

VOLUME II OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

SHANA ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002216

APPENDIX

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1 MR. MAYER: May I approach, Judge?

2 THE COURT: Uh Huh.

3 MR. WEST: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. WEST: Foundation.

6 THE COURT: Please approach.

7 [Whereupon, an off the record bench conference is
8 held]

9 THE COURT: Objection is overruled. You may
10 proceed.

11 MR. MAYER: Thank you, Judge.

12 Q. [Mr. Mayer] Trooper I'm showing you what's been
13 marked for identification only as defense exhibits 1 and
14 2. Take a look in there if you will and let me know if
15 you recognize any of that.

16 [Whereupon, the witness is shown exhibit]

17 A. I recognize it as being a Bud Light.

18 Q. Okay, look specifically at this one here, if you
19 will the one I'm pointing to there [indicates] that's
20 been marked as defense exhibit 2.

21 A. Yes, sir.

22 Q. Lift that up just a little bit and examine that if
23 you will.

24 [Whereupon the witness complies]

25 Q. What is that?

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- 1 A. A Bud Light can that isn't full.
- 2 Q. That is not full?
- 3 A. Yes, sir.
- 4 Q. But is not opened either, is it?
- 5 A. Correct, unopened. The top isn't opened, it's
- 6 obviously opened somewhere on the can.
- 7 Q. Like it might be punctured.
- 8 A. Yes, sir. I believe so.
- 9 Q. Okay. Now you described this as a violent accident?
- 10 A. Yes, sir.
- 11 Q. Violent enough to puncture a beer can maybe, right?
- 12 A. Sure.
- 13 Q. Okay. Have you investigated accidents before that
- 14 involve a Saturn?
- 15 A. I'm certain I have, sir.
- 16 Q. Isn't it true those things are more likely to get
- 17 destroyed in an accident?
- 18 A. I'm no expert, sir.
- 19 Q. Well in this collision, isn't it true there was a
- 20 lot more damage to that Saturn than there was to the BMW?
- 21 A. Yes, sir. I would say there was more damage to the
- 22 Saturn yes, sir.
- 23 Q. Okay. And you testified a minute ago that you were
- 24 on the phone with somebody who had told you that they had
- 25 seen Shana at the bar, is that right?

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- 1 A. That's correct.
- 2 Q. Who were you on the phone with?
- 3 A. Janet Jurosko.
- 4 Q. Okay. And did she call you or you call her?
- 5 A. She called me.
- 6 Q. How did she know to call you?
- 7 MR. WEST: Objection. Speculation.
- 8 THE COURT: Sustained.
- 9 Q. [Mr. Mayer] Do you know why she called you?
- 10 A. To inquire about the collision.
- 11 Q. And from that conversation, what was your
- 12 understanding about Shana's prior activities?
- 13 A. That she had been at Geronimo's Bar prior to the
- 14 collision.
- 15 Q. Okay. And did Ms. Jurosko -- was it your
- 16 understanding at all that Shana was impaired?
- 17 A. Ms. Jurosko couldn't tell me one way or the other,
- 18 she just knew that she was there.
- 19 Q. Okay. It's not illegal to go to a bar and grill, is
- 20 it?
- 21 A. It is not, sir. No, sir.
- 22 Q. It's not illegal to drive home after being there,
- 23 right?
- 24 A. Depending on your condition, it may or may not be.
- 25 Q. Okay. Isn't it true that you made the determination

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1 to arrest Shana after hearing from Trooper Southerland in
2 the hospital?

3 A. It was based on multiple factors, but that was part
4 of it.

5 Q. And part of it was based on him calling you and
6 telling you that she was incomprehensible?

7 A. No, sir. That is not correct.

8 Q. Please correct me.

9 A. The only thing that Trooper Southerland added to the
10 equation was that she -- he could smell alcoholic
11 beverages coming from her person.

12 Q. Okay. So part of what you considered was not him
13 calling saying she was incomprehensible?

14 A. No, sir.

15 Q. And why didn't you consider that?

16 A. Because I knew that she was at Med-U, she had
17 obviously suffered some severe trauma and the medical
18 staff would have been working on her at that time.

19 Q. Okay. That's good. When you had Trooper
20 Southerland at Med-U, was he checking on anyone besides
21 Shana?

22 A. He was just sent down there. He wasn't sent to
23 check on her, he was sent to check on anybody that would
24 have been involved in the collision that was taken there.

25 Q. So he would've also checked on Brittany Hartley.

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1 A. I honestly don't recall if he did or didn't. I
2 don't even recall if she went to Med-U or if she went to
3 Trident because I don't think they were sent together if
4 I remember correctly. I believe Ms. Hartley went by
5 ambulance.

6 Q. Okay.

7 MR. MAYER: Court's indulgence? ,

8 [Whereupon Mr. Mayer confers with his client]

9 Q. [Mr. Mayer] I just want to ask a little bit more
10 about the beer that was in the car.

11 A. Yes, sir.

12 Q. Did you guys make any attempt to count those?

13 A. They were photographed. I didn't physically try to
14 count them, I just -- photographs were taken of them as
15 they were on the scene.

16 Q. Okay. Do you know how the beer was recovered out
17 of the car later?

18 A. It was my understanding that supposedly Ms.

19 Robinson's Mom took it out of the car.

20 Q. Okay. Some days later, right?

21 A. That is my understanding, yes sir.

22 Q. Okay. After the police were done with their
23 investigation.

24 A. Yes sir that is my understanding.

25 Q. Do you know if Ms. Robinson's mom used like a Hazmat

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1 suit to get that out of there, or how she did that?

2 A. I don't know if Ms. Robinson's Mom was concerned
3 about blood borne pathogens at all, but I certainly am.

4 Q. Okay. No further questions.

5 THE COURT: Any redirect?

6 MR. WEST: No redirect, Your Honor.

7 THE COURT: Any objection to the witness being
8 excused from the state?

9 MR. WEST: Nothing from the state, Your Honor.

10 THE COURT: From the defense?

11 MR. MAYER: No, judge.

12 THE COURT: Officer, you're excused.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: You may call your next witness.

16 MR. WEST: Thank you, Judge. The state calls
17 Officer Poston.

18 [Whereupon, Officer Poston comes forward]

19 [Whereupon, the witness is duly sworn by the Clerk
20 of Court]

21 CLERK OF COURT: Please be seated. State your full
22 name and spell your last name for the record.

23 WITNESS: John Anthony Poston, P-O-S-T-O-N.

24 THE COURT: You may proceed.

25

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1 JOHN ANTHONY POSTON,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Officer Poston, where do you work?
7 A. Charleston County Sherriff's Office.
8 Q. Where did you work in November of 2011?
9 A. The South Carolina Highway Patrol.
10 Q. How long have you been in law enforcement?
11 A. Nineteen years.
12 Q. Can you describe for the jury where you work?
13 A. Yes, first I finished the academy in '95. I worked
14 for the city of Newberry from '95 through '97. From '97
15 to 2008 with the City of Charleston and from 2008 till I
16 left last year from the Highway Patrol and I've been on a
17 year now with the county.
18 Q. Can you describe your educational background and
19 experiences in Highway Patrol?
20 A. Sure, I have a 4-year degree from Charleston
21 Southern in Criminal Justice with a minor in sociology.
22 And also I've gotten numerous certificates --
23 certifications on reconstruction. I got phase 1 and
24 phase 2 accident reconstruction, and field sobriety, and
25 -- and other certifications pertaining to that.

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1 Q. How many collisions would you say that you've worked
2 throughout your career in law enforcement?

3 A. Well into the hundreds, lots. My primary function
4 since 2001 with the City of Charleston has been primarily
5 with the traffic division. I was with the traffic
6 division until I left in '08 for the Highway Patrol.

7 Q. Can you describe for the jury what the general
8 process is for the first thing you do when you arrive at
9 a collision?

10 A. First thing I do when I arrive on the scene is first
11 check for injuries, make sure to find out where the
12 victims are, injuries and all that and make sure
13 everybody is taken care of.

14 Q. Is it common for you to make a determination as to
15 who an at-fault driver is in a collision?

16 A. It is after my investigation.

17 Q. Do you remember responding to a call on November 10,
18 2011 involving this defendant Shana Robinson and the
19 victim, Ms. Candy Zoll?

20 A. I do.

21 Q. Okay. Where were you when you first received that
22 call?

23 A. I was with Corporal Pearson and Trooper Southerland.
24 We were on Rivers Avenue having dinner.

25 Q. What kind of call came in?

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- 1 A. Collision with major injuries.
- 2 Q. How long did it take you to get there?
- 3 A. From Rivers around 45 minutes; I'm not sure.
- 4 Q. Where were you called to?
- 5 A. I was called to Broughton Road.
- 6 Q. Is that in Berkeley County?
- 7 A. It is.
- 8 Q. Can you describe for the jury the general layout of
- 9 Broughton Road?
- 10 A. Broughton Road as you turn on from here it's a
- 11 straight, then it gets curvy. It has a good curve in it
- 12 going towards Lyons Beach.
- 13 Q. I'm showing the state -- the witness what has been
- 14 marked into evidence at state's number 13.
- 15 [Whereupon, the witness is shown photograph]
- 16 Q. First let me do this. When you arrive at a scene,
- 17 do you normally take pictures?
- 18 A. Not right off the bat, but then that would be like
- 19 the second thing I do after I check for injuries and
- 20 statuses.
- 21 Q. Now, did you take pictures in this case?
- 22 A. I took pictures.
- 23 Q. Can you review this stack of photographs; some have
- 24 been admitted into evidence?
- 25 [Whereupon, the witness reviews photographs]

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1 Q. Have you had time to review those?

2 A. Yes.

3 Q. Are they true and accurate depictions of the cars
4 and the scenes as you saw them?

5 A. They are.

6 Q. Okay. Now specifically number 13 has been already
7 admitted into evidence. I'm going to get you to look at
8 State's 13.

9 MR. WEST: The State would ask the court's
10 permission to publish.

11 THE COURT: You may proceed.

12 [Whereupon, State's exhibit number 13 is shown]

13 Q. [Mr. West] Can you describe for the jury what that
14 is a picture of?

15 A. That's Broughton Road going towards Lyons Beach
16 area.

17 Q. Okay. Now where is Lyons Beach in that photograph?

18 A. Down toward that end over there [indicates].

19 Q. Okay. Towards the top of that photograph sort of
20 in the middle is when the road runs out of view, what is
21 that [indicates]?

22 A. Right there [indicates]?

23 Q. Right.

24 A. It starts to curve.

25 Q. Okay. Do you know where Lois Circle is on that

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- 1 photograph?
- 2 A. Right in there [indicates].
- 3 Q. And do you notice any speed limits on that picture?
- 4 A. 45 is right here [indicates].
- 5 Q. Okay. Let me show you State's 55. Can we publish
- 6 55?
- 7 [Whereupon, State's exhibit number 55 is shown]
- 8 Q. What is that a picture of?
- 9 A. That's -- starting into the curve with 2 signs that
- 10 are -- right in there [indicates] speed limit signs of 35
- 11 miles per hour around the curve.
- 12 Q. How about number 14? What is that a picture of?
- 13 [Whereupon, State's exhibit number 14 is shown]
- 14 A. It's a picture of the curve going to the straight-
- 15 away area.
- 16 Q. Okay. And any speed limit signs in that picture?
- 17 A. Yeah, the 35 and the 35.
- 18 Q. Okay. Number 9, please. What is that a picture
- 19 of?
- 20 [Whereupon, State's exhibit number 9 is shown]
- 21 A. The curve.
- 22 Q. Is that from a different angle than we've previously
- 23 been looking at?
- 24 A. Yes.
- 25 Q. Okay and what angle is that? Describe the

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1 directions of travel on that.

2 A. Towards Lyons Beach, still.

3 Q. So, Lyons Beach being towards the front of the
4 photograph or towards the back?

5 A. Oh towards the front, there's the sign right there
6 [indicates].

7 Q. Okay.

8 A. So it's coming this way [indicates]. Yeah it is.

9 Q. Okay. And if you're going towards Lyons Beach on
10 that photograph, what lane of travel would a driver be
11 in?

12 A. This one right here [indicates].

13 Q. Okay. And if you're going away from Lyons Beach
14 towards the town limits of Moncks Corner which direction
15 would that be?

16 A. That one right there [indicates].

17 Q. Okay. And is that the curve or the front part of
18 the curve where this collision occurred?

19 A. Correct.

20 Q. Okay. How about number 10?

21 [Whereupon, State's exhibit number 10 is shown].

22 Q. What is that a picture of?

23 A. The curve going toward -- this is going towards
24 Lyons Beach on this side [indicates]. This one's heading
25 back toward the Moncks Corner side [indicates].

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1 Q. Okay. And those speed limit signs that we just saw
2 in the previous photograph, do those still apply in this
3 [indicates] area?

4 A. Correct.

5 Q. Okay. So it's still 35 miles an hour?

6 A. Correct.

7 Q. Where did the collision occur or where would the
8 cars have been located in this photograph?

9 A. Well just judging by the plane here, the silver BMW
10 was right by this pole I believe, right here [indicates]
11 and the other one maybe somewhere up in that area
12 [indicates].

13 Q. Okay. How about state's number 1?

14 [Whereupon, State's exhibit number 1 is shown]

15 Q. What is this a photograph of?

16 A. Um...

17 Q. Down towards the bottom, would that be the area of
18 Lyons Beach?

19 A. Down this way [indicates] going this way
20 [indicates]?

21 Q. Right.

22 A. Correct.

23 Q. Okay. And this [indicates] is the same curve in
24 question that we're talking about?

25 A. Correct.

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1 Q. Okay. When you first arrived on scene at the
2 collision what is some of the first things you saw?

3 A. First thing I saw when I arrived on scene, a lot of
4 people.

5 Q. Okay. Did you notice any cars in the roadway?

6 A. The E-M-S was in the roadway. I noticed one car
7 further down in the roadway and then I noticed the silver
8 BMW off the embankment near the pole.

9 Q. Okay. State's number 24?

10 [Whereupon, State's exhibit number 24 is shown]

11 Q. Now, it's a little dim on the screen, but in the
12 pictures you have that are in evidence are a little more
13 clear. Will you describe what is seen in that
14 photograph?

15 A. Yeah, basically the fire truck is on that end
16 [indicates] the victim's car, the Toyota is right there
17 [indicates], the silver BMW is at a rest right there off
18 that embankment area [indicates].

19 Q. Okay and the silver BMW that's the defendant's car,
20 correct?

21 A. Correct.

22 Q. Okay and the right -- towards the right on that
23 photograph [indicates] is the Saturn we've been talking
24 about?

25 A. Correct.

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1 Q. Okay. Now you've been here throughout the
2 testimony, right?

3 A. Correct.

4 Q. Which direction was the BMW traveling in this
5 photograph [indicates]?

6 A. In this photograph the BMW was traveling towards
7 Lyons Beach.

8 Q. Okay. And how about the Saturn?

9 A. Was traveling in this lane [indicates] towards
10 Moncks Corner.

11 Q. Okay. In that photograph, the BMW is across ---

12 A. --- correct ---

13 Q. --- the opposite lane of travel.

14 A. Correct.

15 Q. Okay, so once you first saw this [indicates] this is
16 the collision, correct? What did you do?

17 A. When I first saw the collision, like I said I
18 checked for injuries, I talked to Chief Lee to find out
19 what was going down with the people involved. After I
20 got all my bases for that, I started doing my
21 investigation.

22 I started taking photos. As I approached the
23 vehicles and stuff in the roadway, first thing I did was
24 took pictures of the roadway. And we were told -- back
25 then on Highway Patrol we were told to take bunches of

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1 pictures of the scene from every angle to try to include
2 everything. So I tried to take a lot of pictures. Then
3 I went back and painted the scene with relevant marks.
4 Then I went back and photograph those scenes again that I
5 painted, to show where I painted at.

