Did you request a speedy trial?

4 A: I did not request no speedy trial.

5 Q: You never asked your attorney to file a speedy trial
6 motion?

7 A: No, ma'am.

8 Q: Did you want to proceed to trial?

9 A: I didn't -- I didn't even -- I wasn't even aware of
10 anything like that. I wasn't even aware. I didn't -- I
11 didn't -- didn't care what happened. I didn't.

12 Q: You were aware you had pending criminal charges as a
13 result of this accident; correct?

14 A: I had what?

15 Q: You were aware that you had criminal charges as a result
16 of the accident; correct?

17 A: Yes, when I got arrested and I went to jail.

18 Q: Okay. And were you aware you were charged with felony
19 DUI as a result of Robert's death?

20 A: Yeah. I didn't know that until I got to the jail.

21 Q: When when you got to the jail? When you were arrested in
22 April of 2017?

23 A: Yeah. When I got arrested two months after the accident.

24 No one's ever talked to me about the accident until I got
25 arrested.

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1 Q: So you weren't under arrest immediately after the
2 accident when you were airlifted to Richland County; correct?

3 A: Right. That was two months later I got arrested.

4 Q: And you weren't under arrest when Trooper Boland came to
5 speak with you; correct?

6 A: Right.

7 Q: And he originally came three hours after the accident;
8 correct?

9 A: That's what they say. I don't remember that.

10 Q: You don't remember the period when you were at Richland
11 Hospital; correct?

12 A: I don't remember the period from the accident until a
13 couple of days later when I woke up in the hospital. I
14 couldn't have. I couldn't have. I was too busted up and
15 banged up. I had a concussion in my front right here where a
16 rod went in my head. That's what the pictures is. I had
17 broken bones in my shoulders and my back.

18 Q: So the few days after the accident, you have no
19 recollection of what happened; correct?

20 A: Right. I didn't know Robert was dead until the fourth
21 day after the accident. That's when I found out Robert had
22 died in the accident because the reenactment officer that was
23 talking to me asked me, and I told him -- I said ask Robert.
24 I said he was driving, and then he said it and then all my
25 family went ballistic then. They were, like, he wasn't

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1 supposed to know, and da, da, da, da, da, because I kind of
2 flipped out then.

3 Q: When you were referencing the reconstruction officer, are
4 you talking about Lance Corporal Trotter?

5 A: Yes, ma'am.

6 Q: And he came to see you days later after you'd been at the
7 hospital at Richland County; correct?

8 A: Yes. But I didn't know who he was or his name at that
9 time. I didn't know it until the trial when he was talking
10 because I never -- I couldn't open my eyes. My eyes were
11 swollen shut and -- but I remember speaking to him. And when
12 he came to the trial and was speaking here at the trial, it
13 was the same voice that -- so I knew it was him, and they said
14 -- he said it was him, and I said, I know.

15 Q: Do you recall your first attorney requesting that you be
16 evaluated for competency?

17 A: Yes, ma'am.

18 Q: And you were evaluated by doctors from the Department of
19 Mental Health; correct?

20 A: Ms. Donna Maddox. That's what it says in the
21 transcripts. I don't remember her name or nothing like that.
22 I just remember it in the transcript that I went and spoke to
23 her. They took me somewhere to speak to her.

24 Q: And you remember speaking to her?

25 A: Yes, ma'am.

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1 Q: Do you remember that you were found competent for trial?

2 A: I didn't know that until they said it in the transcripts
3 in trial. I didn't know that until the trial. That was a
4 year before Just Care.

5 Q: And your attorney or ultimate attorney or trial attorney,
6 Timothy Griffith, he informed Judge King that you had been
7 transferred to Just Care shortly before the trial; correct?

8 A: Say that again?

9 Q: Did your attorney -- did Mr. Griffith tell Judge King,
10 the trial judge, that you had been transferred to a mental
11 health facility shortly before trial, that you had just been
12 in Just Care and had been brought back from Just Care for the
13 trial?

14 A: Yes. The prosecutor, yes.

15 Q: Yeah. He -- he -- Tim Griffith told Judge King that;
16 correct?

17 A: Yes. And the judge asked if there was any reports on
18 that.

19 Q: Do you recall him telling Judge King that you were able
20 to assist him and communicate with him?

21 A: Yes.

22 Q: And he told the Court that he had no reason to doubt your
23 competency; correct?

24 A: Yes.

25 Q: And Mr. Griffith also brought up these mental health

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1 concerns during your sentencing; correct?

2 A: Say that again? I can't understand that.

3 Q: Did Mr. Griffith in sentencing when he was arguing that
4 you should get a lesser sentence bring up some of these mental
5 health concerns and your attempts to harm yourself?

6 A: I don't remember that. I got the transcript over there.

7 Q: Mr. Griffith moved to suppress your blood sample and the
8 analysis of your blood before trial; correct?

9 A: Yes. There was a suppress.

10 Q: And you had a hearing on that before Judge King?

11 A: Yes.

12 Q: Do you recall what reason --

13 A: I remember -- I remember that happening, but I don't
14 remember being -- if it was suppressed or whatever. I just
15 remember -- I remember that happening.

16 Q: You remember the hearing, but you don't remember any
17 specifics?

18 A: Yeah. I remember being in here, and I remember them
19 talking about it.

20 Q: Okay. Do you recall whether you testified during that
21 hearing?

22 A: Yes, I did testify.

23 Q: At the suppression hearing?

24 A: Oh, I don't remember if I did. I don't think -- I don't
25 remember. I don't think I did. I think I only testified

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1 once, and that was in trial, I think. I don't remember
2 testifying any other time.

3 Q: Do you recall the Court talking to your attorney about
4 whether you wanted to testify during that suppression hearing?

5 A: I remember my attorney -- attorney telling me -- asking
6 me if I wanted to, and I remember the judge telling me that if
7 -- if I do -- I remember the judge saying something about me
8 testifying. So yeah. Yes, ma'am.

9 Q: And you admitted when you testified at trial that you
10 were under the influence of methamphetamine during the wreck;
11 correct?

12 A: There was -- yes, there was methamphetamine in my system
13 before the wreck and during the wreck.

14 Q: And your defense was that you were not the driver, but
15 you were standing behind Robert, who was driving; correct?

16 A: Yes, ma'am.

17 Q: Do you recall the State presenting Shonda Brown, who said
18 she saw you driving immediately before the wreck?

19 A: Yes. That was -- I got pictures of her -- of her and her
20 husband that was at the accident and whatnot, and she was the
21 one driving the oncoming vehicle coming -- oncoming vehicle
22 that they said I swerved over in their lane and then went into
23 the tree.

24 Q: And her boyfriend, Andrew Moyd, said he pulled you out
25 from under the steering wheel and removed a seatbelt from

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1 around you; correct?