6 Q. Okay. Now was Ms. Robinson present when you
7 arrived on the scene?

8 A. No, she was not.

9 Q. Okay. You said you started looking for markings
10 and started painting things. What specifically are you
11 looking for when you arrive on scene in order to mark
12 them or paint them and why?

13 A. Well, first and foremost the main thing I look for
14 is a point of impact. Basically what that means is where
15 the collision occurred. As you see ---

16 MR. MAYER: Objection.

17 THE COURT: Basis?

18 MR. MAYER: Speculation.

19 THE COURT: Overruled.

20 MR. MAYER: He's not -- objection.

21 THE COURT: He doesn't have to be an expert, rule
22 701. It's within his rational perception and certainly
23 within his education, training, and experience and within
24 the scope of his responsibilities as a first responder
25 and officer investigating the scene. You may proceed.

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1 MR. WEST: Thank you, Your Honor.

2 Q. [Mr. West] Continue.

3 A. Okay. As you can see, based here [indicates] where
4 I marked this area here [indicates]. This [indicates] is
5 where I determined was the very first point of impact.

6 It was the first set of gouge marks where due to the
7 type of collision it was, which was considered a head-on
8 collision you could tell where the BMW crossed the double
9 center line, came over and when they met they met like
10 this [indicates] and buckled down.

11 That's the gouge marks from the engine block
12 [indicates]. You can see where the BMW went off to the
13 left down the embankment and there's gouge marks there
14 [indicates] that I circled and you'll see a few more that
15 shows the direction of which way the Toyota traveled and
16 came to a final rest that way [indicates].

17 Q. Okay. I'm going to slow you down a little bit and
18 kind of walk you through some more things. I'm going to
19 show you state's 25.

20 [Whereupon, State's exhibit number 25 is shown]

21 Q. Okay. What is this a picture of?

22 A. That there is a picture of the point of impact.

23 Q. Okay. Now there's some orange paint on the bottom
24 of that picture, what specific purpose does that serve?

25 A. That just kind of notates where the point of impact

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- 1 was so that we can go back and reference it.
- 2 Q. Okay. When you say we can go back and reference
3 it, who in particular are you talking about?
- 4 A. The MAIT team, when they come back and do their
5 further investigations on it.
- 6 Q. What is the MAIT team?
- 7 A. The Multi-Accidental team, I can't think of the
8 analogy of it ---
- 9 Q. --- that they ---
- 10 A. --- they're the ones that investigate the total
11 collisions and things like that fatals and stuff. They
12 come out with the special equipment.
- 13 Q. Okay. And why is spray paint used?
- 14 A. Spray paint because it's visible to see and you can
15 walk it. It's better to use to see with -- to determine
16 where it is.
- 17 Q. Okay. And this is just a little bit closer up
18 picture of the last photograph that you saw, correct?
- 19 A. Yeah, uh huh, correct.
- 20 Q. So, the marks you were talking about, these are just
21 closer up versions?
- 22 A. Yes, sir.
- 23 Q. Now, can you describe for the jury what in
24 particular about those marks is significant to you and
25 law enforcement?

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1 A. Well, it tells the direction of travel, basically.
2 For instance, the gold vehicle driven by the victim that
3 was traveling this way [indicates], when they buckled
4 here [indicates], it shows that the engine block of the
5 victim just dragged this way [indicates].

6 And there's a pattern showing that coming through
7 this way [indicates]. You can see it further on over
8 [indicates] where she'll come to a rest. It shows her
9 direction of travel.

10 Q. Okay. You said there's a pattern that way. Let's
11 show state's 26.

12 [Whereupon State's exhibit number 26 is shown]

13 Q. Is this [indicates] that similar pattern you were
14 speaking of?

15 A. Correct.

16 Q. Okay and ---

17 A. --- right here [indicates] you see where this is
18 [indicates], I mean it is very vague, but you can see it
19 still dragging and it's following all the way through
20 that angle there [indicates].

21 Q. All right. So there's a lot of scrape marks on that
22 photograph. Why would there be so many?

23 A. Because it was a pretty violent wreck.

24 Q. Okay. Now would you classify the scrape markings as
25 kind of superficial on the surface or were they pretty

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1 deep into the roadway, how would you describe them?

2 A. These as you can see here [indicates] are pretty
3 deep in the roadway. As they get faint, some of them as
4 they go further out they get a little bit higher on the
5 ground there -- a little bit higher on the level surface,
6 but the gouge is kind of deep for a certain amount of
7 space out.

8 Q. Okay. Just to reiterate these markings are still
9 in the victim's lane of traffic.

10 A. Correct.

11 Q. Okay. What about State's number 27?

12 [Whereupon, State's exhibit number 27 is shown]

13 Q. What is this s photograph of?

14 A. More gouge marks.

15 Q. Okay. Now these gouge marks [indicates], you said
16 they trail up until where the Saturn was located. Are
17 you able to follow those while you're taking these
18 photographs?

19 A. Yes. That's what I was doing as I was taking the
20 photographs I was following it, showing a pattern of
21 where it's coming to and how it's coming -- kind of just
22 kind of back turn like that [indicates] and facing the
23 opposite direction.

24 Q. Okay. Now, there's some yellow tape in that
25 photograph and some other things around that yellow tape,

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1 what is that?

2 A. We put up caution tape around that vehicle so that
3 no one could get access to it.

4 Q. Okay. Why is that?

5 A. Because typically it's a crime scene.

6 Q. Okay. Now, there appears to be some dark marks in
7 the road that aren't the white scrape marks. What are
8 those dark marks?

9 A. Where are you referring to, this right here
10 [indicates]?

11 Q. In a collision like this would fluids be ---

12 A. --- yeah that would, the dark marks you're talking
13 about this over here [indicates] this other gouge mark up
14 in this area [indicates]. That would be fluids coming
15 from the vehicle underneath.

16 Q. Okay. And did they help you trace those fluids
17 from where the collision started until where the ---

18 A. --- correct ---

19 Q. --- vehicle ended up? Okay, state's number 28.

20 [Whereupon, State's exhibit number 28 is shown]

21 Q. Towards the bottom of that picture the gouge marks
22 are pretty -- they're not as straight as the other ones
23 we've been looking at. Why is that?

24 A. Because the vehicle is rotating coming to a final
25 rest.

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1 Q. Okay. Now it's important that you said the word
2 final rest. What is final rest?

3 A. That means that the car has finally come to a stop.

4 Q. Okay. Did you make any markings as to what final
5 rest would be and how would you do that?

6 A. I did. I marked the tires on each side of the
7 vehicle with a little mark. And then I put either left
8 rear on this [indicates] -- that'd be left rear, front
9 rear [indicates] and so forth like on the other side.
10 Same type markings.

11 Q. State's 29?

12 [Whereupon, State's exhibit number 29 is shown]

13 Q. It's a little dark in that picture, but towards the
14 passenger's back right tire is there anything marked
15 right there [indicates]?

16 A. Yes. It's marked right there [indicates] that
17 orange paint [indicates].

18 Q. And that's that final rest marking that you were
19 just speaking of ---

20 A. --- correct.

21 Q. Okay. I'm going to show you what's marked -- or you
22 can look in your own stack at State's number 30, 31, and
23 32.

24 [Whereupon the witness views photographs]

25 A. Okay.

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1 Q. All right. Number 30 is already in evidence. But
2 how about numbers 31 and 32? Did you take those
3 photographs?

4 A. I did.

5 Q. Are they accurate depictions of the scene of the
6 collision?

7 A. They are.

8 Q. Have there been any alterations, deletions,
9 modifications of those photographs?

10 A. Negative.

11 Q. And they're true and accurate representations as you
12 saw them that day?

13 A. Correct.

14 MR. WEST: The State would ask that State's 31 and
15 32 be admitted into evidence.

16 THE COURT: Any objections?

17 MR. MAYER: Yeah Judge, it's just cumulative.

18 THE COURT: Approach please.

19 [Whereupon, an off the record bench conference is
20 held]

21 THE COURT: Overruled. The photos are relevant.
22 They're an accurate depiction of the scene as it existed
23 at the time of the collision. It also corroborates one
24 of the elements the State is required to prove in meeting
25 their burden in this case. You may proceed. The

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1 objection goes to weight, not admissibility.

2 MR. WEST: Okay. Just for clarification Your
3 Honor at this time ---

4 THE COURT: --- 31 and 32. Aren't those the
5 numbers?

6 MR. WEST: That's correct Your Honor, they're
7 admitted into evidence?

8 THE COURT: Uh Huh.

9 [Whereupon, State's exhibit numbers 31 and 32 are
10 entered into evidence by the court]

11 MR. WEST: The state would ask the permission to
12 publish.

13 THE COURT: Proceed.

14 Q. [Mr. West] State's number 31?

15 [Whereupon, State's exhibit number 31 is shown]

16 Q. State's number 31 in talking about final rest, did
17 you make those markings in this photograph [indicates]?

18 A. Yes, I did.

19 Q. Okay. And why specifically have you put it on the
20 tires like that and what writings are on the road?

21 A. Well it just makes a definite mark at the exact
22 place where that vehicle sits. And then what we put --
23 we just mark like left, right tire to indicate -- or left
24 rear or right rear to indicate which direction that the
25 vehicle was facing. It helps that out.

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1 Q. While this photograph is on the screen, do you
2 notice anything in particular about the front of the car?

3 A. There's not much left of it.

4 Q. Okay. What do you mean by that?

5 A. The crush damage of it is just -- the type of
6 collision it was it just totally crushed the front end
7 all the way [indicates] up towards the seat.

8 Q. Okay. Would that be any indication of speed?

9 A. Correct.

10 THE COURT: Be very careful, Mr. West. He's not
11 been qualified as an expert.

12 MR. WEST: Thank you, Your Honor.

13 THE COURT: His opinions are only as to what he
14 documented at the scene, which do not require compliance
15 with Rule 702.

16 MR. WEST: Thank you, Your Honor.

17 Q. [Mr. West] State's number 32?

18 [Whereupon, State's exhibit number 32 is shown]

19 Q. Is this another marking of the final rest?

20 A. It is.

21 Q. Okay. And you marked that such that the MAIT team
22 could come back later? Why is -- are you familiar with
23 why MAIT would want to know the final rest of the
24 vehicles?

25 A. Yes, they -- because it's all with their total

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1 investigations. They do speed estimates through like
2 total stations and machines that they have, tools and
3 equipment that can help them with that.

4 Q. Did you make any markings for the defendant's car?

5 A. Yes.

6 Q. State's number 38 has been admitted into evidence.

7 [Whereupon, State's exhibit number 38 is shown]

8 Q. What is this a photograph of?

9 A. The defendant's gray BMW.

10 Q. Okay. And did you make any markings surrounding the
11 car or -- can those be seen in this photograph?

12 A. I believe they can. I think I see a little bit of
13 orange right there [indicates].

14 Q. Okay. State's 39?

15 [Whereupon, State's exhibit number 39 is shown]

16 Q. Again, it's a little dark but; would you make any
17 markings in this photograph?

18 A. I did.

19 Q. Okay. And where would you have made those
20 markings?

21 A. Right here [indicates] the left front -- left rear.

22 Q. And state's number 40?

23 [Whereupon, State's exhibit number 40 is shown]

24 Q. Is there any markings in that photograph?

25 A. Correct. Right there [indicates].

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- 1 Q. Okay. After marking the roads, did you at any time
2 look inside of either of the vehicles?
3 A. Yes, to take photos.
4 Q. Okay. State's number 43?
5 [Whereupon, State's exhibit number 43 is shown]
6 Q. What is that a photograph of?
7 A. 12-ounce can of Bud Light.
8 Q. And where was that found?
9 A. I believe that was the back seat area.
10 Q. Who's car?
11 A. The defendant's.
12 Q. The defendant's car? State's number 44?
13 [Whereupon, State's exhibit number 44 is shown]
14 Q. What is that a photograph of?
15 A. Looks like 12-ounce cans of beer right there
16 [indicates].
17 Q. And they're different cans than the previous
18 photograph?
19 A. I'm sorry?
20 Q. Is that a picture of different cans than the
21 previous photograph?
22 A. I don't believe so.
23 Q. Okay. So it's just a different angle?
24 A. Yeah.
25 Q. What about state's 45?

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1 [Whereupon, State's exhibit number 45 is shown]
2 Q. What is that a picture of?
3 A. Looks like an 18-pack of Bud Light.
4 Q. Again, where was that found?
5 A. In the back.
6 Q. In the back of what?
7 A. In the back of the defendant's car. I'm sorry.
8 Q. Okay. Now, did you ever look inside the victim's
9 vehicle?
10 A. Inside the vehicle -- I took photos from the
11 outside, correct, looking in.
12 Q. Show you what has been marked as State's number 33.
13 [Whereupon, State's exhibit number 33 is shown]
14 Q. You can look in your stack. Do you recognize that?
15 A. I do.
16 Q. Did you take that photograph?
17 A. I did.
18 Q. Is it a true and accurate depiction of the
19 photograph as you took it on the scene?
20 A. It is.
21 Q. And you've been -- have there been any alterations,
22 deletions, or modifications to that photograph?
23 A. No.
24 MR. WEST: The State would ask State's 33 be
25 admitted into evidence.

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1 THE COURT: Please show it to counsel.
2 [Whereupon, Mr. West shows photograph to Mr. Mayer]
3 MR. MAYER: No objection.
4 THE COURT: Marked and admitted without objection.
5 [Whereupon, State's exhibit number 33 is entered
6 into evidence by the court]
7 Q. [Mr. West] Please publish State's 33?
8 [Whereupon, State's exhibit number 33 is shown]
9 Q. What is that photograph of?
10 A. A speedometer.
11 Q. What speedometer?
12 A. The victim's speedometer.
13 Q. Okay. So that's inside the victim's vehicle. Why
14 would you take a picture of that?
15 A. Just to kind of gauge it to see if the needle got
16 stuck, see if there's a possibility of detecting speed on
17 there.
18 Q. Now, before you eventually arrested the defendant,
19 did you ever inspect the front ends of both of the
20 vehicles?
21 A. I did.
22 Q. I'm going to show you what's been marked as state's
23 number 37.
24 [Whereupon, State's exhibit number 37 is shown]
25 Q. You can look in your stack. Do you recognize that?

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- 1 A. I do.
- 2 Q. Did you take that photograph?
- 3 A. I did.
- 4 Q. Is it a true and accurate depiction of the
5 photograph as you took it that day?
- 6 A. It is.
- 7 Q. Has there been any alterations, deletions,
8 modifications to that photograph?
- 9 A. No.
- 10 MR. WEST: The State would ask number 37 be
11 admitted into evidence.
- 12 THE COURT: Any objections?
- 13 MR. MAYER: May I see it?
- 14 [Whereupon, Mr. West shows photograph to Mr. Mayer]
- 15 MR. MAYER: No objection.
- 16 THE COURT: Marked and admitted without objection.
17 [Whereupon, State's exhibit number 37 is entered
18 into evidence by the court]
- 19 Q. [Mr. West] State's number 37.
- 20 [Whereupon, State's exhibit number 37 is shown]
- 21 Q. What is this a photograph of?
- 22 A. It's a photograph of the victim's front end of her
23 vehicle.
- 24 Q. Okay. Now, is this the hood of the vehicle?
- 25 A. Yeah, that's the hood.

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1 Q. Okay. And on each side of the hood in that
2 photograph, what in particular do you notice about any
3 markings on it?

4 A. Paint's missing from this end [indicates] and this
5 end [indicates].

6 Q. Is that completely across?

7 A. Yes, sir. From here [indicates] to here
8 [indicates].

9 Q. Okay. Now towards the bottom of the photograph
10 [indicates].

11 A. The undercarriage?

12 Q. Is that significant in your investigation?

13 A. Yes, it is.

14 Q. And why?

15 A. Well basically it determines how bad the collision
16 was, how much damage is done to the vehicles and where
17 the gouge marks come from. It's pretty much the
18 undercarriage coming out.

19 Q. Okay. You said where the gouge marks come from.
20 Can you point out what in your opinion would have been
21 what caused the gouge marks in that photograph?

22 A. Well, basically when the engine -- when the
23 undercarriage pretty much when it hits head-on, like I
24 said earlier, they buckle down and cause big like holes
25 in the asphalt, which indicates a gouge mark.

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- 1 Q. Okay. After you've taken all these pictures of the
2 scene what, if anything, did you do in furtherance of
3 your investigation?
- 4 A. After I did what I had to do, based on doing all ---
- 5 Q. --- did you talk to anybody? I'm sorry to interrupt.
6 Did you talk to anybody on the scene?
- 7 A. I've been keeping in touch with Corporal Pearson
8 back and forth.
- 9 Q. Did you take any statements from witnesses?
- 10 A. I did take statements from witnesses.
- 11 Q. Do you remember who they were?
- 12 A. Their names right off hand, no, I don't. I got the
13 copy ---
- 14 Q. --- you were in the court room earlier this week ---
- 15 A. --- yes, yes ---
- 16 Q. --- where those the same people that testified?
- 17 A. Yes.
- 18 Q. And those are the three people you took statements
19 from?
- 20 A. Correct.
- 21 Q. Okay. How were the vehicles taken away from the
22 scene?
- 23 A. By tow trucks.
- 24 Q. Okay. Now, did you have any interactions with the
25 defendant's family on the scene?

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1 A. With the mother I did.

2 Q. Tell us about that.

3 A. As I was approaching her car, the defendant's car, I
4 observed her Mom -- her Mother leaving from the vehicle
5 with something in her hands and I asked her what she had.

6 She said some medications for her daughter that she
7 needed to get to her. I said okay. And I knew that she
8 had some pills and stuff that she -- that her daughter
9 needed some like prescriptions.

10 Q. Okay. What else did you do that gave you cause to
11 believe that this wasn't your ordinary traffic collision?

12 A. Well, several factors involved in this, basically
13 crossing over a double center line, basically at high
14 rate of speed due to the type of collision that we had
15 with the amount of damage to both vehicles. That's not
16 an ordinary crash normally; that along with the fact that
17 I could detect an odor of alcoholic beverage coming from
18 the vehicle.

19 Also, possibly the fact that the defendant was
20 possibly on prescription drugs at the time gave me a
21 totality of circumstances to believe that there's a
22 possibility that she could have been under the influence
23 of some type of alcohol or type prescription drug at the
24 time of the collision, which gave me enough reasonable
25 suspicion and probable cause to believe -- to tell

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1 Corporal Pearson to go ahead and it's possible that we
2 may need a blood draw at that time.

3 Q. Okay. When did you leave the scene of the
4 collision?

5 A. I left the scene as soon as I finished doing my
6 investigation, collecting my pictures and painting the
7 scene and the tow trucks getting the vehicles. I left
8 and went straight to M-U-S-C.

9 Q. Okay, so you went to M-U-S-C, what did you do while
10 you were there?

11 A. At MUSC I issued two -- one citation for felony
12 D-U-I to the defendant at that time.

13 [Whereupon, Mr. West and Mr. Alfaro confer]

14 MR. WEST: No further questions from the State at
15 this time.

16 THE COURT: Any questions for the witness?

17 MR. MAYER: Yes, Judge.

18 THE COURT: You may proceed.
19
20
21
22
23
24
25

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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. You've testified in this case before, haven't you,
4 the preliminary hearing?

5 A. Correct.

6 Q. You remember being upset with me after that?

7 A. I can't recall.

8 Q. You were here also in February of this year on this
9 matter, weren't you?

10 A. Yes.

11 Q. And I was here.

12 A. Yeah.

13 Q. And I went to shake your hand and you wouldn't shake
14 my hand.

15 A. Okay.

16 Q. Why was that?

17 A. I don't know.

18 Q. I don't know either.

19 THE COURT: No editorial comments, only questions.

20 Be very careful not to make yourself a witness, Mr.

21 Mayer.

22 Q. [Mr. Mayer] Let's talk about your training a little
23 bit. You went through Highway Patrol basic training?

24 A. I did.

25 Q. Did you go through at scene accident investigation?

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- 1 A. I did.
- 2 Q. Is that S-C-C-J-A?
- 3 A. Are you referring to the Criminal Justice Academy?
- 4 Q. Yes.
- 5 A. Correct.
- 6 Q. Okay. And you went through a technical accident
7 investigation?
- 8 A. Yeah, phase two.
- 9 Q. Okay, and how about a traffic accident
10 reconstruction, that 80 hour class, two week class?
- 11 A. Both classes that I've taken were 80 hour classes;
12 they were both two week courses.
- 13 Q. So you've taken two 80 hour classes?
- 14 A. Correct.
- 15 Q. Okay. Did that include traffic accident
16 reconstruction or just investigation?
- 17 A. Both.
- 18 Q. Did you take an advanced evidence collection class?
- 19 A. Negative.
- 20 Q. Okay. Where did you learn to take law enforcement
21 photographs?
- 22 A. From reconstruction class.
- 23 Q. Did you take any classes related to tire forensics?
- 24 A. As part of the reconstruction.
- 25 Q. All in those two classes, right?

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- 1 A. Yeah.
- 2 Q. You did nothing other than those two classes?
- 3 A. Correct.
- 4 Q. Okay. When you were investigating this accident
5 and you saw the beer in the car, did you see any open
6 beers?
- 7 A. No.
- 8 Q. Okay. If you'd have seen an open beer it would've
9 been important to enter that into evidence, right?
- 10 A. Yes.
- 11 Q. Okay. But there's no such thing in evidence,
12 correct?
- 13 A. I took photos because I couldn't get into the car at
14 the time.
- 15 Q. Why couldn't you get into the car?
- 16 A. Because there was blood and fluids that would
17 prevent me from getting inside the car because of
18 biohazard ordeal.
- 19 Q. Okay. The same qualms that your colleague
20 expressed Trooper Pearson?
- 21 A. Correct. Yes.
- 22 Q. Okay. And so you guys didn't enter the beer into
23 evidence because it was more exculpatory than anything,
24 right?
- 25 A. I took photos of it, correct.

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- 1 Q. Did you find a can on the scene that was busted open
2 or only partially full?
- 3 A. I found what I did and I took a photo of, correct.
4 I don't know if it was busted open or not, all I can tell
5 you is that I smelled an odor of alcoholic beverage
6 coming from inside of the vehicle.
- 7 Q. Did you find a can that had been busted open?
- 8 A. No.
- 9 Q. So, at the time of determining if it was appropriate
10 to arrest Shana, you did not know that one of these cans
11 had exploded ---
- 12 A. --- correct ---
- 13 Q. --- in the car. Okay. Trooper Poston, to your
14 knowledge was this accident being reported? Were there
15 reporters at the scene?
- 16 A. Reporters?
- 17 Q. Yes.
- 18 A. I don't recall.
- 19 Q. So you don't know if it was being televised or
20 anything like that?
- 21 A. No, I don't recall.
- 22 Q. Okay. Did you -- at the scene were there other law
23 enforcement people from other agencies?
- 24 A. Yes.
- 25 Q. And there were some from Berkeley County, right?

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1 A. Correct.

2 Q. Do you know if any of them got a list of the
3 medications that Shana's Mom removed from the car?

4 A. I have no knowledge of that.

5 Q. Okay. I'm going to ask you to take a look at
6 what's already into evidence as State's exhibit 13.

7 [Whereupon, the witness is shown photograph]

8 Q. This is where, I think, vaguely in the dark there's
9 a speed limit sign you testified earlier is a 45 mile per
10 hour sign?

11 A. Correct.

12 Q. This picture, the road as it's represented in the
13 picture, it looks wet to me. Is that accurate?

14 A. No, it's not wet.

15 Q. It's not wet? Oh it's just my eyes going on me.
16 But the night of the wreck the road was not wet, right?

17 A. Correct.

18 Q. But it was dark.

19 A. Correct.

20 Q. So that would be a difference between this picture
21 and the night of the wreck picture.

22 A. Correct.

23 Q. Or the night of the wreck situation. So a 45 here,
24 is this where the 45 zone begins?

25 A. It's just showing you that it's 45 here [indicates]

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1 correct.

2 Q. Right and so where the picture is taken from, is
3 that still inside a 55 zone?

4 A. Within the 55? I believe so because there's the
5 sign [indicates] I think that says 55 the other way.

6 Q. Okay. I'm going to ask you to take a look now at
7 State's exhibit 55.

8 [Whereupon, the witness is shown photograph]

9 Q. Did you take this?

10 A. No. No, I wasn't working during the day time.
11 These are MAIT pictures; they came out and took the
12 pictures during the day.

13 Q. Okay. And you testified earlier that this
14 [indicates] is kind of the first curve before the bigger
15 curve as you're approaching Lyons Beach from Moncks
16 Corner?

17 A. That's the starting of the curve, correct.

18 Q. Okay. And so, in this photograph Lois Lane would
19 be behind the photographer, correct?

20 A. I believe right up in there [indicates] behind it.

21 Q. I'm sorry you pointed -- it looked like you pointed
22 to the white house, but that's ---

23 A. --- no, that's just a house.

24 Q. Okay. So looking at this photograph, Lois Lane --
25 Lois Circle would be behind the photographer on the right

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1 hand side, correct?

2 A. Yes.

3 Q. Okay. I'm going to ask you to take a look at
4 State's exhibit 10 which is in evidence.

5 [Whereupon, the witness is shown photograph]

6 Q. You testified earlier that in the -- going out this
7 way [indicates] is the way out to Lyons Beach, correct?

8 A. Correct.

9 Q. Okay, what's this access road on the right hand side
10 here [indicates]?

11 A. I think that's a little road that goes out to a park
12 or something back there?

13 Q. Okay. Maybe some playing fields?

14 A. I think so. I never go down there; I've never been
15 down there before.

16 Q. Okay. Do you know when that road was put in?

17 A. I don't know. I didn't grow up here.

18 Q. Sorry?

19 A. I didn't grow up here, I'm not sure.

20 Q. Okay. Do you know if that road was put in at the
21 same time the recommended 35 mile per hour speed limit
22 sign was put up?

23 A. I am not sure.

24 Q. Okay. And so from here [indicates] it looks to me
25 like in kind of the bottom right hand corner of this

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- 1 photograph, it looks like there's a red paint mark.
2 A. Where?
3 Q. Bottom -- bottom right hand corner [indicates] just
4 above the fog line.
5 A. Right.
6 Q. What's that?
7 A. I'm not sure what that is.
8 Q. That's something that you painted or is that
9 something that the MAIT team painted?
10 A. It might have been me trying to get my paint can to
11 work, but it wasn't anything relative to the wreck, no.
12 Q. I mean...
13 A. Because sometimes the paint can don't work right
14 away and you try to squirt it a little bit to try to get
15 it to work.
16 But to me, I don't think that had anything to do
17 with what my investigation was because it's like a long
18 straight line. And if I was doing any kind of tire
19 marks or anything like that, they would be documented by
20 dots.
21 Q. Okay. What do you mean dots, like dashes?
22 A. Like, you take paint ---
23 Q. --- yeah ---
24 A. --- and you spray it one time and it makes a dot.
25 Q. Oh, okay. All right.

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1 A. Sometimes, like I said, the can doesn't work so you
2 kind of just kind of spray it to try to make sure it's
3 working properly.

4 Q. Okay. Can you look through the pictures that the
5 State's given you there [indicates] by the witness stand
6 and find us an example of where you did the tire marks
7 with a dot, please?

8 A. I'm trying to remember which pictures -- there are
9 too many of them...

10 Q. Take your time.

11 [Whereupon, the witness reviews photographs]

12 A. Got one here, but you can't hardly see it. Can you
13 see that there [indicates]? That's a bad picture, but
14 there's a little dot there [indicates].

15 Q. Was there not much wheel mark -- not many wheel
16 marks on this accident or what?

17 A. I think we had a small on but not much.

18 Q. I've got one in mind where I think there is a tire
19 mark on it. See if we can ---

20 A. --- if you got one, go ahead and show me and I can
21 try and tell you.

22 Q. It's in evidence already as State's exhibit 25.

23 [Whereupon, State's exhibit number 25 is shown]

24 Q. So on this one, maybe this isn't the best, but up
25 there towards the right [indicates] I'm going to use my

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1 pen here, that looks like a tire mark to me, yeah? Is
2 that a paint mark then, or is that something else?

3 A. That's debris -- I think that's debris right there
4 [indicates].

5 Q. Okay.

6 A. Yeah, that's debris.

7 Q. On the fog line [indicates]?

8 A. On the fog line all the way down that's all dark so
9 you can't determine if that's tire or not because from
10 here [indicates] all the way down it's just distortion of
11 the night.

12 The fog line here [indicates] looks dark all the way
13 down. I don't -- I can't make it out if it's a tire mark
14 or anything. If it is a tire mark, it's the vehicle
15 going off the road. But other than that, you can't tell.

16 Q. Okay. Is that -- if that is -- is that marked in
17 any way with those dots you're talking about?

18 A. No, no, these aren't [indicates]. This is the --
19 no, I don't see any of the dots on there where it went
20 off the roadway.

21 Q. Okay. I'm going to ask you to take a look at
22 state's 27 again, which you talked to Mr. West about a
23 minute ago.

24 [Whereupon, State's exhibit number 27 is shown]

25 Q. And this shows what you testified were gouge marks

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1 in the asphalt. You weren't at, just to be clear now I
2 probably should have started with this -- you weren't at
3 the scene when the wreck happened. You didn't see this
4 accident occur?

5 A. No, of course not. No.

6 Q. What you're testifying to is based on your training
7 and experience in trying to figure out what happened,
8 right?

9 A. Correct.

10 Q. Okay, what's your explanation for this lower down
11 the screen, this gouge mark right there [indicates], yes
12 sir?

13 A. My explanation is the force when the car was being
14 dragged back to the final rest; the undercarriage scraped
15 the ground causing these patterns of gouge marks all the
16 way until the car came to that final rest.

17 Q. What would account for it to scrape one place and
18 then stop like it does right there [indicates]?

19 A. Because of the way it's moving. I mean, it could be
20 -- it could lift up -- but you see how it depends on the
21 debris underneath the car, the undercarriage, how it's
22 disabled underneath.

23 And you got pieces hanging down, it could be this
24 [indicates] dragging, which that could be causing it,
25 this [indicates], this [indicates] and then it comes all

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1 the way down it comes to that final rest there
2 [indicates].

3 Q. And so, by the time you got to the scene, the
4 accident was what, 40 minutes old?

5 A. I guess. I don't have the times right in front of
6 me.

7 Q. Was that [indicates] fire truck already back there
8 when you got there?

9 A. Yes, the fire truck was there.

10 Q. Is there any other way for that fire truck to have
11 gotten there other than to drive through that road?

12 A. I'm not sure if he came up from behind or he came
13 around this way [indicates]. I'm not really sure, he's
14 facing this way [indicates], so unless he went down
15 turned around and came back, I'm not sure.

16 Q. You know that's a dead end down there, right?

17 A. Right.

18 Q. Okay. So he didn't come off the water.

19 A. No, but I don't know if there's a fire station down
20 on the end, I don't know that area that well.

21 Q. Okay, fair enough. All right, do you know what
22 other emergency vehicles or heavy equipment may have
23 driven through this area before you got here?

24 A. Not before I got there. No, I do not.

25 Q. Okay. You're aware of the concept of heavy

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1 equipment making damage in the road, right?

2 A. Oh, very well, yes sir.

3 Q. Okay. I'm going to ask you to take a look at what
4 is already in evidence as State's exhibit 33 again.

5 [Whereupon, State's exhibit number 33 is shown]

6 Q. This [indicates] is the -- well, this is the Saturn
7 you testified; this is the Saturn dashboard, right?

8 A. Correct.

9 Q. Okay. And, it's not common for a speedometer and
10 this sort of stuff to stick where it stops, right?

11 A. It happens sometimes, often, yeah sometimes.

12 Q. Okay. Is it also possible that the controls or the
13 display on this car just were not fully operational to
14 begin with?