2 A: Yes. I remember he said that in trial, but he didn't say
3 that before when I talked to him.

4 MS. JAMESON: A moment's indulgence, Your Honor.

5 BY MS. JAMESON:

6 Q: You testified that you wanted Mr. Griffith to call
7 witnesses on your behalf at trial; correct?

8 A: Yes.

9 Q: And one of the witnesses you wanted called was Melissa
10 Flowers, the girlfriend of Robert at the time, who owned the
11 RV; correct?

12 A: Yes. At that time she was wanting to -- she was wanting
13 to talk, but as of, like, now, because I contacted her here
14 just a couple of weeks ago -- well, I had somebody else
15 contact her, and now it's a different ballgame. They -- then
16 they said the RV was stolen and all kinds of stuff like that.
17 Everything's changed now because of her -- because the RV was
18 in somebody else's -- her sister's name and whatnot, and so
19 now she's totally, totally against me now.

20 Q: Do you recall Deputy Solicitor Meadors telling Judge King
21 that they were not able to locate Melissa Flowers at the time
22 of trial and that's why they couldn't present her as a
23 witness?

24 A: Yes, but that wasn't -- that wasn't the only witness
25 though. It was -- it was a few -- few witnesses.

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1 Q: I think someone else you testified --

2 A: Matters of fact, the prosecutors had her testify -- was
3 trying to get her to testify against me, and that's why she
4 didn't show up in court. And I was hoping that she would
5 have, but she didn't. And she was supposed to have been a
6 witness for the prosecutor, not for me at that time, but she
7 didn't show up because she was for me. She -- she was there.
8 She knows what happened.

9 Q: I think you testified you also wanted some family members
10 or friends who were at the hospital to discuss whether you
11 gave consent to Trooper Boland; correct?

12 A: Yes. Or just -- or medical papers because it was
13 impossible for me to talk. Well, he said I never talked to
14 him. He said I mumbled and shook my head yes and no while in
15 a neck brace and strapped to a board.

16 Q: And again, you testified before you have no recollection
17 of days after the accident? It's about day four where you
18 start remembering stuff; correct?

19 A: Yes. It was, like, day three when I talked to that -- I
20 couldn't open my eyes, and day four I started -- I was able to
21 open my eyes.

22 MS. JAMESON: No further questions, Your Honor.

23 THE COURT: Anything else, Mr. Falk?

24 REDIRECT EXAMINATION

25 BY MR. FALK:

GENE D. EVANS, JR. - REDIRECT BY MR. FALK

1 Q: I just want to make -- so you have no recollection of
2 Officer Boland asking you whether or not you wanted to submit
3 to a blood draw?

4 A: Yeah, it was impossible. I couldn't have. I couldn't
5 have.

6 Q: And my question is, did -- you don't remember him asking
7 you that; is that correct?

8 A: Yes. I don't remember him. I don't even remember the
9 first day, two days in the hospital.

10 Q: And why -- and why do you think he couldn't have?

11 A: If -- if I could have had talked and if I would -- would
12 have had seen him and speaked to him or answered him, I would
13 have had no problem with giving him a blood test. I would
14 have had no problems at that time because I know I wasn't
15 driving. I didn't do anything wrong. I didn't -- I would
16 have gave him that, but that -- he's -- he's lying. I did not
17 give him consent. I couldn't give him consent.

18 Q: Okay.

19 MR. FALK: No further questions.

20 MS. JAMESON: No recross, Your Honor.

21 THE COURT: You may step down.

22 Who's your next witness?

23 MR. FALK: We'll call Mr. Griffith.

24 THE COURT: All right. I'll step out for a moment as we
25 prepare for him to testify.

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1 (WHEREUPON, there was a pause in the proceedings, after
2 which the proceedings resumed as follows.)

3 THE BAILIFF: All right. Place your left hand on the
4 Bible. Raise your right hand. State your full name.

5 THE WITNESS: Timothy Lee Griffith.

6 THE BAILIFF: Do you solemnly swear and affirm that the
7 testimony to this Court to be the whole truth and nothing but
8 the truth, so help you God?

9 THE WITNESS: I do.

10 THE BAILIFF: Step around, sir. State your full name and
11 spell your last name for the record, please, sir.

12 THE WITNESS: Timothy Lee Griffith. G-r-i-f-f-i-t-h.

13 TIMOTHY GRIFFITH, being first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FALK:

17 Q: Mr. Griffith, there's some testimony that -- well,
18 looking at the transcript, you filed a motion to try and
19 suppress the blood draw; is that correct?

20 A: Yes.

21 Q: And what was your argument?

22 A: Well, the -- there were several things we argued. That,
23 you know, under the statute that they had not followed the
24 terms of the statute and that Mr. Evans was at the time under
25 the influence still of a lot of medication. He was in -- had

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1 just been admitted to the hospital after an accident. It was
2 just very, very shortly after the accident. So we asked that
3 it be suppressed.

4 Q: And the State tried to argue that it was voluntary; is
5 that right? Wasn't that one of their arguments, that he gave
6 consent?

7 A: Yes. They tried to say that it was voluntary, but my
8 argument was it couldn't be voluntary because he was not in a
9 condition to give consent, as I recall.

10 Q: Do you have a transcript with you?

11 A: No, I don't.

12 Q: Do you remember who Kevin Selenski was when he testified?
13 I'm going to hand you a transcript. If you can look at -- I'm
14 just trying to find his first page. Okay. Now, if you could
15 just look at page 224 of the transcript or the record,
16 whatever you have. I think they're the same pages.

17 A: Okay.

18 Q: So if you can just -- so does that help remind you who
19 Kevin Selenski was?

20 A: I see that he is testifying here.

21 Q: And what was his role? Is he the person who did the
22 analysis on the blood draw?

23 A: It looks like it. Toxicology department at SLED.

24 Q: And if you look at page 233, line 14?

25 A: Okay. The methamphetamine was a 0.78 milligrams per

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1 liter, and the amphetamine was 0.11 milligrams per liter.

2 Q: All right. So that's where -- so he's now testifying as
3 to the results for the blood draw; is that fair to say?

4 A: Yes.

5 Q: Did you renew your objection?

6 A: I don't recall whether I did or not. It appears that I
7 did not.

8 Q: So there -- so is it your understanding that since you
9 had a motion *in limine*, several witnesses were called, then
10 this witness called, that in order to preserve the objection
11 for appeal, you have to renew it before the testimony?

12 MS. JAMESON: Your Honor, I would object for the record.
13 This is not the allegation that was raised in the application,
14 and I have not heard a motion to amend to raise this
15 allegation.

16 MR. FALK: It still relates to the -- it still relates to
17 the challenge to the blood draw.

18 MS. JAMESON: I believe what's being raised now is
19 failing to preserve for appellate review the challenges to the
20 blood draw, which is a different allegation.

21 THE COURT: Mr. Falk?

22 MR. FALK: I think it's still covers under the -- you're
23 not challenging the blood draw if you are not -- if you are
24 not objecting to its being admitted into testimony. I mean,
25 he may have challenged the blood and may have partially

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1 challenged it, but until you renew the objection, you haven't
2 challenged the blood draw.

3 THE COURT: I overrule the objection.

4 MS. JAMESON: Thank you, Your Honor.

5 MR. FALK: No further questions.

6 CROSS-EXAMINATION

7 BY MS. JAMESON:

8 Q: Mr. Griffith, how did you become involved in this case?

9 A: The Public Defender's Office appointed me to Mr. Evans.
10 They had represented him up to a point, and then they
11 discerned that he would be better off in my hands.

12 Q: Were you on -- did you have some type of conflict
13 contract with the Third Circuit Public Defender's Office?

14 A: I -- what year was that? But I have had a contract with
15 them for quite some number of years; so I imagine, yes, I did
16 at that time as well.

17 Q: Do you recall when you were appointed?

18 A: It was in December of the year prior to the trial.

19 Q: And he was tried in February of 2018; correct?

20 A: Yes.

21 Q: And you filed a speedy trial motion on Mr. Evans' behalf;
22 correct?

23 A: That is correct.

24 Q: Why did you file one?

25 A: I never file a speedy trial when I am immediately

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1 assigned to a case because I want all the time I can have to
2 get ready for it, to learn more about it, but I did so at his
3 bequest. He -- he was anxious to get it over with, he said.

4 Q: So he asked you to move for a speedy trial; correct?

5 A: He did ask me to file a speedy trial.

6 Q: And he was tried within roughly one year of this
7 incident; correct?

8 A: I think the incident happened, like, in April and then he
9 was tried in February, a year later.

10 Q: So approximately a year after the wreck; correct?

11 A: Almost a year, yes.

12 Q: Did you feel prepared for trial when the case was called?

13 A: Oh, yes, I was quite prepared.

14 Q: Would you have moved for a continuance if you were not
15 prepared?

16 A: I'm sorry?

17 Q: Would you have moved for a continuance if you felt like
18 you weren't prepared for trial?

19 A: If I didn't feel like I was ready, I would definitely
20 move for a continuance.

21 Q: What sort of investigation did you do in this case?

22 A: Well, of course, I talked to Mr. Evans. I went through
23 all of the discovery that was given to me. I talked to some
24 of the witnesses. I got more complete statements from them,
25 as I could. Some of that, of course, we had written down and

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1 my paralegal notarized them. And so I was -- I felt like I
2 had asked all the questions I could ask and done all the
3 investigation I could do. I did not hire an investigator, but
4 I did myself question these folks.

5 Q: Did you talk to any of the troopers or law enforcement?

6 A: Oh, I definitely talked to some of the troopers and law
7 enforcement. In fact, Mr. Boland, it was my neighbor.

8 Q: Trooper Boland was your neighbor?

9 A: Yeah.

10 Q: And you talked to him?

11 A: Yeah.

12 Q: Did Mr. Evans give you any witnesses he wanted you to
13 investigate?

14 A: I don't remember whether he mentioned anybody or not, but
15 the people I talked to -- I think he might have mentioned some
16 names, but when I talked to them, they were not going to be
17 any help to him. In fact, they wanted to test -- they would
18 have been testifying against him. It would have not been in
19 his interest for me to bring them in.

20 Q: And so you made a strategic decision not to call
21 witnesses that would not have been favorable to your client
22 after your investigation?

23 A: Absolutely.

24 Q: And there were several witnesses who testified that your
25 client, Mr. Evans, was the driver; correct?

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- 1 A: That's correct.
- 2 Q: Including a Shonda Brown, who actually saw your client
3 driving before the wreck; correct?
- 4 A: That's correct.
- 5 Q: Immediately before the wreck; correct?
- 6 A: Yes.
- 7 Q: And then witness Andrew Moyd pulled your client from
8 underneath the steering wheel; correct?
- 9 A: That's correct.
- 10 Q: And there were photographs taken on the scene showing the
11 victim, Robert, in the passenger position or more towards the
12 passenger position; correct?
- 13 A: That's correct.
- 14 Q: And a drug analysis showed that Mr. Evans was under the
15 influence of methamphetamine; correct?
- 16 A: Correct.
- 17 Q: Did you see any reason to challenge the chain of custody
18 of the blood draw and the analysis that was done by SLED?
- 19 A: No. They had a pretty well-documented chain.
- 20 Q: And this was discussed on direct, but you did file a
21 motion to suppress the blood sample; correct?
- 22 A: I did.
- 23 Q: And that was a written motion that you filed; correct?
- 24 A: Yes. We also argued the motion.
- 25 MS. JAMESON: And, Your Honor, for the record, a copy of

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1 the motion to suppress is in the record on appeal, which is
2 part of the record before Your Honor on page 387, and that was
3 made Court's Exhibit 2 at the hearing on the motion to
4 suppress.

5 BY MS. JAMESON:

6 Q: And your argument, Mr. Griffith, was that the State
7 hadn't complied with the statute; correct?

8 A: That's correct.

9 Q: That the video recording was not on, and he wasn't given
10 a written copy and advised that he did not have to give
11 consent; correct?

12 A: That's correct.

13 Q: And you also made an argument at the hearing that it
14 would not have been physically possible for him to give
15 consent based on his medical condition; correct?

16 A: That is correct.

17 Q: And drugs that he was given when he was airlifted from
18 the scene to Richland County; correct?

19 A: Yes.

20 Q: And testified -- Trooper Boland testified at that motion
21 to suppress hearing; correct?

22 A: Yes, he did.

23 Q: And he testified that your client wasn't under arrest at
24 the hospital; correct?

25 A: He did.

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1 Q: And he -- Trooper Boland got to the hospital in Columbia
2 within a few hours of the wreck; correct? I think three
3 hours?
4 A: That's my understanding, yes.
5 Q: And your client wasn't actually arrested until April?
6 This incident was in February, and he was arrested in April;
7 correct?
8 A: That's correct.
9 Q: And Trooper Boland testified that your client gave
10 consent for the blood draw; correct?
11 A: He testified that he consented, yes.
12 Q: And that consent was through an unequivocal nod of yes;
13 correct?
14 A: I wasn't there, but that's what he was saying in court.
15 Q: That is what Trooper Boland testified to though; correct?
16 A: Yes.
17 Q: And you challenged this, arguing that he was in no
18 condition; correct?
19 A: I did.
20 Q: Did your client testify at this motion to suppress
21 hearing?
22 A: I don't really remember if he -- let me see. Motion to
23 suppress?
24 Q: If you look at page --
25 A: I don't know if he did or not.

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1 Q: -- 52 of the transcript?

2 A: What page?

3 Q: Page 52 in the record on appeal. That might help to

4 refresh your recollection.

5 A: Okay. 52 or 62?

6 Q: 52, on to page 53.

7 A: Now, you said 52?

8 Q: 52, on to page 53, yes.

9 A: Okay.

10 Q: Towards the bottom of 52.

11 A: I'm looking at page 52. I don't see Mr. Evans on this

12 page. Maybe -- I see -- this is Kevin Boland's.