15 A. That's a possibility too.

16 Q. Okay. What do you make about that gas gauge over
17 there [indicates] on the left hand side? Is that tank
18 full or empty?

19 A. It's missing the needle off of it.

20 Q. Okay. Do you know if it was like that before the
21 wreck?

22 A. Nope.

23 Q. Okay. Who owns that car?

24 A. Who's the owner of that car?

25 Q. Yes, sir.

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1 A. I'm not sure who it's registered to, but I know who
2 was driving the vehicle.

3 Q. As part of your investigation you didn't look to
4 find out who owned that car?

5 A. Well, it's on my TR-310. I'll be glad to look at it
6 and recollect my memory.

7 [Whereupon, defendant's exhibit number 32 is marked
8 by the court reporter]

9 Q. Okay. Trooper Poston I'm handing you what's been
10 marked for identification as defendant's exhibit 32.

11 [Whereupon, the witness views documents]

12 Q. Oh sorry, are you ready?

13 A. Did you want -- what was the question?

14 Q. I'm sorry, I was waiting for you; you were waiting
15 for me. I was asking you who owned that Saturn?

16 A. According to my TR-310 a Patricia, excuse me if I
17 pronounce the name wrong, Malphrus [phonetic].

18 Q. Okay. That's not a nickname for Ms. Zoll or
19 anything right? That's someone else?

20 A. Yeah. It's someone else according to the name.

21 Q. Do you have any idea who that person is?

22 A. No, I do not.

23 Q. Do you know why Ms. Zoll was driving her car?

24 A. No, I do not.

25 Q. As a part of your investigation into these matters,

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1 do you check each person's driving history? If someone's
2 got a record, do you check their driving history?

3 A. Yes. We check and see sometimes, not all the time.
4 It's not necessarily -- it's not necessary all the time.

5 Q. Did you pull the driving records of the two people
6 involved in this collision?

7 A. This collision? I can't recall if I did or not. I
8 don't know if I did because usually if it's a General
9 Sessions case, the Solicitor usually gets all the
10 information as far as records go. We're not even allowed
11 to pull NCIC records.

12 Q. Okay. So do you know if Ms. Zoll had a driver's
13 license at the time of this wreck?

14 A. Yes.

15 Q. You do know if she did?

16 A. I believe so. Does she have her driver's license
17 number on there? May I see the thing again please?

18 [Whereupon, the witness is shown document]

19 A. Yes, according to this she had a driver's license
20 number.

21 Q. Would you put down a driver's license number on that
22 even if someone's license were suspended?

23 A. Yes, I would.

24 Q. Okay. Did you recover a cellular telephone out of
25 that Saturn?

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1 A. No, I did not.

2 Q. When you testified earlier with Mr. West, you
3 testified that the cars hit like this [indicates] using
4 two fists to come together?

5 A. Yes.

6 Q. But this accident occurred on a curve?

7 A. Correct.

8 Q. Okay. And did you inspect the damage to the cars
9 with an eye toward trying to figure out the angle of
10 impact?

11 A. I tried, yes, my best.

12 Q. Okay. What did you do to figure that out?

13 A. I looked at the type of damage to the vehicles,
14 determined where the damage occurred, see if it was a
15 little off centered or what. I mean, it could have been
16 a little bit off center, but it's pretty much head-on.
17 They still when it -- even though it's a little off
18 center and they hit head-on, it's going to buckle down
19 like that regardless because there's gouge marks in there
20 if that's what you're referring to.

21 Q. Oh, no I was just talking about angle of impact.

22 A. Yeah, I mean coming around the curve. You have a
23 head-on. A head-on is a head-on, but it could be just
24 a little bit shifted could be that way [indicates] could
25 be this way [indicates] but it's still considered a head-

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1 on right there.

2 Q. Okay. You say, even if it's not quite directly
3 centered on the car, you're still calling it a head-on.

4 A. Oh yeah, correct.

5 Q. Okay. And in fact the damage to Shana's car was
6 more noticeable or worse on the driver's side a little
7 bit, right?

8 A. Let me see the pictures real quick.

9 [Whereupon, the witness views the pictures]

10 A. According to this picture here [indicates], it looks
11 like it could be almost directly head-on ---

12 Q. --- can you tell me what exhibit number you're
13 looking at just for the record ---

14 A. --- Oh, I apologize, its 22, State's exhibit 22.

15 Q. Okay. Go ahead.

16 A. But according to this it looks like it's kind of
17 almost directly head-on. But it's got a little induced
18 image pushed up this side [indicates], so it could be a
19 minor angle to it that caused it ---

20 Q. --- this side [indicates] being the driver's side?

21 A. Yeah.

22 Q. Okay. Thank you. In -- one of the limitations of
23 accident reconstruction is there's no way to figure out
24 if your theory about what happened is absolutely right,
25 isn't that true? You can't rewind time and hit replay

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1 and see what really happened?

2 A. No, I guess I can't, not in real life.

3 Q. So even if you -- even for someone who's been doing
4 this for years, you got no way of confirming that what
5 you've been doing for years is right?

6 A. Well, if you've been investigating collisions and
7 you know what a gouge mark is and you know where the
8 first gouge mark takes place and the way it looks like
9 and then determine direction of travel afterwards from
10 the gouge marks within the pavement, you kind of got an
11 idea of where the collision took place.

12 Exactly the point of impact, yes I can say that. I
13 can kind of figure where a point of impact took place; if
14 that's what you're inquiring.

15 Q. Okay. Well, it is a little bit what I'm asking
16 about.

17 A. Okay.

18 Q. Do you know for instance how many times a car rolls
19 over?

20 A. How many it rolls over?

21 Q. Yes.

22 A. Not necessarily.

23 Q. Okay. Are you able to say in this accident how
24 many times Shana's car rolled over?

25 A. Not necessarily.

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1 Q. Are you able to say after the point of -- after the
2 impact between the two vehicles whether Shana's car
3 immediately went into the air at that time or whether it
4 rolled over -- started rolling over some other time based
5 on what's left at the scene?

6 A. Nope. I can't say.

7 Q. Okay. So you can't say if that car went directly
8 up into the air, so to speak?

9 A. I don't believe it went in the air, I believe it
10 went down the embankment and rolled from what I can tell
11 by some of the grass and stuff.

12 Q. Okay. But is there -- are there any markings before
13 the grass that would indicate whether it rolled before
14 that?

15 A. I don't think so.

16 Q. Okay. Court's indulgence?

17 [Whereupon, Mr. Mayer confers with his client]

18 Q. [Mr. Mayer] When you were investigating this scene,
19 you were taking witness statements you said. Wasn't
20 there a time when you were talking with the witnesses
21 where the witnesses were all talking together at the
22 scene?

23 A. I don't recall that.

24 Q. Oka. But with so much going on at the scene, did
25 you make an effort to kind of keep the witnesses separate

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June 4, 2014

1 so they wouldn't influence each other's recollection or
2 anything like that?

3 A. Like I said, I don't recollect.

4 Q. Okay. When you said you issued the two citations to
5 Shana, you said after you left the scene you went to
6 M-U-S-C hospital?

7 A. Correct.

8 Q. Was that after Trooper Southerland drew her blood or
9 was that before Trooper Southerland drew her blood?

10 A. I issued the citations when I went to the hospital
11 and it was after he had drawn the blood.

12 Q. Okay. Was it like the next day -- was it all on
13 the same shift?

14 A. It was on the same shift, correct.

15 Q. Okay. So it was after she was already under
16 arrest?

17 A. Correct.

18 Q. Okay. And it was -- so it was after the blood
19 draw?

20 A. Correct.

21 Q. Is it common practice to issue someone a citation
22 after the blood draw?

23 A. Due to the exigent circumstances and that me being
24 the investigative officer on the scene at the time, yes.
25 We did the best we could do at the time.

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1 Q. Okay. and to do that blood draw y'all didn't go get
2 a warrant to get her blood drawn?

3 A. No.

4 Q. Okay. Are you aware that the blood was drawn after
5 she had major abdominal surgery?

6 A. Like I said, I can't attest to that. I'm not sure.
7 I mean whatever Trooper Southerland said; he's the one
8 that was at the hospital at the time.

9 Q. Okay.

10 MR. MAYER: No further questions.

11 THE COURT: Any redirect of the witness?

12 MR. WEST: Yes, Your Honor.

13 THE COURT: You may proceed.
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State v Shana Robinson
John Poston-Redirect Examination by Mr. West
June 4, 2014

1 REDIRECT EXAMINATION

2 BY MR. WEST:

3 Q. Previously defense counsel showed you your incident
4 report, correct?

5 A. Correct.

6 Q. Okay. Just to clarify some time line of events,
7 can you clarify when the call was made and your time of
8 arrival on the scene?

9 A. Okay. We were dispatched to the -- to Broughton
10 Road. We were notified at 20:47, which was 8:47 pm. I
11 arrived at 21:15 hours, which is 9:15 pm.

12 Q. Okay. After you went to the hospital, Trooper
13 Southerland was directed to place this defendant under
14 arrest, correct?

15 A. Correct.

16 Q. Or, in other words, he was there before you were
17 there?

18 A. Correct.

19 Q. Okay. And Trooper Southerland is the trooper that
20 actually read this defendant her Miranda rights and
21 placed her under arrest?

22 A. Correct and the implied consents.

23 Q. Okay. And the timing on the reports for their
24 arrest come from that time?

25 A. Correct.

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1 Q. Okay. But the actual paperwork wasn't done for the
2 ticket citations until later?

3 A. Yeah. I just filled out the tickets because the --
4 on the tickets only the incident time is on there when
5 the incident occurred, that's what time we put on there.
6 The arrest time doesn't go on the ticket.

7 Q. Okay.

8 MR. WEST: No further questions.

9 THE COURT: Any objection to the witness being
10 excused from the state?

11 MR. WEST: Nothing from the state.

12 THE COURT: From the defense?

13 MR. MAYER: Judge, can I just have a brief re-
14 cross?

15 THE COURT: Limited to redirect.
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State v Shana Robinson
John Poston-Recross-Examination by Mr. Mayer
June 4, 2014

1 RE CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Trooper Poston you mentioned those tickets again.

4 Have you had an opportunity in the last day or two to

5 inspect those tickets again?

6 A. Correct.

7 Q. And, one of those tickets is dated November the 11,

8 right?

9 A. Correct.

0 Q. And the other ticket seems to be dated November the

1 14.

2 A. Correct.

3 Q. Was that just a clerical error?

4 A. That was a clerical error on my part.

5 Q. That ticket was still served on the 11th?

6 A. Correct.

7 Q. Okay, thank you.

8 THE COURT: Any further questions from the State?

9 MR. WEST: Nothing from the state, Your Honor.

0 THE COURT: You're excused.

1 MR. POSTON: Thank you.

2 THE COURT: You're welcome, sir.

3 [Whereupon the witness is excused and steps down

4 from the witness stand]

5 THE COURT: Mr. Foreman, ladies and gentleman, we

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1 are going to take advantage of this break in testimony to
2 take a morning break. We'll break until 11:30. During
3 the break please do not discuss the case and please leave
4 your notepads in your seats. If you will go with the
5 bailiff please.

6 [Whereupon, the jury exits at 11:22 a.m.]

7 THE COURT: We'll be at ease until 11:30.

8 [Whereupon, court is in recess from 11:22 a.m. to
9 11:35 a.m.]

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State v Shana Robinson
Proceedings
June 4, 2014

1 THE COURT: Is the State ready to proceed?
2 MR. WEST: Yes, Your Honor.
3 THE COURT: Is the defense ready to proceed?
4 MR. MAYER: Yes, Judge.
5 THE COURT: Please bring the jury.
6 [Whereupon, the jury enters at 11:35 a.m.]
7 THE COURT: We now resume testimony. The State may
8 proceed.
9 MR. WEST: Thank you, Your Honor. The State calls
10 David Lee.
11 [Whereupon, Mr. Lee comes forward]
12 [Whereupon, the witness is duly sworn by the Clerk
13 of Court]
14 CLERK OF COURT: Please be seated. State your full
15 name and spell your last name for the record.
16 WITNESS: My name is David William Lee, L-E-E.
17 THE COURT: You may proceed.
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State v Shana Robinson
David Lee-Direct Examination by Mr. West
June 4, 2014

1 DAVID LEE,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Mr. Lee, where do you work?
7 A. Currently, I'm retired. I work for an attorney's
8 office here in the Charleston area. Also for a
9 reconstruction unit group called Crash Teams.
10 Q. Where did you retire from?
11 A. Highway Patrol.
12 Q. When did you retire?
13 A. March 8th of this year after 27 years.
14 Q. Very recent.
15 A. Yes, sir.
16 Q. Okay. Were you working for the Highway Patrol in
17 November of 2011?
18 A. I was.
19 Q. What was your rank?
20 A. Sergeant. I had been -- I was a sergeant over the
21 Collision Reconstruction Unit on the coastal region. I
22 was the region commander actually. My daughter likes
23 that title, by the way. I had been the region commander
24 for quite some time running a unit of three or four
25 officers that worked 12 counties on the lower end of the

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1 State. It's the Multi-Disciplinary Accident
2 Investigation Team.

3 Q. Is there an acronym for that?

4 A. MAIT.

5 Q. Okay. And could you describe your history in law
6 enforcement?

7 A. I started on the Highway Patrol in 1987. March 8th
8 actually is when I started at the Academy. I graduated
9 from there and went to Berkeley County in June of that
10 same year.

11 I worked here for about eight and half years as a
12 road trooper, enforcement officer. I investigated
13 accidents, issued summons and tickets for traffic
14 violations that sort of thing.

15 On average the troopers at that time in Berkeley
16 County were investigating anywhere from 18-25 crashes a
17 month when they were active and working on the -- and not
18 on vacation or taking a couple of days off. So, I
19 investigated a good number of crashes over those eight
20 and half years.

21 At that point the Highway Patrol was looking at
22 putting together a crash reconstruction unit and that was
23 something I was very interested in. And I went and did
24 the testing and put in for it and I was actually one of
25 the founding members of the unit that's called MAIT. I

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1 started in March -- I'm sorry, January of 1996 as a full-
2 time member of this unit and progressed until I was the
3 team leader for -- region commander of that unit, that
4 very same unit.

5 Q. Can you describe for the jury your education in the
6 area of collision reconstruction?

7 A. We started just prior to 1996; taking reconstruction
8 classes a group of about 20-22 people were picked to go
9 through the classes. We took at scene investigation,
10 technical, and then reconstruction; those were the three
11 basic building blocks. Those were 80 hour classes each.

12 From there we took specialized classes, that would
13 be forensic mapping class or CAD which is computer aided
14 drawing classes so we could learn how to do scale
15 diagrams and we could do the mapping to go and do those
16 things.

17 Then we went into some detective classes, basic
18 detective sort of stuff. We've done some other
19 specialized training which would be commercial motor
20 vehicles, pedestrian bicycle classes, each of those were
21 their own discipline, specialized discipline. Then
22 motorcycle classes, biomechanics, some -- classes.

23 We continued to progress until we had taken just
24 about every collision reconstruction class that there was
25 -- that was being offered at the time. At some point we

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1 decided we wanted to have our own in-house training and
2 we started teaching associates and I became one of the
3 instructors for the Highway Patrol.

4 We trained somewhere in the neighborhood of 120 to
5 150 officers through that reconstruction class and I
6 taught in three of the five phases of that -- of those,
7 I'm sorry, three of the five phases of those classes,
8 four of the five phases.