13 Q: If you'll look at line 19?

14 A: 19, all right.

15 Q: Through 53, line --

16 A: Oh, yeah. This is where he -- yeah. Okay. The Court is

17 asking him if he wants to testify. Okay.

18 Q: The Court asked if your client, Mr. Evans, wanted to

19 testify in support of the motion to suppress; correct?

20 A: Yes.

21 Q: And you told the Court he did not remember anything and

22 did not wish to testify; correct?

23 A: Yes.

24 Q: And you heard Mr. Evans before testifying he can't

25 remember anything for a few days after the accident; correct?

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1 A: That's correct.

2 Q: So you can't really be sure, nor can he, whether he
3 consented or not because he doesn't remember; correct?

4 A: That's correct.

5 MS. JAMESON: No further questions, Your Honor.

6 THE COURT: Anything further?

7 REDIRECT EXAMINATION

8 BY MR. FALK:

9 Q: When you're talking about preparation for the trial, so
10 Mr. -- my client testified that for about the four weeks prior
11 to the trial, he was either in Just Care or in the other
12 hospital; is that correct?

13 A: That's what he testified.

14 Q: All right. So what kind of communication did you have
15 with him the day before the trial?

16 A: I don't specifically recall. Just a minute. Let me pull
17 out my little sheet here that'll tell us what happened. Here
18 we go. Here it is. Okay. So -- okay. The trial began on
19 the 22nd, and soon the 13th I had a telephone conversation
20 with Mr. Evans and on the 19th I visited Mr. Evans.

21 Q: At Just Care?

22 A: Pardon me?

23 Q: Where was he?

24 A: Prepped for trial visit client. I'm not sure where he
25 was. And then -- and we -- we spent a significant amount of

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1 time prepping for the trial and visiting the client. I've got
2 six hours on there, but I'm sure I didn't spend all that time
3 with him. Then on the 20th, I visited with his fiancée and
4 witnesses in my office. On the 20th spoke to people on the
5 phone. And so on the 13th and the 19th, I communicated with
6 him just prior to trial.

7 Q: But that 19th when you said you met with him, it doesn't
8 indicate that you met with him at Just Care?

9 A: I'm not sure where. It doesn't say where I met with him.
10 It just said I met with him.

11 Q: Well, that would be unusual. Wouldn't you remember?

12 A: Usually, I meet with people at the jail.

13 Q: Right.

14 A: But I'm not sure if he --

15 Q: So I mean --

16 A: -- was in the jail, and I don't remember whether I saw
17 him in the hospital or not. I may have gone over there to see
18 him, but I think it was in the jail. More than likely, it was
19 in the jail because I do remember visiting him several times
20 in the jail, and he had -- when I first started visiting, he
21 had the turtle on. And so -- so we sat down and talked for
22 quite a while.

23 Q: Were you aware of this probate hearing that was set for
24 the 20th?

25 A: No. I didn't know anything about it until he showed me

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1 the paper or something the day of the trial. We were in
2 trial.

3 Q: But you weren't sure? Yeah. I mean, so the probate
4 hearing was on the 20th and if you look at the outside of the
5 transcript, doesn't it say the trial starts on the 20th?

6 A: I think the trial started -- let's see. Did it start on
7 the 22nd or the 25th?

8 Q: Well, the -- here's a copy of the transcript --

9 A: Okay. Here it is.

10 Q: -- that says it went on -- started on the 20th through
11 the 22nd.

12 A: Okay. You're saying it started on the 22nd?

13 Q: No, no. It went from the -- I don't know when it
14 started. I'm just saying right there it says 20th to the
15 22nd.

16 A: Okay. It started on the 20th.

17 Q: All right. Well, did that -- so you saw the probate
18 notice. Why didn't you -- did you do anything about that?

19 A: I didn't. I wasn't aware of anything going on with
20 probate with him. I, of course, didn't represent him in
21 probate. I don't recall what the whole thing was about the
22 probate, and I really don't -- I don't know if I actually
23 looked at that paper or not. I don't recall him really
24 pointing anything out about it, but I would have made some
25 kind of note if it was something significant to -- that I, you

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1 know, had looked at, and I did not make any notes.

2 Q: You have seen the notice though, haven't you?

3 A: I'm sorry?

4 Q: Have you seen the notice, that formal document?

5 A: I've seen it since. I've seen it just now.

6 Q: And so --

7 A: But I don't recall it from before that really, to tell

8 you the truth.

9 Q: And that was a notice for him for a hearing on his

10 competency, is it not?

11 A: He had had a competency hearing. In fact, that is to say

12 in part of my notes I had reviewed a report from the

13 Department of Mental Health.

14 Q: What was the date of the report?

15 A: That date was 1/23/18 when I -- when I reviewed it. I

16 don't know the day that he was evaluated, but I reviewed it on

17 the 18th, 1/18. Let me see if I can find it in there. It may

18 have just been a patient care report. I don't think I have

19 that report here.

20 Q: If you look at page 70 of the transcript?

21 A: 70? Okay.

22 Q: And that's where there's a discussion about this probate

23 court hearing.

24 A: Okay. Let me see.

25 Q: Or at least there's a discussion that he was transported

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1 from Just Care, looking at lines 13 to 15.

2 A: Okay. What about it? He was first evaluated by the
3 South Carolina Department of Mental Health down there starting
4 at line 23. That's the Court speaking to that, and the Court
5 does have a copy of the exhibit. And then the Court reviewed
6 the report of Dr. Donna Schwartz-Maddox, which he was found
7 some kind of disorders here, but does have an opinion that he
8 is competent to stand trial. Further, he can aid his attorney
9 in the defense.

10 Q: Well, it looks like Donna Maddox's report was from July
11 12th, 2017. If you look at page 71?

12 A: I'm looking at 71. Let's see. I don't see a date on
13 there.

14 Q: Look at lines 4 and 5.

15 A: 4 and 5? Oh, here it is. Yeah. July 12th, '17. Yeah.
16 Yep.

17 Q: So that's a report from July of 2017, and then you find
18 out that he's gone back to Just Care sometime very close to
19 the first day of trial. Did you not have concerns that he
20 needed to be evaluated?

21 A: First of all, I didn't know anything about the probate
22 thing until the day that he showed it to me, and all the times
23 that I talked to him, every time I talked to him, he was
24 coherent. He knew what was going on. I did not see an issue
25 with him. I don't know who filed the -- my question is who

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1 filed the thing in probate? Was it someone in his family or
2 someone who wanted to have guardianship or something?

3 Q: Well, it looks as though two doctors signed off on it.

4 A: But who asked for it was the question. I just wondered.
5 Of course, I'm not asking the questions.

6 Q: Yeah. I don't know. Just a guardian *ad litem*.

7 A: I think it turned out it was somebody in his family who
8 wanted to get guardianship over him, like, but I don't
9 remember. But I had read the Department of Mental Health,
10 reviewed their report, and all the times that I talked to him,
11 he -- he had no issues. He and I talked reasonably together,
12 and so I had no reason to doubt his competency for trial.