9 I taught the technical part. I taught in the
10 reconstruction part. I taught in the mapping part or the
11 forensic mapping part and I taught in the CAD drawing
12 part. So, I had a very hands-on knowledge of what we do
13 as well as teaching those that are doing it now, since I
14 retired --

15 Q. How many accidents or collisions would you say that
16 you've investigated?

17 A. In the entire 27 years? For first eight and half
18 with time off and that sort of stuff I would imagine
19 somewhere in the neighborhood of 200 a year I went to.
20 And that could be anything from parking lot wrecks to
21 major fatalities; just depending on what it was that I
22 responded to when I got to the scene.

23 After that when I joined the MAIT team and started
24 doing collision reconstruction full time, our unit was --
25 had a smaller case load to start with. Somewhere in the

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1 neighborhood of 16-20 over the first four or five years
2 and then it has grown exponentially to the point that
3 we're averaging somewhere in the neighborhood of 125 to
4 150 cases a year and that's been going on for five or six
5 years.

6 So, somewhere in the neighborhood of 1600 in the
7 first eight and a half years and since then I would say
8 I've actually been involved in the investigations that
9 would be consistent with the number of say another 1,000
10 or so.

11 Q. Have you ever testified in court?

12 A. Absolutely have.

13 Q. Ever been qualified as an expert?

14 A. Yes sir I have; on numerous occasions.

15 Q. What were you qualified as an expert as?

16 A. Collision reconstruction.

17 MR. WEST: At this time the State would move to
18 qualify David Lee as an expert in the area of collision
19 reconstruction.

20 THE COURT: Any questions or objections?

21 MR. MAYER: No objection as to his expertise,
22 Judge.

23 THE COURT: So admitted without objections.

24 Q. [By Mr. West] Do you recall the events that bring
25 us here today?

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1 A. The collision on Broughton Road, yes sir.

2 Q. Okay. Did you have the opportunity to investigate
3 that collision?

4 A. Yes, sir, this was a deferred response call. In our
5 processes are crashes we don't -- our unit doesn't
6 immediately respond to. We have two different types, one
7 is an immediate response, one is a deferred response. We
8 didn't go to the scene immediately that night. We were
9 contacted later on and showed up at the scene to document
10 evidence and look at the vehicle.

11 Q. I'm sorry, I hear what you said, but could you speak
12 up a little bit?

13 A. I'm sorry.

14 Q. Speak directly into that microphone. So you did
15 investigate this collision, did you prepare any reports?

16 A. Yes we did.

17 MR. WEST: I'm showing witness what has been marked
18 as State's exhibit 69 for identification.

19 [Whereupon, the witness is shown documents]

20 Q. [Mr. West] Do you recognize that?

21 A. Yes, sir.

22 Q. How do you recognize it?

23 A. I authored the report.

24 Q. Okay. Are these reports kept in the ordinary
25 course of businesses as your job duties entail for

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1 collision reconstruction?

2 A. Yes sir, they are.

3 Q. Is it a true and accurate representation of the
4 report as you prepared it?

5 [Whereupon the witness examines the document]

6 A. Yes sir, it appears to be so.

7 MR. WEST: At this time the State would like to
8 move State's number 69 into evidence.

9 MR. MAYER: Judge, may we approach?

10 THE COURT: Uh Huh.

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: I.D. only subject to foundation.

14 Q. [By Mr. West] I'm going to hand you again State's
15 exhibit 69 for identification only. You indicated this
16 was the report you indeed prepared as a result of the
17 investigation of this collision?

18 A. Yes, sir.

19 Q. And you indicated that this report is a report that
20 is kept in the ordinary course of your duties during the
21 investigation?

22 A. That's correct.

23 Q. Did you ever go out to the scene?

24 A. Yes, sir. Myself and two other officers from my
25 unit responded to the scene. We went out and did a

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1 walkthrough of the crash scene itself. We photographed
2 the scene along with the evidence that was already marked
3 on the scene when we got there.

4 Q. Okay. I'm going to stop you right there. When did
5 you go to the scene?

6 A. It's within our paperwork; it was within a couple of
7 days of the collision having occurred.

8 Q. Okay. But you didn't go there that night?

9 A. No, sir. It was an active scene, it wasn't an
10 immediate call-out, it was a deferred call-out.

11 Q. Okay, explain what a deferred call-out is.

12 A. It depends on the circumstances of the crash whether
13 or not we immediately respond to the scene and what the
14 particular circumstances on this particular case were, I
15 don't recall.

16 We were not called until later after the scene had
17 already been cleared. So we didn't respond until a
18 later date to the crash scene itself. That's what we
19 consider a deferred call-out.

20 An immediate call-out would be something where we
21 were there when the vehicles were there, depending on the
22 location we may be there while there are still active
23 participants in the crash still on the scene.

24 Q. When you go to the scene, what kind of information
25 do you have prior to your arrival?

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1 A. In the deferred call-out situation what we attempt
2 to get is the photographs from the primary investigating
3 officer, the TR-310 or the collision report so we know
4 where the crash is and what information they already have
5 so we have a starting point for investigation.

6 We also -- and I'm the liaison between the officers
7 that would be calling for us to go out there and my unit,
8 so I get details from those officers that are involved.
9 Whether it be the primary officer, the investigating
10 officer, or his supervisor; whoever it is I speak with
11 about the details they have prior to us arriving on the
12 scene.

13 Such as in this case it was a -- we were aware that
14 it was a felony D-U-I that there was a crash that
15 occurred and that one of the vehicles had crossed left of
16 center.

17 Q. When you go to a scene, would you have been given
18 any photographs by the investigating officer?

19 A. I don't recall if I had those in hand I the time --
20 I think we did, that's our ordinary process is to try and
21 get those.

22 Those photographs are usually taken and then stored
23 in digital format on our drive and we retrieve them and
24 take them either on a computer, we don't usually print
25 them out. But we have them on a computer and available

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1 for us to look at as we walk through the scene.

2 Q. Okay. I'm going to show you State's 34, 35, and
3 36.

4 [Whereupon, the witness reviews photographs]

5 Q. Do you recognize those photographs?

6 A. Yes sir, I've seen these.

7 Q. Okay. Would they have been some of the photographs
8 that you would have had prior to your arrival on scene?

9 A. Yes sir, they would have been within that group.

10 Q. Okay. Are they true and accurate depictions of the
11 images as they entail?

12 A. Yes.

13 Q. Has there been any alterations, deletions,
14 modifications to those images?

15 A. No, sir; none that I can tell from these
16 photographs.

17 MR. WEST: The State would move number 34, 35, and
18 36 into evidence.

19 THE COURT: Any objections? Please show them to
20 defense counsel.

21 [Whereupon, Mr. Mayer reviews photographs]

22 MR. MAYER: I object to number 35, Judge. The
23 other two are fine ---

24 THE COURT: --- please approach. No speaking
25 objections.

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1 [Whereupon, an off the record bench conference is
2 held]

3 THE COURT: Objection is overruled. 34, 35, and 36
4 are admitted subject to the objection. Actually 34 and
5 36 are admitted without objection. 35 is admitted
6 subject to the objection. Objection is relevance and it
7 is overruled. It shows the interior of the vehicle and
8 the severity for the indication of independent
9 corroboration of the severity of the impact. Overruled.
10 You may proceed.

11 MR. WEST: Thank you, Judge.

12 [Whereupon State's exhibit numbers 34, 35, and 36
13 are entered into evidence by the court]

14 MR. WEST: Thank you, Judge.

15 THE COURT: You're welcome.

16 MR. WEST: I'm showing the witness what has been
17 pre-marked as State's 63, 64, 56, and 58.

18 [Whereupon, the witness views photographs]

19 Q. [Mr. West] Do you recognize these?

20 A. Yes sir, I do.

21 Q. And what are they depictions of?

22 A. Two of the photographs are of the vehicles that were
23 taken at the wreck yard -- when we went to see the
24 vehicles later. And then two are, one is of the scene on
25 the night of the collision and the other is one of the

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1 vehicles on the night of the collision.

2 Q. And would these have been some of the images that
3 you either took or would have taken with you and prior to
4 your investigation?

5 A. That's correct.

6 Q. Are they true and accurate depictions of the images
7 as they're entailed in these photographs?

8 A. They are.

9 Q. Have there been any alterations, deletions,
10 modifications, or subtractions to these images?

11 A. No, sir.

12 MR. WEST: At this time, State would move 58, 56,
13 64, and 63 into evidence.

14 THE COURT: I think those have already been -- were
15 admitted pre-trial without objection, correct?

16 MR. WEST: All right.

17 MR. MAYER: I've got objections to two of them,
18 Judge.

19 THE COURT: Please approach. Those numbers were
20 already included in the ones that were already admitted.

21 [Whereupon, an off the record bench conference is
22 held]

23 THE COURT: 63 has already been admitted without
24 objection. 58, 56, and 64 admitted without objection.

25 [Whereupon State's exhibit numbers 56, 58, and 64

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1 are admitted into evidence by the court]

2 THE COURT: You may proceed.

3 MR. WEST: Thank you, Your Honor.

4 Q. [By Mr. West] Prior to the arrival, what sort of
5 information and equipment would you have when you arrived
6 on scene?

7 A. As far as information is concerned, we were made
8 aware that there was a felony D-U-I crash on Broughton
9 Road not far from Lyons Beach. That one vehicle had
10 crossed left of center and struck another one head-on.

11 As far as equipment is concerned, we have digital
12 cameras, a mapping system. Basically to give you an idea
13 of what it looks like it's the same sort of equipment
14 used by surveyors except we don't survey.

15 We review forensic mapping. We make an artificial
16 reference point and then measure from that point to the
17 evidence points within that scene so we can do a two
18 dimensional, sometimes three dimensional two scale
19 diagram of the crash scene.

20 The equipment we use is accurate to an eighth of an
21 inch over a quarter mile, so we get a pretty good
22 representation of the crash scene itself as well as the
23 physical evidence that's left on the roadway from the
24 crash.

25 Q. Okay. Who goes with you out there?

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1 A. I would take other officers with me from our unit.
2 Sometimes if the primary investigating officer is
3 available he would go with us or any one of his
4 supervisors. But on this particular occasion it was
5 myself and Lance Corporal Miller [phonetic] I believe and
6 Lance Corporal Ashe [phonetic] was on the scene.

7 Q. Can you describe the role of each of these
8 individuals in the investigation?

9 A. We have -- I'm sorry there's also vehicle equipment.
10 We do take videos of the crash scenes as well. Each one
11 has overlapping roles; I guess would be the best way to
12 put it. We do go out, one person will take photographs
13 and one will do video.

14 We'll all walk through the scene and look at the
15 physical evidence that's there. As well as get a feel
16 for the terrain that we're working with and dealing with.
17 We also look at the safety issues that will apply to us
18 so that we can station our vehicles and have control of
19 the roadway while we're out in the road looking at the
20 evidence and measuring its position within that scene.

21 We park the vehicles on each shoulder, put the blue
22 lights on well away from where the crash scene is so that
23 it gives the oncoming drivers some warning that we're in
24 place. And then we'll start working through the evidence
25 that's there. It just depends on what type of evidence

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1 or how big of a scene it is which one we do first. There
2 are times when we will map or measure the roadway itself
3 first, which is everything except for the evidence. And
4 then there are times in which we would actually do the
5 evidence first. It just depends on each individual
6 circumstance.

7 As far as this one was concerned, likely we did the
8 roadway first, it does take the longest. So, we will do
9 -- we did -- we mapped that vicinity for that particular
10 roadway and then we went down and started looking at the
11 physical evidence itself.

12 That's the any tire marks that are down, any gouges
13 in the roadway, fluid trails, and then the final rest
14 positions of the vehicles that are marked on the scene by
15 the primary investigation officer.

16 Q. Can you describe how -- for the jury how the
17 information that you're collecting on scene is recorded?

18 A. It's in a data collector. What we do is it's kind
19 of like connect the dots it's not actually kind of like
20 that it's actually like that.

21 We give each point a code. We'll tell it -- give
22 it a name and then we'll tell our computers whether or
23 not we want them to connect those dots. And then the
24 programs that we use go through and connect each dot with
25 a line to draw the roadway itself and then the physical

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1 evidence if it's a line or if it's just a dot position
2 it'll put just a dot down there -- it'll also have the
3 codes next to it if we need to see those to make sure
4 that it's doing what we're telling it to do.

5 Q. Okay. When you went to the scene, did you inspect
6 physical evidence on the scene?

7 A. Yes I did.

8 Q. Were you able to determine the direction of travel
9 of the two vehicles?

10 A. Yes, the Saturn was coming from Lyons Beach headed
11 towards Moncks Corner. The BMW was traveling towards
12 Lyons Beach from Moncks Corner.

13 The physical evidence on the roadway put the impact
14 within the lane of the Saturn as it was traveling away
15 from Lyons Beach and placed the BMW left of center at the
16 time of collision.

17 Q. You said you were able to determine the point of
18 impact. Can you please pull up State's number 11?

19 A. If I said point of impact, let me clarify, the area
20 of impact. It's a little bit bigger than just one point.
21 You have gouges that are for both vehicles and then you
22 have where the 2 bumpers actually strike.

23 So that point, that one singular point is a very
24 narrow place. But the area where the two vehicles
25 strike is defined by the gouges that are left in the

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1 roadway from the two vehicles.

2 Q. Can you please pull up State's number 11?

3 [Whereupon, State's exhibit number 11 is shown]

4 Q. Is this a photograph from while you were on the
5 scene?

6 A. Yes, it is.

7 Q. Okay. What are you able to determine from this
8 photograph?

9 A. The gouges that are here [indicates] and here
10 [indicates] indicate the location of the two vehicles at
11 impact. Like I said, there's overhangs on that part
12 which is in front of the front wheels of both vehicles
13 and then to where the bumper are, that's the front
14 overhang of each vehicle.

15 So, if you look at these impacts, you can see that
16 there [indicates] -- the distance that travels back where
17 the gouges start is consistent with those overhangs.
18 They start to affect one another, drive each other into
19 the ground and then they start marking the roadway.

20 And then you start seeing marks where it leaves the
21 scene and that's what the gouges are is where it's -- the
22 impact has already taken place or is taking place at that
23 moment. And, this was part of the travel path for the
24 Saturn outbound after the crash takes place [indicates].
25 It travels this direction; it's fairly -- that one is

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1 fairly obvious, you can see those -- see that marks,
2 those marks and the fluid trail where it leads out to
3 final rest. And then there are some marks here
4 [indicates] where the BMW comes to rest as well.

5 Q. Pull up State's number 12.

6 [Whereupon State's exhibit number 12 is shown]

7 Q. See the gouge marks on the bottom of the picture
8 [indicates]. Is there any significance to the direction
9 that these gouge marks are pointing?

10 A. These marks [indicates] are put down after the
11 vehicles have already impacted, so they are taking place
12 after they've reacted to one another in some way. There
13 are physical forces that are applied by the roadway
14 itself as the -- and the tires that are attached to the
15 vehicles.

16 As you can tell, the Saturn travels fairly -- pretty
17 much straight back in line from where it's impacted.
18 It's driven directly back. The BMW strikes it pretty
19 much dead head-on or fairly close to that and then it
20 starts to move out or rotate out at impact in a clockwise
21 fashion.

22 But then again, the Saturn also rotates in a
23 clockwise fashion so those two front ends turn as they
24 strike; they can't occupy the same place.

25 Q. Okay. So this gouge mark towards the bottom of the

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1 photograph [indicates] is this the first gouge mark that
2 was found on that roadway?

3 A. It's the -- if you were coming from Moncks Corner,
4 towards Lyons Beach, it would be the first mark that you
5 came upon, yes.

6 Q. Okay. So, through all of this you were able to
7 determine that this [indicates] was in fact the point of
8 impact?

9 A. Yes.

10 Q. Okay. Now, if you look at that photograph, it
11 looks a little like the gouge marks are traveling
12 somewhat towards the fog line.