13 Q: Because it does look like if you look again on page 70 --
14 and I think this is consistent with how he testified. Line
15 13, it looks like the Friday before trial he left the
16 detention center and went to -- back to Just Care.

17 A: Well, it says maybe through the probate court. I'm not
18 sure. I mean, I don't know where he went either.

19 Q: Apparently, last Friday he was sent back from Sumter-Lee
20 Detention Center. It sounds like he was sent from there to
21 someplace, I assume to back to Just Care.

22 A: I have no idea. I just know I talked to him on the 13th
23 and the 19th before trial.

24 MR. FALK: No further questions.

25 MS. JAMESON: Very briefly, Your Honor.

TIMOTHY L. GRIFFITH - RECROSS BY MS. JAMESON

RECROSS-EXAMINATION

1
2 BY MS. JAMESON:

3 Q: Do you still have a copy of that transcript in front of
4 you?

5 A: I sure do.

6 Q: If you can look at page 70 through 72, line 7, to
7 yourself. I have a few questions about that.

8 A: Page 72, line what?

9 Q: Excuse me. Page 70, starting at line 7. If you'll read
10 that to yourself, through page 72, line 7.

11 A: Okay. Down to where on 72?

12 Q: Line 7.

13 A: Oh, I got it.

14 Q: You told --

15 A: Yeah. It looks like the detention center sent him out
16 and then I had no idea.

17 Q: And it looks like the detention center sent him because
18 he wasn't taking his medication?

19 A: Yeah.

20 Q: Or at least that's what you told Judge King; correct?

21 A: Yes.

22 Q: And you told Judge King that Mr. Evans was competent and
23 you had no reason to doubt his competency based on all of your
24 interactions with him; correct?

25 A: Yes.

TIMOTHY L. GRIFFITH - RECROSS BY MS. JAMESON

1 Q: Including recent interactions on the 13th and the 19th;
2 correct?

3 A: Correct.

4 Q: Immediately before trial starting on the 20th; correct?

5 A: Yes.

6 Q: And the report from Dr. Schwartz-Maddox diagnoses him as
7 having a stimulant use disorder; correct?

8 A: Yes. And --

9 Q: And methamphetamine is a stimulant?

10 A: Yeah.

11 Q: Correct?

12 A: I think it said it was because he'd been using so long or
13 something.

14 Q: And that was the only diagnosis that is placed upon the
15 record in addition to that he is competent to stand trial and
16 can aid his attorney in his defense; correct?

17 A: Correct.

18 MS. JAMESON: No further questions, Your Honor.

19 THE COURT: All right. Thank you, sir.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Any additional witnesses?

22 MR. FALK: No, Your Honor.

23 THE COURT: Any argument?

24 MS. JAMESON: Yes, Your Honor, if the State may be heard
25 briefly.

1 As your Honor is aware, it's the applicant's burden in a
2 PCR action to establish that he is entitled to relief. And
3 for the issues that are still in dispute, the State submits
4 that Mr. Evans cannot meet his burden of proof as to either
5 deficiency or prejudice.

6 So the first issue that counsel was ineffective for
7 failing to challenge the sufficiency of the blood draw, the
8 record is abundantly clear that Mr. Griffith did indeed
9 challenge the blood draw on multiple grounds. A hearing was
10 held, and the judge determined that the sample was properly
11 obtained by consent when Mr. Evans was not under arrest.

12 That -- that finding of consent was unchallenged when Mr.
13 Evans declined to take the stand in his own defense. And the
14 testimony we have today is that he doesn't remember anything
15 for the first few days he was there. So the uncontested
16 testimony before this Court is that he did consent based on
17 the testimony of Officer Boland.

18 There was no valid Fourth Amendment argument that Mr.
19 Griffith could have been made, and so the claim must fail as a
20 matter of law. Mr. Griffith was not deficient, nor was he
21 prejudiced.

22 The second issue, the failing to prepare for trial, in
23 his pro se application part of that allegation was based on
24 failing to challenge the blood draw. The State submits the
25 record is abundantly clear that he did challenge that blood

1 draw.

2 The failure to ensure he's competent claim also fails.
3 He cannot meet prejudice as a matter of law because he has
4 failed to present any evidence to this Court that he was not
5 competent at the time of trial. And so as a matter of law,
6 that claim must fail.

7 Moreover, the record makes it abundantly clear that he
8 was evaluated for competency. He was determined to be
9 competent, and counsel told Judge King he had no reason to
10 doubt his client's competency. We also have testimony from
11 Mr. Griffith here today that he interacted with him twice
12 immediately before trial and had no reason to doubt his
13 competency, and that the reason his client had been taken for
14 mental health treatment was his failure to take medication
15 that was prescribed to him. And so the -- that claim must
16 fail as a matter of law.

17 And Your Honor has already ruled on that third issue and
18 granted summary judgment. So the State would ask that this
19 application be dismissed, denied and dismissed in full.

20 THE COURT: Mr. Falk?

21 MR. FALK: Your Honor, with respect to the blood draw,
22 without having preserved the objection, we contend that he did
23 not adequately challenge.

24 THE COURT: Yeah. I noticed you mentioned that -- that
25 it came up as part of a motion *in limine*, but in fact, it was

1 a motion to suppress. Is there a difference?

2 MR. FALK: I -- well, this -- certainly as far as record
3 preservation, absolutely -- absolutely no difference.

4 THE COURT: Okay.

5 MS. JAMESON: Your Honor, we recently have case law from
6 our appellate courts potentially waiving preservation
7 requirements specifically when it relates -- relates to Fourth
8 Amendment issues, and so I would dispute that
9 characterization.

10 Also, this is not a situation where the brief said that
11 the issue was not preserved for appellate review or any sort
12 of argument was made in regards to that. And so the record
13 does not show that this claim was not preserved for appellate
14 review.

15 THE COURT: All right. You may proceed.

16 MR. FALK: I mean, on its face it was -- I mean, there
17 was no -- there was no renewing the objection when the
18 evidence came in.

19 And, you know, as far as uncontroverted that it was --
20 that it was consensual, I mean, the testimony we had is that
21 the person who supposedly gave consent did not remember those
22 three days. And so that would certainly question what the --
23 how voluntary the consent or the volitional ability to consent
24 when somebody has no recollection that quickly after an
25 accident of that nature. So I mean, for him to -- so I think

1 that would be an issue that needs to be preserved for appeal.

2 THE COURT: Anything further?

3 MR. FALK: No, Your Honor.

4 MS. JAMESON: No, Your Honor.

5 RULING

6 THE COURT: I find that the applicant has failed to meet
7 his burden of showing that the representation was deficient or
8 that there was prejudice.

9 The primary issue, aside from those raised in the
10 application, seems to be that Mr. Evans is still contesting
11 the findings of the jury that he was the driver of the
12 vehicle. He testified during the trial that he was not the
13 driver, didn't he? So he gave testimony, and the jury did not
14 believe his testimony. This is -- this is not an opportunity
15 to reweigh that testimony.

16 And based on the testimony of Mr. Griffith, he did an
17 adequate job in preparing and raising the issues and in
18 representing Mr. Evans. Obviously, there's a bad result, but
19 that's not something we can relitigate through this PCR
20 proceeding. So I deny the application and will have Ms.
21 Jameson to prepare a proposed order.

22 MS. JAMESON: Thank you, Your Honor.

23 (WHEREUPON, the proceedings ended at 5:36 p.m.)

24

25 --- END REQUESTED TRANSCRIPT ---

State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 55, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 28th day of June, 2022.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

April 27, 2023

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2022 OCT 24 PM 3:51
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Gene D. Evans, Jr., SCDC #375509, Case No.: 2020-CP-43-0933

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hart
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before this Court by way of Applicant Gene D. Evans, Jr.'s application for post-conviction relief challenging his conviction and sentence for felony driving under the influence (DUI) resulting in death based on allegations of ineffective assistance of counsel and a constitutional challenge to the felony DUI statute. James K. Falk, Esquire, was thereafter appointed to represent Applicant.

In response, Respondent the State of South Carolina filed a return and partial motion for summary dismissal, requesting an evidentiary hearing to resolve the claims of ineffective assistance of counsel as set forth in the application and moving for summary dismissal of the constitutional challenge to the felony DUI statute.

An evidentiary hearing on this action was convened June 28, 2022, before this Court at the Sumter County Courthouse. Applicant appeared alongside counsel Falk. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in application. This Court heard testimony from Applicant and his former trial counsel.

Following a thorough review of the record in its entirety, along with the testimony and

evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

FACTUAL AND PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined within the South Carolina Department of Corrections. On February 12, 2017, Applicant was driving an older-model recreational vehicle (RV) on a public roadway in Sumter while under the influence of methamphetamine. While he was driving, Applicant lost control of the vehicle and ran into a tree, fatally killing the sole passenger, his friend Robert Skidmore. An analysis of Applicant's blood sample taken approximately three hours after the wreck established Applicant was under the influence of methamphetamine. Applicant was arrested in April of 2017, and during the October 2017 term, the Sumter County grand Jury indicted Applicant for felony DUI resulting in death (2017-GS-43-1104). Applicant was originally represented by the Sumter County Public Defender's Office but was eventually appointed Timothy Griffith, Esquire, to represent him in December of 2017. The case was prosecuted by Deputy Solicitor John P. Meadors of the Third Circuit Solicitor's Office.

Upon order of the court, Applicant was evaluated by the South Carolina Department of Mental Health for competency and deemed competent.

At Applicant's request, counsel filed a motion for a speedy trial on January 23, 2018, and the State called the case to trial on February 20, 2018, before the Honorable Howard P. King, circuit court judge. At the outset of the trial, Applicant, though counsel Griffith, moved to suppress

the drug analysis of Applicant's blood based on a failure to comply with statutory requirements and a lack of consent to take Applicant's blood sample. Following a pre-trial hearing, Judge King denied this motion. Applicant's case proceeded to trial and he testified in his own defense, arguing that he was not driving the RV when the wreck occurred. On February 22, 2018, the jury convicted Applicant as indicted. Judge King sentenced Applicant to twelve years imprisonment.

Applicant timely sought direct appellate review and was represented on appeal by Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense-Office of Appellate Defense, who submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967) along with a petition to be relieved as counsel. Applicant then submitted his own *pro se* brief of appellant. Following a review of the entire record as required by Anders, the South Carolina Court of Appeals dismissed the appeal and granted appellate counsel's request to be relieved. State v. Gene David Evans Jr., Unpub. Op. No. 2020-UP-119 (Ct. App. filed April 29, 2020). The remittitur was issued on June 30, 2020.

ALLEGATIONS BEFORE THE COURT

In his *pro se* application for post-conviction relief, filed on June 24, 2020, Applicant alleges he is being held in custody unlawfully based on the following grounds:

1. Ineffective Assistance of Counsel
 - a. "For Not Challenging the Blood Draw and Test as a Fourth Amendment Violation"
 - b. "Failure to Prepare for Trial" and specifically, failing to challenge the blood draw and failing to ensure Applicant was competent to stand trial
 - c. "For Failing to Request the Reckless Driving Charge"
2. "Whether the Driving under the Influence with Death Resulting Statute is Unconstitutionally Unreasonable, Arbitrary, and Ambiguous?"

As requested relief, Applicant states he is seeking vacation of his sentence and a new trial.

In response to the application, Respondent served a return and partial motion to dismiss,

asking for a hearing to resolve Applicant's claims of ineffective assistance of counsel and moving for summary dismissal of Applicant's claims challenge the statute as a claim not proper for post-conviction relief. Attached to this return and before this Court are the records from Applicant's general sessions proceedings, his appellate records (including the record on appeal with a complete copy of the trial transcript), his SCDC records, and the records from this current PCR proceeding.

James K. Falk, Esquire, was appointed to represent Applicant in this proceeding pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court (S.C. Sup. Ct. Order filed Oct. 6, 2008) and Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Counsel did not amend the application.

At the evidentiary hearing Applicant proceeded forward on the grounds as set forth in his *pro se* application.

SUMMARY OF THE EVIDENTIARY HEARING

An evidentiary hearing was convened before this Court at the Sumter County Courthouse on June 28, 2022. Applicant was present alongside counsel Falk. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. Testimony was taken from Applicant and trial counsel Timothy L. Griffith.

At the start of the hearing, Respondent renewed its motion to dismiss the constitutional challenge to the felony DUI statute for failure to state a claim upon which relief could be granted in post-conviction relief, arguing the claim was improper and that the claim lacked merit as a matter of law. Respondent also moved to dismiss the allegation that counsel was ineffective for failing to request a jury instruction on reckless driving as a lesser-included offense of felony DUI.

resulting in death as the claim failed as a matter of law. Specifically, Respondent argued that reckless driving is not a lesser-included offense of felony DUI causing death, but rather, it is a distinct offense requiring proof of different elements. In support of this argument, Respondent cited State v. Cribb, 310 SC 518, 426 S.E.2d 306 (1992), which expressly holds that reckless driving is not a lesser-included offense of felony DUI. Respondent also cited to State v. Easler, 322 SC 333, 471 S.E.2d 745 (1996), reaffirming the holding in that reckless driving is not a lesser-included offense of felony DUI.

In response, Applicant conceded that Respondent was entitled to summary dismissal on both of those allegations.

Accordingly, both of these allegations were denied and dismissed with prejudice. Applicant then proceeded forward solely on the claims that counsel was ineffective for failing to adequately challenge and move to suppress the evidence obtained from the draw of his blood, that counsel failed to adequately ensure he was competent to proceed to trial, and that counsel failed to present favorable defense witnesses at trial.