13 A. Yes.

14 Q. What would that indicate?

15 A. It could indicate something being broken on the
16 bottom of the BMW, something -- once again the rotation
17 of the vehicle at impact because like I said they'd start
18 to turn as they strike one another and rotate out to
19 final rest. That's consistent with those -- with that
20 occurring.

21 Q. Will you pull up State's 24?

22 [Whereupon, State's exhibit number 24 is shown]

23 Q. In that picture, is that the two vehicles involved
24 in the collision?

25 A. Yes sir, it is.

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1 Q. Okay. And those gouge marks towards the middle of
2 the photograph [indicates] with the orange paint around
3 it, those are the gouge marks you were just talking
4 about?

5 A. That's correct.

6 Q. Okay. Now from that picture, would that have
7 assisted you in determining direction of travel and point
8 of impact?

9 A. Yes sir, it would.

10 Q. And how is that?

11 A. What places -- it places the BMW within the lane of
12 the Saturn at impact. The directionality of the Saturn
13 post impact is 180 degrees backwards from the way it
14 came, which indicates the directionality of both vehicles
15 at impact.

16 Q. Okay, State's number 25.

17 [Whereupon. State's exhibit number 25 is shown]

18 Q. You see there's kind of a dark spot in the roadway
19 there [indicates]. What is that?

20 A. When vehicles strike as violently as these two hit,
21 they do damage to the interior of the engine compartments
22 as well. Radiators, any fluid lines that might be in the
23 front of the motor, if it's damaged, it just drops the
24 fluid there. That trail actually follows all the way out
25 the damage that was done to the Saturn at that point, you

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1 can see [indicates] where that fluid trail continues out
2 all the way out to final rest.

3 Q. So you were able to determine where that fluid came
4 from?

5 A. That appears to be -- because it's consistent with
6 the fluid trail left by the Saturn, to have come from the
7 Saturn at impact. Like I said, that puts the Saturn in
8 that position as well.

9 Q. All right, State's number 27.

10 [Whereupon, State's exhibit number 27 is shown]

11 Q. What is this a photograph of?

12 A. This is a photograph of the Saturn at final rest as
13 well as some gouging. And you can -- here [indicates]
14 you can make it out and here [indicates] you can somewhat
15 make it out. It's a fluid trail.

16 Q. What is the direction of the gouging in the road?

17 A. It's travelling back towards Lyons Beach.

18 Q. Okay. And which lane of traffic is that?

19 A. That is the lane headed towards Moncks Corner.

20 Q. And is there any fluids that you previously
21 mentioned in this photograph?

22 A. Yes, there's some fluid trail through here
23 [indicates] that you can see, it's a little hard to make
24 out in this photograph, but it's there.

25 Q. State's number 28.

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1 [Whereupon, State's exhibit number 28 is shown]

2 Q. What is the photograph from?

3 A. There is debris from the -- what appears to be the
4 Saturn and then there's gouging on the roadway from the
5 Saturn as well as you see this [indicates] is that fluid
6 trail where it crosses the yellow line and runs under --
7 and goes underneath the car, or under the Saturn.

8 Q. Now previously the pictures showed the gouge marks
9 going directly back in the roadway.

10 A. Yes.

11 Q. Why would these gouge marks curve towards the right
12 in the defendant's lane of travel?

13 A. Once again, there's -- roadway forces, tires do
14 their job, they grab the roadway. The wheels are turned
15 at impact or if they're damaged and turned at impact then
16 they create directionality.

17 If there's one that pinned because of the impact,
18 that braking -- it simulates a braking or it causes the
19 vehicle to slow because it's not rolling the way it
20 should.

21 Then, it creates a situation where it turns the
22 vehicle as well. And then the front end where it's
23 gouged it goes -- the undercarriage where it's striking
24 the road is also causing some changing direction. The
25 other thing is the roads are made with a -- one is a

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1 super elevation which is the road is crowned to the
2 middle and the water runs off to the side. And then
3 there's a banking, I guess that's a super elevation for
4 the road way where it's actually banked into a corner.

5 So that it's kind of like when you see in NASCAR --
6 it's nothing nearly that drastic so you won't ever really
7 feel that. But the road is banked in some way so that
8 you go towards the center of the curve, the water would
9 run off into the bottom of the curve.

10 Q. Now what did you say caused these [indicates] gouge
11 marks in the road?

12 A. Those gouge marks are likely from either the
13 undercarriage or from one of the rims that were of one of
14 the tires that was damaged in the crash itself.

15 Q. From which car?

16 A. From the Saturn.

17 Q. Was there any gouge marks from the BMW?

18 A. Not in this location, no. The crash occurred well
19 before that, this is just before final rest. It's where
20 the Saturn comes to rest. The BMW had gone off to the
21 shoulder from that point and never made it to that far
22 down the roadway.

23 Q. I'm going to show you State's number 50.

24 [Whereupon, State's exhibit number 50 is shown]

25 Q. What is this picture of?

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1 A. That's the same one we looked at just a minute ago.

2 Q. Okay. Now in your opinion, did you find any gouge
3 marks from the BMW toward this [indicates] area of the
4 roadway?

5 A. This [indicates] would be from the BMW and this
6 [indicates] would be from the Saturn.

7 Q. How can you distinguish the two?

8 A. These were actually taken; I believe these are the
9 ones that were taken by my unit on the day that we went
10 out to the scene. So this is a couple of days
11 afterwards.

12 But you can still see some of the, where the fluid
13 originally comes out of the Saturn and then there's a
14 continuation of that trail where it travels down
15 [indicates].

16 But it's my opinion that this [indicates] is from
17 the Saturn and this [indicates] is from -- I'm sorry this
18 [indicates] is from the BMW and this [indicates] is from
19 the Saturn.

20 Q. Do you know what the speed limit of that curve is?

21 A. I know that the roadway approaching is -- got a
22 speed limit of 45 miles an hour, but there's a regulatory
23 sign entering the curve which is the 35 miles an hour and
24 that would be the suggested speed or -- I'm sorry, let me
25 put that in a different way, the required speed of the

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1 roadway at that point because of the severity or the
2 steepness of the curve.

3 Q. When reconstructing a collision, what sort of
4 elements are you looking to find out?

5 A. It depends on each individual collision is its own
6 individual being. We're looking to see how the collision
7 occurred. Some collisions are -- it's important to know
8 how fast someone was going. Some collisions it's
9 important to know how long it took them to do their
10 particular thing because that creates a situation for
11 another driver or pedestrian.

12 In this case, the most important part of this crash
13 when we were out there discussing it and walking through
14 the scene was where did the crash take place? Everything
15 else was kind of secondary. The biggest point was which
16 vehicle was left of center?

17 In this case, the BMW had crossed left of center and
18 struck the Saturn head-on. And that as far as I was
19 concerned, mostly in our report, that's the biggest issue
20 we had in this case is who was left of center and who
21 created the collision; and that would've been the BMW in
22 this case.

23 Q. Were you trying to determine any sort of element
24 such as speed?

25 A. In some cases, and we did look at speed in this and

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1 we did actually go through and do a speed analysis on
2 this particular case.

3 Q. In general, how do you determine the speed of a
4 collision?

5 A. There is any number of ways to determine speed. In
6 this particular case, what we did was we looked at a in-
7 line momentum state, that's because the two vehicles
8 struck head-on.

9 That means that they were pretty much overlapped as
10 far as their impact was concerned and their center masses
11 were traveling and acting upon each other at the point of
12 impact. This one pretty much fits that bill.

13 The post impact on the Saturn is directly along its
14 line of approach, which is pretty consistent with what
15 we're looking at. There is some rotation that's involved
16 and that's not unusual for head-on collisions to see
17 rotational value depending on there may be a certain
18 percentage of an offset.

19 If one is just a little bit to the left or right
20 coming in at 100 percent overlap, then you'll see some
21 rotation like we did in this particular case.

22 The second thing is for in-line momentum we need to
23 know what the speed of one vehicle is; we have to have a
24 starting point. Ordinarily we would look at if we don't
25 have something to base it on, we'd look at what the

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1 posted speed limits were and start from there and see
2 what -- if one vehicle is doing the speed limit what's
3 the other -- how fast is the other vehicle going and we
4 would have some sort of table to figure out what those
5 speed ranges were.

6 But in this case, the Saturn had an A-C-M on board
7 and we were able to download the information from the
8 A-C-M, which is -- it's basically the airbag control
9 module. It looks for the change in velocity or change in
10 speed as the vehicle gets involved in a crash. It's what
11 tells the airbags to go off. So it documents all that
12 information and holds it for a certain amount of time or
13 backs it up for a certain amount of time.

14 So, when we looked at that information at impact,
15 the Saturn was showing somewhere -- 42 miles an hour is
16 what is was showing on the Saturn for impact speed.
17 Because we knew that, we were able to place that within
18 our momentum study and we were able to determine the
19 speed of the BMW at impact at approximately 79 miles an
20 hour.

21 Q. Now, you talked about this A-C-M or airbag control
22 module ---

23 A. --- yes ---

24 Q. --- where is that located in a car?

25 A. They place them as close as they can to the center

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1 mass of the vehicle because that's what their -- what the
2 manufacturer's are attempting to figure out is how is the
3 center mass of that vehicle affected because that closely
4 resembles what's happening to those passengers within the
5 vehicle.

6 So, it's either on that center tone, the hump; it
7 could be as far back as between the front two seats in
8 the car. It may be underneath the driver's seat or it
9 could be underneath the center stack or where you radio
10 and that is in the dash. It just depends on which
11 manufacturer, but it's usually fairly close to the center
12 mass of the vehicle.

13 Q. How is the information recorded in the box?

14 A. It's electronically stored in there --

15 Q. How do you retrieve that information?

16 A. We have a downloading system; it's called a C-D-R
17 kit or a crash data retrieval system. We can plug into
18 that recorder either through a port that's located
19 directly underneath the steering wheel or we can remove
20 the airbag control module itself and do a desktop
21 download, we can plug directly into it.

22 In this case because of the way the vehicle was
23 damaged, we did have to actually take it from the vehicle
24 and download it and then we returned it to the vehicle
25 without actually taking possession of it. We did that

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1 the day we went to the wrecker yard.

2 Q. So the black box would not have been in Highway
3 Patrol's custody during this?

4 A. No, we didn't take it as evidence; we only imaged
5 the data from it and left it with the car.

6 Q. Okay. How about the BMW? Did the BMW have one of
7 these A-C-M modules?

8 A. If it's got an airbag, it's got one, but the
9 manufacturers -- not all manufacturers have made that
10 data available or at least made it so that we can
11 download that data.

12 Now, there's a requirement and I'm not sure exactly
13 I think it's 2015, but I'm not sure where all
14 manufacturers that sell cars within the United States
15 have to have that data available.

16 It can be downloaded, but they don't necessarily
17 have to share that data with law enforcement or anybody
18 else. So, we don't specifically at that time didn't have
19 the ability to download the BMW, the A-C-M from the BMW
20 we didn't take it from the vehicle.

21 Q. Okay. So you would've had to use some sort of
22 formula to come up with the speed?

23 A. That's correct and that's where that in-line
24 momentum analysis came from.

25 Q. I'm going to show you State's number 33.

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1 [Whereupon, State's exhibit number 33 is shown]

2 Q. What does that [indicates] indicate to you?

3 A. That's a photograph of the dash for the Saturn.

4 That's something we would look at during our
5 investigation -- let me apologize if I'm speaking too
6 softly. That's a bad habit of mine I don't talk very
7 loud. I just prefer not to shout so I'll do my best to
8 make sure you can hear me okay.

9 I would not necessarily use this as the sole piece
10 of evidence to walk up to a crash car and say that's how
11 fast that car was going on impact. Because any number of
12 things can occur during that crash sequence that could
13 affect that.

14 But, I would look at it and see to see if it was a
15 tap on the dashboard from the speedometer needle or to
16 see if it had stuck in place. In this case it had, it's
17 a good photograph. It is a piece of circumstantial
18 evidence that we would use to corroborate the evidence
19 that we come up with as far as our investigation is
20 concerned.

21 When we downloaded the A-C-M or imaged that A-C-M
22 and came up with a speed of 42 miles an hour at impact
23 and then saw this photograph, that's fairly compelling.
24 It's very good circumstantial evidence to indicate that
25 it's an accurate speed for that, but it's not -- it would

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1 not be a sole factor for us to use that number.

2 Q. Did you place these calculations and readings into
3 your report?

4 A. Yes sir, I did.

5 Q. Okay. Is that the report that previously handed to
6 you marked State's number 69?

7 A. Yes it is.

8 Q. Are these calculations, again, the same calculations
9 that you did as part of your investigation in this
10 report?

11 A. Yes, sir.

12 Q. Is that report a true and accurate report of the
13 report you would have made as part of this investigation.

14 A. Yes sir, it is.

15 Q. Has there been any additions, deletions,
16 subtractions, or modifications to that report in terms of
17 the calculations as you wrote them?

18 A. No, sir. The report itself, it's the same numbers.
19 There were a couple of typos that we had noticed after we
20 got further along. There was one in the speed
21 calculations where the BMW was misidentified in a
22 statement across the top of the border as a 650, when it
23 was actually a 325i; I think that's what it was. I
24 hadn't actually looked at it. But, it was basically a
25 typographical error. The correct information was used

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1 for the BMW weights and all the particular specs for that
2 car were correct, it was just a typo as it was put in
3 place. As well as one other in the body of the report
4 where one vehicle was identified as vehicle one when it
5 should have been vehicle two or the other way around and
6 those have been corrected.

7 Q. None of that would have changed your calculations as
8 determinations found in this report?

9 A. No, sir it made no difference whatsoever.
10 Everything is the way it was intended to be which is the
11 BMW was at 79 miles an hour at impact, the Saturn is at
12 42 and that the BMW was left of center at impact and it
13 causes the collision.

14 MR. WEST: At this time, the State would move
15 State's 69 into evidence.

16 THE COURT: Any objection?

17 MR. MAYER: No, Judge, no objection.

18 THE COURT: Marked admitted without objections.

19 [Whereupon, State's exhibit number 69 is admitted
20 into evidence by the court]

21 Q. [Mr. West] Mr. Lee, if you would not have had the
22 A-C-M module in the Saturn, how would you have calculated
23 the speeds of the two vehicles?

24 A. We would use the same sort of analysis. As I stated
25 a minute ago, we would have started -- used the posted

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1 speed limit for the BMW, I'm sorry for the Saturn as it
2 was in its proper lane of travel. And said if the Saturn
3 is traveling at 35 miles an hour, what's the speed of the
4 BMW?

5 And we would use that as a baseline to go up for the
6 Saturn we would have said anywhere from 35 to say 50
7 miles an hour and done every five miles an hour and then
8 we would back it up to 25 and done every five miles an
9 hour. So we would have had seven or eight different
10 calculations to determine what the speed of the BMW was
11 and what that range was.

12 It doesn't make sense that the Saturn would have
13 been traveling much slower than 25 miles an hour entering
14 that curve. And in this particular calculation, every
15 time the Saturn was faster, it would make the BMW that
16 much faster as well.

17 So we recounted to 35 and seeing that the BMW was
18 over the posted speed limit, it would have just been a
19 range from that point to determine which one we wanted to
20 look at as far as speeds were concerned.

21 Likely we would've chosen the 35. But we have
22 accurate information that shows the Saturn at 42, so we
23 use that number and it actually narrows any range that we
24 would use, we just fell on that one number because that's
25 what we considered we had and get accurate number for the

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1 Saturn at the time of impact.

2 Q. So, if you were to put it in a hypothetical, into
3 the formula that the Saturn was traveling 35 miles an
4 hour, then your calculation would have led you to believe
5 that the speed of the BMW was less than 79?

6 A. Yes. Here's the way it works and this is kind of
7 straight forward. If I have a Saturn or an object
8 traveling at a certain speed and I bring a second object
9 in and strike it, there's a certain amount of energy
10 that's being used.