Applicant testified first on his own behalf. He testified that immediately prior to his trial, he was transported to a mental health facility (Just Care) for mental health treatment at the request of the county detention center because his medication was not working properly. He testified he spent several weeks at the hospital, a week at Just Care, and then was transported back to the county detention center for his trial. He testified he was diagnosed with lack of sufficient to make reasonable decisions and this stemmed from the head injury he suffered during the wreck. He testified the attached an order from the probate court pertaining to his mental health issues to his *pro se* brief of appellant, which scheduled a hearing on an unrelated probate matter for February 20,

2018, the same day his trial began. He testified trial counsel failed to obtain any of this documentation regarding the unrelated probate matter. He elaborated that counsel failed to have him evaluated before trial. He testified counsel came to visit him the Saturday before his trial began and told him that he would have an upcoming court appearance but did not explain that it would be his trial. He testified he does not know what happened in the unrelated probate proceeding. He testified he was in-custody the entire time before trial following his arrest and he was under suicide watch.

Applicant testified his family came to visit him at the hospital shortly after the wreck and that he was severely injured in the wreck to such an extent that he has no recollection of the wreck the subsequent three days following the wreck. He testified he does not remember talking to law enforcement following the wreck but conceded he would have given consent for a blood sample to be drawn to help investigate the wreck. He asserted it would not have been physically possible for him to give consent based on the severity of his injuries but stated he has no recollection of the few days following the wreck so he cannot testify with any certainty as to whether he did or did not consent.

Applicant testified that he was not driving during the wreck and insisted that the victim was the driver. He testified he was helping assist the victim and his girlfriend move the RV because they were evicted from the RV park where they had been living in the RV. Applicant testified that he believes the accident was caused by the tires malfunctioning due to dry rot based on the poor condition of the RV. He testified that the only way he could be extracted from the RV was through the driver's side because of the extensive damage from impact to the passenger side of the RV.

Applicant testified counsel only visited with him twice before trial. He testified the first

visit was in December of 2017 shortly after counsel was appointed to represent him. He described this visit as a "new client" visit but stated they did review the accident report. Applicant testified the next visit was the Saturday immediately before trial and counsel did not have discovery or anything available for Applicant to review. He testified he did not have any conversations with counsel during trial.

Applicant testified he wanted counsel to present witnesses at his trial, including the victim's girlfriend and the first person who arrived on the scene of the wreck, Edward Vipperman. He testified that the victim's girlfriend was cooperative and supportive at the time to trial but now is unsupportive of Applicant and asserts he stole the RV that was wrecked. He later acknowledged the State informed the trial court that it could not locate the victim's girlfriend at the trial despite efforts to find her. He testified that he had a statement from Vipperman indicating that Vipperman left the scene before law enforcement arrived because there were pending warrants for his arrest due to unpaid child support. Applicant did not present any of these witnesses at the hearing.

On cross-examination, Applicant testified that counsel was his third attorney, as two prior public defenders had been relieved from his case. He testified that he never requested counsel file a motion for a speedy trial on his behalf and he did not want a speedy trial. He testified he was ambivalent as to whether he wanted a trial or not. He testified he was not arrested until two months following the wreck, well after his release from the hospital. He testified he was not even aware that he was proceeding to trial on the day his trial began because he had only recently been transported back to the detention center from Just Care. He acknowledged that his prior attorney had requested he be evaluated for competency and a court order required the Department of Mental Health to evaluate him. He testified he was evaluated by Dr. Donna Maddox and he remembers

this evaluation. He denied knowing that he was deemed competent for trial until his trial started. He acknowledged that his competency was discussed on the record prior to the start of his trial and that his counsel informed the trial court that he believed Applicant was competent and could assist in his defense. He also acknowledged that counsel brought up his mental health concerns during sentencing in mitigation and support of a lesser sentence.

Applicant testified he is not sure whether counsel moved to suppress any evidence related to blood sample taken immediately after the wreck. He testified that he testified during trial but cannot recall if he testified at any pre-trial motions hearings. He testified that Trooper Boland informed the trial court that Applicant had consented to a blood draw but there is no way that Applicant could have given consent based on his physical condition following the wreck. He also testified that he does not remember anything following the wreck for a four-day span. He testified he did not learn that the victim was killed in the wreck until the fourth day following the wreck. He testified he was severely injured, including a concussion and multiple broken bones.

Applicant testified that he testified in his own defense at trial and he readily conceded at trial that he was under the influence of methamphetamine during the wreck but insisted he was not the driver. He testified that he told the jury the victim was driving and he was standing behind the driver's seat when the wreck occurred. He acknowledged the State presented a witness who identified Applicant as the driver immediately before the wreck, as well as another witness who testified Applicant was pulled from underneath the crushed steering wheel while in a seatbelt.

Applicant then presented testimony from trial counsel, Timothy Griffith. Counsel testified that although Applicant was receiving in-patient medical care for his suicidal behavior prior to trial, he was still able to prepare for trial with Applicant sufficiently. He detailed the numerous

interactions he had with Applicant and his family members immediately prior to trial. He testified that he was not involved in any probate proceedings involving Applicant and did not have any details regarding that unrelated matter.

Counsel testified that he moved to suppress the evidence obtained from Applicant's blood sample based on several grounds, including that the State failed to comply with the necessary statutory provisions governing blood draws following suspected DUIs and that Applicant could not have given consent based on the severity of his injuries and the numerous medications he was under the influence of immediately following the wreck. He elaborated that the State argued Applicant had given consent for his blood sample, and that in response, he argued consent was not physically possible based on Applicant's injuries and could not have been knowing and voluntary based on the influence of the medications to treat him following the wreck. He testified his pre-trial motion was denied following a hearing but acknowledged that he did not renew this motion. He testified that he did not have any good faith basis to challenge the chain of custody of Applicant's blood sample. When asked about this issue on cross-examination, counsel elaborated that the law enforcement officer who took the sample, Trooper Boland, testified at the suppression hearing that Applicant was not under arrest at the time of the blood draw. He elaborated that Applicant was not arrested until two months after the accident. He testified that Trooper Boland also testified at the suppression motion that Applicant unambiguously and unequivocally gave consent to the blood draw and that he challenged this on cross-examination by highlighting the severity of Applicant's injuries and his medications at the time of the blood draw. Counsel testified that the Court explicitly asked Applicant if he wanted to testify in support of suppression but that Applicant declined to do so because he had no memory of this time period and could not offer any

useful testimony.

On cross examination, counsel testified that he was appointed to represent Applicant after a conflict with the public defender's office. He testified he was appointed to represent Applicant in December of 2017. He briefly discussed the factual background of the case, including that a witness, Shona Brown, identified Applicant as the driver immediately prior to the wreck, that another witness, Andrew Moye, testified he pulled Applicant from underneath the driver's steering wheel while Applicant was wearing a seat belt, that photographs of the wreckage showed the victim positioned towards the passenger seat, and that the drug analysis established that Applicant was under the influence of methamphetamine.

Counsel testified he filed a motion for a speedy trial at Applicant's request. He testified he traditionally does not file such motions unless a client requests that he do so and particularly would not have done so here if Applicant had not demanded it because he had only been appointed approximately a month prior to making the motion. He testified that he always wants more time to prepare for a trial but that he felt prepared and ready to try Applicant's case. He elaborated that he would have moved for a continuance if he did not believe he was prepared for trial.

Counsel testified he fully investigated the case, including discussing the case with Applicant and speaking with several witnesses. He elaborated that he got more complete statements from witnesses on the scene, including getting notarized affidavits and statements, none of which were helpful to Applicant. He testified he did not hire a private investigator because he was able to personally do the investigation and track down the necessary witnesses. He testified that he also spoke with the law enforcement witnesses. He testified that based on his investigation, he developed a defense strategy that Applicant was not the driver at the time of the wreck, which

was supported by Applicant's testimony at trial.

Regarding Applicant's competency, counsel testified that Applicant's prior counsel had moved for Applicant to be evaluated and an evaluation for competency to stand trial was ordered. He elaborated that Applicant was evaluated by the Department of Mental Health and found competent to stand trial. He elaborated the results of the competency evaluation performed by the Department of Mental Health diagnosed Applicant as having a stimulant use disorder as a result of his drug use and nothing else. He testified that he did not personally have any doubts as to Applicant's competency and that Applicant was able to assist him with the defense, echoing what counsel told the trial court during Applicant's trial. He testified Applicant's mental health challenges pertained more to suicidal behavior, which led to his hospitalizations and treatment, but did not impact his ability to interact with Applicant or prepare for his defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged three instances of ineffective assistance of trial counsel and asserts that as a result of counsel's purported errors, he is entitled to have his conviction reversed and proceed back to the court of general sessions for a new disposition of his case.

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC.

The three grounds for relief upon which Applicant proceeded at the evidentiary hearing pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient

to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as

it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts

or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Findings as to Specific Claims Raised

Applicant has alleged three specific claims of ineffective assistance of trial counsel and asserts that as a result of counsel’s purported errors, he is entitled to a new trial. This Court finds has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Allegation #1: Trial Counsel was ineffective for failing to adequately challenge move to suppress the evidence obtained from the draw of Applicant’s blood

Applicant first asserts trial counsel was constitutionally ineffective for failing to adequately challenge and move to suppress any evidence obtained from the draw of Applicant’s blood. This claim is directly refuted by the record, which conclusively establishes that trial counsel moved to suppress this evidence on several grounds, including that the State failed to comply with the proper statutory authorities for conducting a blood draw following a suspected DUI and that Applicant could not have knowingly, voluntarily, and intelligently given consent for law enforcement to obtain a

sample of his blood based on his physical and mental state. The trial court conducted a through pre-trial hearing on this motion, and, after weighing the evidence presented and the argument from both parties, denied the motion to suppress. (ROA. P. 28-66). This Court finds that this motion was not denied based on any failure of counsel regarding argument or presentation, but rather, was based on the uncontradicted evidence presented establishing that Applicant unequivocally and unambiguously gave knowing, intelligent, and voluntary consent to give a blood sample. This is consistent with Applicant's testimony at the evidentiary hearing that although he cannot remember entire days following the accident, he would have given consent if requested. This Court finds Applicant cannot establish any deficiency of counsel, as counsel properly made a motion to suppress, offered the best arguments available, and the motion was ultimately denied on the merits. Moreover, this Court finds Applicant cannot establish any resulting prejudice, as he has failed to show that a motion to suppress would have been granted had counsel made additional argument or that the issue would have been successful on appeal. Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #2: Trial Counsel was ineffective for failing to adequately ensure Applicant was competent to proceed to trial

Next, Applicant asserts that trial counsel was ineffective for failing to ensure that he was competent to proceed to trial. This Court finds Applicant has failed to meet his requisite burden of proof as to this allegation. Initially, this Court notes the uncontradicted evidence before this Court establishes that Applicant was competent to stand trial. He was evaluated by the Department of Mental Health and deemed competent with a diagnosis of substance use disorder. Counsel testified he had no trouble communicating with Applicant and Applicant was able to assist him in trial preparation and his defense, echoing what counsel told the trial court at the time of Applicant's trial. Applicant failed to present any evidence that he lacked competency at the time of trial, and,

accordingly, he has failed to meet his burden of proof. See e.g. Matthews v. State, 358 S.C. 456, 459, 596 S.E.2d 49, 50–51 (2004) (holding that in order to find trial counsel ineffective for refusing to request a Blair hearing on petitioner's competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings and to show prejudice within the context of counsel's failure to fully investigate the petitioner's mental capacity, an applicant need only show a reasonable probability that he was either insane at the time the crime was committed or incompetent at the time of the plea) (citing Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)). Accordingly, this Court denies and dismisses this allegation with prejudice.

Allegation #3: Trial Counsel was ineffective for failing to present favorable witnesses at trial

Finally, Applicant asserts that trial counsel was ineffective for failing to present favorable defense witnesses at trial. This claim fails as a matter of law, as Applicant failed to present any witnesses or otherwise offer evidence to support this allegation. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (“This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse’s notes presented at PCR hearing corroborated lack of penetration in sexual assault case); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel’s failure to contact these witnesses); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish

prejudice); Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records)). Accordingly, this Court denies and dismisses this allegation with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

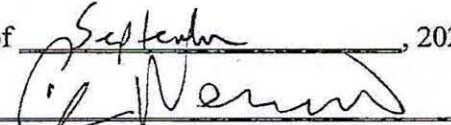
This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant Gene D. Evans Jr. shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 26th day of September, 2022.

Columbia, South Carolina


CLIFTON NEWMAN
Presiding Judge - Third Judicial Circuit

RECEIVED

NOV 15 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

DUI / Felony driving under the influence, death results

At a Court of General Sessions, convened on october 5, 2017 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE

That in Sumter County, South Carolina, on or about February 12, 2017, while driving a vehicle under the influence of alcohol, drugs or both alcohol and drugs, the Defendant, Gene David Evans Jr. did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle, to wit; drive left of center and drive off the ride side of the roadway striking a tree and such act proximately caused death to Robert Skidmore ; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made
and provided.

Solicitor



WITNESSES

Kevin H. Boland
Patrol

S C Highway

ARREST WARRANT NUMBER

2017A4310100252

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 10/5/17

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-43-1104

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

October

TERM

2017

THE STATE

vs.

GENE DAVID EVANS JR.

Indictment for

DUI / Felony driving under the influence, death results

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Sumter

VS.

Gene David Evans Jr.

AKA:

Race: White Sex: M Age: 47

DOB: SS#:

Address:

City, State, Zip: Sumter, SC 29154

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, death results

INDICTMENT/CASE#: 2017-GS-43-1104

A/W#: 2017A4310100252

Date of Offense: 2/12/2017

S.C. Code §: 56-05-2945(A)(2)

CDR Code #: 0395

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

Meadors, John P

SC Bar# 10429

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$12.00
§ 56-1-286 (DUI Breath Test)	\$25	\$25.00
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$7.86

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel. Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

James C. Campbell
Kisha Reed2101
2-22-18