11 Well, if this one [indicates] is going slower it
12 doesn't take as much energy for this one [indicates] to
13 stop it. If this one [indicates] is going faster it
14 takes more energy for this one [indicates] to stop it.
15 And that's basically what the BMW did with the Saturn is
16 as it comes in it stops the Saturn and then it gives it
17 energy and sends it off this direction [indicates].

18 So, that would mean that the BMW would have to be
19 going faster if the Saturn is going faster or it could
20 necessarily be going slower if the Saturn is going
21 slower. That's pretty much what this calculation would
22 look like.

23 Q. What's the significance of this collision occurring
24 on a curve rather than just a straight road?

25 A. There are a couple of things that we look at as far

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1 as the curve itself is concerned. We were able to
2 determine because of the arc of the curve what the speeds
3 for the BMW to enter that curve and maintain its position
4 in the roadway.

5 The faster it goes, the longer the curve has to be
6 or the less curve there has to be for it to stay in the
7 roadway. The fact that there's a curve there, the faster
8 the BMW goes, the more the BMW wants to drift out to the
9 outer edge or into the oncoming lane.

10 In this case the maximum speed that we found on the
11 curve was about 77 miles an hour I think and that's
12 within these calculations as well. So, that BMW actually
13 had drifted out -- because it was going as fast as it was
14 it was drifting out of the roadway itself.

15 Had it not hit the Saturn and then the roadway
16 straightened out, which it did, it may not have actually
17 maintained the roadway it could have been involved in a
18 crash by itself further down the road.

19 Q. Did you have an opportunity to inspect the vehicles
20 physically?

21 A. [No response].

22 Q. An inspection of the vehicles would have ---

23 A. --- an inspection of the vehicles was done and that
24 took place with Lance Corporal Ash [phonetic] or Corporal
25 Ash and Lance Corporal Miller. They did those

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1 inspections as well as the download on the Saturn.

2 Q. I'm going to show you State's 31.

3 [Whereupon, the witness is shown the photograph]

4 Q. This photograph -- what is that a photograph of?

5 A. It appears to be a photograph of the Saturn.

6 Q. Okay. Now what, if anything, does this photograph
7 tell you about speed or direction of impact?

8 A. When I talked a few minutes ago about the overhang
9 for the vehicle on the front end, when you look at the
10 front there's the [indicates] basically what the bumper
11 is. That's what's left of the bumper on the Saturn and
12 you see it's pushed all the way back to the front tires.
13 That's [indicates] the engine compartment which has been
14 pushed back as well, which pushes into the firewall,
15 which pushes into the passenger compartment of the
16 vehicle. So, the damage that's done is a tremendous
17 amount of damage.

18 This wheel is -- from the damage when I talked about
19 roadway forces earlier and tire marks that you can see,
20 that's one of those things that we would be looking for
21 outbound for that vehicle.

22 And then right here [indicates] at the bottom of the
23 Saturn, the door frame at the bottom where you see it
24 actually makes a V [indicates]. Now that particular type
25 frame or the body of that vehicle is actually bowed down

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1 in that position. It buckled and drove it down towards
2 the ground. That fall back from the -- that would be
3 considered induced damage when it's damaged that far back
4 from where the original impact took place.

5 It was not like the cars didn't touch in that
6 position. The car was damaged that far back because of
7 the amount of energy that was used or the speed in this
8 case. So it was damaged that far back based on the
9 energy that was involved and the speed involved in the
10 crash.

11 Q. I show you State's 37.

12 [Whereupon, the witness is shown the photograph]

13 Q. What is that a picture of?

14 A. That's the front end of the -- that's the front end
15 of one of the vehicles. I think it's the...

16 Q. Would it be a better quality image for you to look
17 at the stack in front of you.

18 A. Yeah, I think so. But I believe that's the Saturn
19 as well. That's just a front on picture of it so what
20 you're seeing is as you look out in this area here
21 [indicates] what you're looking for -- and then as well
22 as this [indicates] is that bumper area I was talking
23 about again. Those things are -- those are actually
24 impact damage, not induced damage. Induced if I hit a
25 car on the front and damage it well back of the car, make

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1 it bend like that like a door frame, that's induced
2 damage. Contact damage is where both vehicles actually
3 strike each other where there is damage between one
4 vehicle to the next.

5 And you can see where that was there is paint
6 removed and the vehicle is bent and then down lower -- I
7 should use the pointer -- down lower [indicates] you can
8 see that this is also contact damage where those vehicles
9 actually struck one another. So the overlap on the head-
10 on collision or that strike is pretty much dead-on.

11 Q. I'm going to show you State's 38. What is that a
12 picture of?

13 [Whereupon the witness is shown the photograph]

14 A. That's a photograph of the BMW at final rest.

15 Q. Okay. And you talked about contact damage. Can
16 you describe contact damage in this instance?

17 A. Like I said, you can see where this vehicle has that
18 same sort of damage done to it where you can tell that
19 the vehicles actually were in contact with one another
20 all the way across the front end of that vehicle.

21 Q. So, hypothetically if you had contact damage across
22 the entire front of a vehicle, would that indicate to you
23 that it was a head-on collision?

24 A. Yes, and that the center masses were acting on one
25 another at that point.

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1 Q. What -- would there have been any angle to the
2 collision, if any?

3 A. Like I said, the way vehicles are made there can at
4 any point be a -- let me go back say this is the right
5 way -- roadway forces and tires themselves acting upon
6 the pavement and then the gouging of the vehicles as they
7 come into impact can create a rotation within that
8 scenario.

9 And that's what happened in this case. And then the
10 BMW did strike and rotate clockwise and then roll over on
11 its way outbound from the crash and then come to rest.

12 Q. Let me show you State's 39.

13 [Whereupon the witness is shown photograph]

14 Q. Tell me about the damage that you see in that
15 photograph.

16 A. Some of this is induced damage and some of it is
17 roll-over damage. You see induced damage here
18 [indicates], there's some damage here [indicates] as
19 well.

20 Once again, it's all indicating that there was
21 energy involved after the crash with the Saturn. So
22 that's how much energy it had; it had to get rid of it
23 somewhere -- dissipated it in damage as well as distance
24 traveled from impact.

25 Q. Does the energy associated with the crash in any way

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1 correlate to speed?

2 A. Yes, it does. The more energy that there -- they're
3 actually they're not equal, but they're equivalent. If
4 you have a large amount of energy it's got to come from
5 somewhere and basically that's the weight and the speed
6 of the vehicle. So, that's how you figure out energy.

7 So, if you have a vehicle inbound with a certain
8 amount of weight and it's traveling at a certain speed,
9 it has this much -- it has this big a block of energy.
10 Or if you increase the speed, it makes the energy that
11 much more. If you increase the weight, without
12 increasing the speed, it still increases the energy on
13 the way in because it takes more energy to move more
14 weight.

15 So, in this case there was a lot of energy that was
16 used to create the damage profiles of the two vehicles
17 that were involved as well as the distances traveled
18 after the crash took place.

19 Q. I show you State's number 20.

20 [Whereupon, the witness is shown photograph]

21 Q. Describe, in your opinion, what amount of energy or
22 just quantify what amount of energy it would take to
23 induce this sort of damage on a vehicle.

24 A. What we're -- what we're looking at here is the
25 passenger part of the -- driver's compartment of this

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1 vehicle. This is [indicates] where the driver was in the
2 Saturn. If you look into here [indicates], this is the
3 firewall and it's basically where the petals are located.
4 The front end of the seat where your legs would go off
5 the seat into the floorboard is pushed fairly close to
6 that, has really narrowed that gap.

7 The steering wheel is pushed back nearly to the seat
8 itself and once again, you see where the frame of the
9 vehicle has been -- where this doorframe [indicates] has
10 been bent and buckled in. And it's bent here [indicates]
11 as well.

12 This area right here [indicates] the bumper is
13 pushed back to just off right there [indicates] at the
14 front of the wheels so all the motor and everything is
15 pushed back into this area [indicates]. That's a lot of
16 energy and I keep saying a lot because I haven't actually
17 quantified that number, but it relates to that speed that
18 was used by the BMW coming in as well as the speed from
19 the Saturn.

20 The Saturn was traveling at 42 miles an hour in one
21 direction and then was turned around 180 degrees or it's
22 was post impact speed, or what it was doing after the
23 crash, it was traveling approximately 30 miles an hour
24 the other direction. That's a lot of energy to turn, to
25 stop a car dead in its tracks that was traveling 42 and

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1 then turn it around and send it at 30 miles an hour the
2 other direction, which is what happened in this case.

3 Q. So, you were able to make a conclusion as to the
4 speed in this case, correct?

5 A. That's correct.

6 Q. And again, could you reiterate what the speeds were
7 that you found in your report?

8 A. Our published speeds for the BMW are 79 at impact
9 and then for the Saturn is 32 -- 42; I'm sorry.

10 Q. Did you ever find any brake marks in the victim's
11 lane of travel?

12 A. There was -- there appears to be some markings on
13 the way inbound, but that's consistent with the
14 information from the A-C-M, which was that the Saturn was
15 braking or slowing immediately prior to the impact from
16 say 45 down to the 42 miles an hour. But that's all
17 related within the A-C-M itself.

18 Q. Any brake marks from the BMW?

19 A. None that we saw, no; none that we saw on that night
20 or in any of the photographs that were taken the night of
21 the crash.

22 Q. Was there any indication from the physical evidence
23 that you inspected, that would have indicated that this
24 collision occurred anywhere but the victim's lane of
25 travel?

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1 A. None whatsoever. And which goes back to what I
2 specifically said earlier on in this testimony was that
3 the crash itself, although speed -- the amount of speed
4 adds to the severity of the crash. The crash itself
5 takes place because the BMW is in the wrong lane.

6 It crossed over left of center and strikes the
7 Saturn head-on. So the main portion of this, the biggest
8 part of this particular crash is not necessarily the
9 speed, but the location of the vehicles at impact, which
10 is very well represented by these photographs.

11 Q. Did you find any evidence that would have suggested
12 that the Saturn contributed to the accident?

13 A. No, sir.

14 Q. Is it your conclusion that the driver of the BMW was
15 the at-fault driver causing the collision that killed
16 Candy Zoll?

17 A. Yes, sir.

18 Q. Okay. During your investigation is it customary to
19 diagram a recreation of the accident?

20 A. Yes, sir. Are you specifically talking about an
21 animation process?

22 Q. Yes.

23 A. Yes, sir. If we have enough data collected where
24 we're able to do an animation of a particular crash
25 scene, then we do that.

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1 Q. How is that done?

2 A. We have computer modeling systems. We bring our
3 data into the system and tell it how fast we want the
4 vehicles to be going prior to the impact, at impact, post
5 impact, what their directions of travel are at impact as
6 well as how they get to final rest.

7 We tell that program how to make -- do that and do
8 all those things during that sequence of events. And
9 then we put 3-D vehicles on there so that they have
10 dimension and then we hit the play button.

11 Q. Did you make a recreation in this case?

12 A. There was an animation done on this particular case,
13 yes.

14 Q. I'm showing the witness what's been marked as
15 State's exhibit 71 for identification.

16 [Whereupon the witness is shown the C.D.]

17 A. Yes, sir.

18 Q. Do you recognize that?

19 A. I do.

20 Q. How do you recognize it?

21 A. My initials as well as the date --

22 Q. Have you viewed the contents of that C.D.?

23 A. Yes sir, I have.

24 Q. And what is that -- the contents?

25 A. The contents are the animations that -- I shouldn't

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1 say the animation; there's only one. We do different
2 camera views of each individual position for -- from the
3 one animation. So there's only one animation that's
4 done, but we can change the perspective.

5 We can put the camera on top, we can put it in one
6 of the cars, we can look at it from the Moncks Corner
7 end, from the Lyons Beach end and watch that occur over
8 and over again to see if there are any -- you know to
9 make sure that it's done properly and then to show it.

10 Q. Is this a true and accurate representation of the
11 calculations in your MAIT report as used in this
12 animation?

13 A. Yes sir, it is.

14 Q. Have there been any alterations, deletions,
15 modifications to these as you have viewed them?

16 A. No, sir.

17 MR. WEST: The State would move State's exhibit 71
18 into evidence.

19 THE COURT: Any objection?

20 MR. MAYER: Yeah Judge, may we approach?

21 THE COURT: Yes.

22 [Whereupon, an off the record bench conference is
23 held]

24 THE COURT: Mr. Foreman, ladies and gentleman I
25 have a brief matter of law I need to take up with the

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1 attorneys. And actually since we're close to the lunch
2 break we are going to go ahead and break for lunch
3 because I anticipate what we need to do is going to take
4 about 15 minutes, which will take us to 1:00. So we will
5 break until 2:15, which gives you an hour and 30 minutes
6 for lunch because we have to eat once I get through
7 dealing with this matter which may take us more than 15
8 minutes; might probably more than likely take us more
9 like 30 minutes.

10 During this break, please do not discuss the case in
11 any manner whatsoever, please leave your notepads in your
12 seats and return at the direction of the bailiffs by 2:15
13 at which time we will resume testimony. Have a great
14 lunch.

15 [Whereupon the jury exits at 12:45 p.m.]

16 THE COURT: Go ahead and ask the next question.
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David Lee-(In Camera) Direct Examination by Mr. West
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1 IN CAMERA-DIRECT EXAMINATION

2 BY MR. WEST:

3 Q. Mr. Lee, the animations on this disc are they
4 animations recreated from your findings in your
5 investigation?

6 A. Yes, they are.

7 Q. Are the way that this animation is created, do you
8 place those findings into some sort of program to
9 recreate those images or how is that done?

10 A. When the animation is done, the speeds -- the
11 program is told how fast to make the vehicle go. It is
12 told where to make the vehicles collide and is told where
13 to make the vehicles go to final rest, how to roll over,
14 which directions to rotate clockwise or counterclockwise.
15 And all of that is based on the findings from our
16 investigation.

17 Q. Did the animations on this C.D. accurately reflect
18 the findings that you made in your report?

19 A. They do.

20 THE COURT: Do you have any questions for this
21 witness?

22 MR. MAYER: Yes, Judge. Thank you.
23
24
25

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1 IN CAMERA-CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. These animations you're talking about, Mr. Lee -- my
4 name is Aaron Mayer, nice to meet you. These animations
5 you're talking about were not done by yourself, correct?

6 A. No sir, they were done at my direction.

7 Q. Okay. And they were in fact, not fully customized,
8 is that correct?

9 A. I'm sorry ---

10 Q. --- they were instead auto-synched?

11 A. I...

12 THE COURT: Do you understand the question, sir?

13 A. I don't know if they were auto-synched or not. I
14 haven't looked within that program to see if they were or
15 not.

16 Q. [Mr. Mayer] What's the significance between auto-
17 syncing versus customizing?

18 A. I believe that's where the program is told to have
19 the vehicles strike at a particular juncture as opposed
20 to piecing them in together.

21 And that's a -- I believe that's the common way that
22 the programs are used at this point is to make them come
23 in and strike at a particular juncture. As a matter of
24 fact I just went through computerated diagramming, which
25 also had an animation class in it and that was part of

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1 the class itself was to have it sync at a particular
2 point so it was a zero-point where the impact took place.

3 Q. I'm not sure I followed that. So, what's the
4 difference then between a customized animation versus
5 this auto-sync that the State has?

6 A. That's not just -- it's not the State -- the class I
7 just went through is not for the State of South Carolina.

8 Q. I'm sorry, I don't mean to get into the class you
9 just went through I'm talking about the animation that
10 y'all did of this wreck.

11 A. Once again, as far as -- I've heard about an issue
12 with auto-sync and customize that there was some issue
13 with that and I'm not sure exactly that I follow
14 completely with that. The only thing I know about as far
15 as syncing is concerned is to have the vehicle strike at
16 a particular point within the animation.

17 And if that's what you're asking me, then yes I
18 don't have any issue with that. It seems to make sense
19 that you would have a program to make sure that they are
20 in a particular location at a particular time as opposed
21 to bringing them in manually and trying to make that
22 strike take place.

23 Q. So, the data points that would have been used to
24 manually do it would have been -- there would have been
25 many more data points than doing it with auto-sync,

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1 correct?

2 A. No, sir. The data points that we would've used were
3 the ones that we collected on the scene. So the
4 information that we had was all put into this diagram
5 which was used to make the animation.

6 Q. So it's your testimony that this animation is the
7 exact equal of a customized -- of a customized product.

8 A. My statement would be that -- my testimony would be
9 that it's an accurate representation of the collision
10 that occurred, which is what we were tasked to do, so
11 that's what we did.

12 Q. Is it as accurate as it would have been if it
13 weren't auto-synced?

14 A. That's -- to be honest with you I don't know that
15 I've actually seen the two side-by-side a customized and
16 an auto-sync so I couldn't give you an opinion as to
17 whether or not one is more accurate than the other.

18 This is very accurate for our investigation was. I
19 looked at this animation repeatedly, as a matter of fact,
20 and it's very accurate to what our report states, which
21 is what I tasked the officer to do. He did the
22 animation; we talked about it as he built it.

23 Q. How many data points were used to build the
24 animation?

25 A. I couldn't tell you that answer; I didn't actually

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1 build the animation. I directed that it be done and then
2 it was done to the specifications that he and I came to.

3 Q. Who built the animation?

4 A. That would've been Corporal Ash [phonetic].

5 Q. That's the same person who did the calculations on
6 the scene?

7 A. Yes. Once again, he did those along with my
8 corroboration.

9 Q. And is the animation based on the first MAIT report
10 or the second MAIT report?

11 A. I'm not sure what you're -- there's only been one
12 report. There were, I think two typos if that's what
13 you're discussing and those have been corrected, but it
14 never changed the report.

15 Q. So there was a first report and you're saying none
16 of the calculations changed?

17 A. No, sir. There wasn't a first report or second
18 report; there were typo corrections that were made in our
19 one and only report.

20 MR. MAYER: Judge, I still object.

21 THE COURT: You need to give me a basis of your
22 objection because I haven't heard anything valid at this
23 point that would challenge the methodology that was used.
24 It seems that you have some differences on how it was
25 done, calculations of the weight to be accorded the

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1 testimony, but I haven't heard anything that questions in
2 good faith the methodology that was used to create the
3 animation or its accuracy or its authenticity. As it
4 reflects the calculations that were done in their report
5 and he has testified that that was his only goal; to have
6 an animation that reflected with accuracy the
7 calculations that were the subject of his investigation.

8 MR. MAYER: Could I ---

9 THE COURT: --- now if your expert did a different
10 calculation, that's why you have battle of the experts.
11 There can be different forms of accepted methods of doing
12 calculations, that doesn't make this one wrong or
13 inadmissible. Simply means that they're different
14 calculations.

15 No different than when you're valuing real estate,
16 there are two different methods to calculate real estate.
17 It doesn't make one or the other wrong; it just means
18 they're two different methods that can be done. Some
19 realtors choose one, some choose the other. It doesn't
20 make either one of them wrong it just means that they've
21 chosen different methodologies based on their experience
22 and training.

23 MR. MAYER: My concern just is with whether the
24 auto-sync function skews the results. He testified he
25 doesn't know, he's never compared them side-to-side, so

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1 the only specimen we have is an auto-sync version. The
2 safest way to go to make ---

3 THE COURT: --- you haven't presented any testimony
4 to me that would raise that issue or make that some issue
5 that the court would use as a barometer to question the
6 veracity of this method being used. What you've simply
7 told me is that there are two different methods. One
8 that you feel is more valid; one that they feel is more
9 valid.

10 I assume your expert is going to use this different
11 methodology, which is his prerogative and yours to
12 present. But it doesn't make this an invalid
13 methodology. Your questions would go to weight, not
14 admissibility. You can question the thoroughness of how
15 they did their investigation, but I haven't heard
16 anything at this point that would make that animation
17 inadmissible just because they used a different
18 methodology.

19 It's no different than how sometimes they create
20 line-ups. Sometimes line-ups are created using a random
21 process with computers, sometimes they're used with a
22 person -- each department does it differently. Some
23 departments have an individual person that actually goes
24 through mug-shots and creates a line-up. Some use a
25 program where you input different characteristics that

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1 create a line-up. It doesn't make either methodology
2 wrong; it just means they're different. But, I haven't
3 heard anything scientifically that you've presented other
4 than your conjecture or your opinion that somehow this
5 was -- that there's something wrong with this program,
6 there's something wrong with the data that they
7 collected.

8 They've laid the appropriate foundation regarding
9 how the data was collected, how they calculated it. He
10 certainly has the educational, training, and experience
11 and expertise to have calculated it. You have some
12 disagreement with how the methodology that was employed,
13 but I haven't heard anything that rises to the level of
14 it scientifically being deficient somehow. What is the
15 State's position in response to Mr. Mayer's objection,
16 which I really still haven't heard an objection within
17 the rules of evidence.

18 MR. WEST: Your Honor, the State's position is
19 we've laid the sufficient foundation that these are
20 accurate representations as testified by this witness and
21 that this animation should be admitted into evidence.

22 THE COURT: Can I see the animation please? How
23 long is it?

24 MR. MAYER: It's quick.

25 MR. WEST: It's very quick, Your Honor.

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1 THE COURT: I need to see it because I've never
2 seen it. Play it so I can see it.

3 MR. WEST: Your Honor, it's broken down into
4 different angles.

5 THE COURT: That's fine. You need to show me
6 everything you want to show the jury.

7 MR. WEST: Thank you, Your Honor.

8 [Whereupon, State's exhibit number 71 plays for the
9 court]

10 MR. WEST: Do you need to see that again, Your
11 Honor?

12 THE COURT: Uh Uh. What else do you plan to show
13 the jury?

14 MR. WEST: Go to the next one.

15 [Whereupon, State's exhibit number 71 plays for the
16 court]

17 MR. WEST: That was the last one, Your Honor.

18 THE COURT: Now what I need to know, which is the
19 record is devoid of, is what's the name of this program,
20 who developed it, how often is it used, how often do they
21 use it, is it accepted in the industry? I need some
22 answers to those questions before I can make any kind of
23 decision.

24 MR. WEST: Okay.
25

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1 IN CAMERA-REDIRECT EXAMINATION

2 BY MR. WEST:

3 Q. Mr. Lee, what is the name of the program?

4 A. Visual Statements.

5 THE COURT: I'm sorry, I can't hear you.

6 A. Visual Statements, that's the manufacturer of that
7 particular brand of software.

8 Q. [Mr. West] How is it used?

9 A. It is collision reconstruction software. It is
10 specifically made with our uses in mind. There -- our --
11 the entire state of South Carolina uses a Smart Roads
12 program, which is also developed by ---

13 THE COURT: I'm sorry I need you to repeat that
14 answer. I couldn't hear you.

15 A. Okay. South Carolina the State Highway Patrol uses
16 a Smart Roads program, that's what we create our TR-310's
17 on that is also created visual statements when we looked
18 at animation software and CAD software.

19 A decision was made to purchase Visual Statement's
20 Animation software and CAD software so --

21 THE COURT REPORTER: Are you saying Cad?

22 Q. CAD, C-A-D computer aided diagram so that they would
23 interact with one another, they would be not
24 interchangeable but there would be a similarity between
25 the software. They do three-D animations that's

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1 basically what this software is developed for and is made
2 for this sort of -- and I use the broader term crime
3 scene investigation because it can be used in any number
4 of different ways including collision reconstruction,
5 which is what this was used for.

6 But, the engines for this particular software are
7 specifically developed for this use. We've been using it
8 for and still it is currently being used with obvious
9 updates from 2011. There are upgrades that come in to
10 the program. Some of them aren't as simple as new added
11 vehicles, three-D vehicles to -- same as any other
12 program; they make it just a little bit better every year
13 so you update the program and it can be any phase of the
14 program.

15 Q. [Mr. West] Do any other agencies use this type of
16 programming?

17 A. Yes.

18 Q. Do you know who that would be?

19 A. I couldn't tell you which agencies are also using
20 it, but they are -- but as well as there are several
21 other programs that are available as well, but all of
22 them basically use similar -- the same thing.

23 Q. In your expert opinion is this generally accepted
24 within the scientific community?

25 A. Yes, to my knowledge and we've not made any

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1 adjustments to our procedures to change anything as far
2 as obviously questions concerning it. Not to my
3 knowledge.

4 Q. How is the data collected and then imported into the
5 program?

6 A. When we originally bring the data in its brought in
7 on a two-dimensional diagram so it's a top down view and
8 then the roadway itself is created as well as the
9 animation is created from the top down view.

10 At that point, you put three-D vehicles in and you
11 contour the roadway. If you notice on this particular on
12 examination you see that the roadway itself ends and the
13 shoulder begins and then it drops away.

14 It's the same thing that's in the photograph where
15 the roadway drops away or the shoulder drops away after
16 the roadway ends. It's contoured based on the data
17 points that we collect on the scene.

18 Q. And those data points are collected in that
19 equipment that you spoke of during your testimony
20 earlier?

21 A. That is correct.

22 Q. And transferred from that equipment into this
23 program?

24 A. Yes.

25 MR. WEST: Your Honor, is there anything specific

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1 that you'd like to know about the program?

2 THE COURT: Any questions as a result of the
3 State's questions?

4 MR. MAYER: No questions Judge, I have a little
5 extra point, a comment.

6 THE COURT: All right.

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1 MR. MAYER: I would not object to the first
2 animation that was shown to be shown to the jury as
3 demonstrative or illustrative. I think that would be
4 appropriate for an animation. I don't think it's
5 appropriate to show animations under, you know 702 -- 703
6 and actually admit them into evidence. But if he just
7 wants to use it as a demonstrative say, hey this is ---

8 THE COURT: --- let me ask a question. Do you all
9 plan to use this as more than demonstratively?

10 MR. WEST: I did intend to introduce it into
11 evidence.

12 THE COURT: I don't think the case law supports
13 that proposition. I think the case law supports that as
14 long as it is fairly accurate, that you can use it for
15 demonstrative purposes, but I don't think you can admit
16 it into evidence. At least I haven't found any cases
17 that support the introduction of them into evidence.

18 But that you can use video animation for
19 demonstrative evidence when you are able to show that
20 it's authentic pursuant to rule 901, that it's relevant
21 pursuant to 401 and 402 and that it's a fair and accurate
22 representation of the evidence to which it relates and
23 that its probative value substantially outweighs the
24 danger of unfair prejudice confusing the issues or
25 misleading the jury under 403.

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1 MR. WEST: Your Honor, the State would just use
2 this for demonstrative purposes only then.

3 THE COURT: There's no exception correct, to
4 demonstrative use of the video.

5 MR. MAYER: Not to the first video, Judge. I just
6 would ask that not all of them be shown.

7 THE COURT: Why?

8 MR. MAYER: I feel like the -- putting the viewer
9 in the car itself is -- does go over the line and is
10 substantially more prejudicial than probative. I think
11 it's ---

12 THE COURT: --- I haven't heard anything within --
13 not accurate or at least based on -- based on his
14 testimony, those are accurate depictions of their data.
15 You might not like what they show, but that doesn't make
16 them inadmissible nor prejudicial. As long as they're
17 accurate -- an accurate reflection of his testimony and
18 the data he collected, that's different than them being
19 unfairly prejudicial.

20 I don't think they have any chance of misleading the
21 jury. They're based on what he interprets the data to
22 reflect based on his investigation and his training and
23 experience. They're all from different angles, but they
24 all basically show the same thing. Well not basically,
25 they all show the same thing which is his contention that

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1 your client's car was going at a high rate of speed and
2 that it was hard for her to manage, drifted out of her
3 lane, hit the other car head-on, and then flipped based
4 on that inertia and those forces and that the other car
5 came to rest in the other location. Is there some other

6 ---

7 MR. WEST: --- nothing further, Judge.

8 THE COURT: I just needed to know if you had
9 some...

10 MR. WEST: I don't have any ace in my sleeve.

11 THE COURT: Yeah, I don't think -- you know, of
12 course, animation with the advent of technology is fairly
13 new to most states, not just South Carolina and of course
14 the concern is always the danger that something could be
15 misrepresented because animation is so powerful.

16 We're a visual society, especially these days where
17 I hate to admit it my 11 year old niece knows more about
18 technology than me and they're visually driven. I mean
19 you're on an airplane and see two year olds with iPads.
20 I mean it's, you know -- I'm quickly becoming a dinosaur
21 much to my dismay. Not really because I'm not that vain.
22 But I think what you have to balance is any kind of
23 unfair danger of prejudice that it's not an accurate
24 reflection of the data that's been collected. And I
25 think pursuant to the case law, the applicable case law

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1 which would be Webb v CSX [phonetic] and Clark v.
2 Cantrell [phonetic] as we have no criminal cases dealing
3 with animation at least not that I could find.

4 What the court is required to look at is those
5 factors which I've already articulated for the record
6 which is whether it's authentic pursuant to the rule 901.
7 And there really has been no contention but that is it is
8 authentic, that is a program that is used in the industry
9 that it is widely accepted.

10 Although there are other programs, they're all
11 basically based in the same technology. It is relevant
12 because it's relevant to his testimony. It is
13 demonstrative. It shows and reflects the data that was
14 collected pursuant to the MAIT investigation. So that
15 would meet the requirements of rule 401 and 402.

16 That it is a fair and accurate representation of the
17 evidence to which it relates, and the court would find
18 that it's probative value is substantially outweighed by
19 any danger of unfair prejudice, confusing the issues or
20 misleading the jury as it is an accurate reflection of
21 the data collected by the MAIT team in performing their
22 evaluation, their investigation as they are tasked with
23 the recreation of any fatality in this state involving
24 the highways. So, clearly it can be used demonstratively
25 and I've looked at all the views of it and I can't

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1 discern any prejudice. They're all from different
2 angles. Maybe one of them could be considered cumulative
3 where one is real close up and one's real far away, but
4 in the grand scheme of things I don't know that it could
5 be considered prejudicial. And I would assume, Mr. Mayer
6 that your expert is going to do much the same or provide
7 much the same type animation or testimony.

8 MR. MAYER: I wish we could've afforded that Judge,
9 but ---

10 THE COURT: --- I'm sure he's going to testify
11 similarly along the lines of -- and that you're going to
12 try to decimate their animation based on his experience.

13 MR. MAYER: We certainly will.

14 THE COURT: Yeah, all right. Anything before we
15 break for lunch from the State?

16 MR. WEST: Nothing from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. MAYER: No, Judge.

19 THE COURT: All right we'll see y'all at 2:15, have
20 a good lunch. Sir you're excused for lunch, just please
21 don't discuss your testimony with anybody. I apologize
22 that I forgot about you.

23 [Whereupon court is in recess from 1:10 p.m. until
24 2:25 p.m.]

25

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1 THE COURT: Is the State ready to proceed?

2 MR. WEST: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. MAYER: Yes, Judge.

5 THE COURT: Please bring in the jury.

6 [Whereupon, the jury enters at 2:25 p.m.]

7 THE COURT: If the witness would retake take the
8 stand. Sir, I'll remind you you're still under oath.

9 [Whereupon, Mr. Lee returns to the witness stand]

10 THE COURT: The State may proceed with its
11 questions.

12 MR. WEST: Thank you, Your Honor.
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David Lee-Direct Examination by Mr. West (resumes)
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1 DIRECT EXAMINATION OF DAVID LEE (resumes)

2 BY MR. WEST:

3 Q. Before the break Mr. Lee we were talking about some
4 of the calculations you use in order to recreate an
5 animation that would depict this collision, is that
6 correct?

7 A. That is correct.

8 Q. Okay. And the calculations that you used and found
9 in your report are the same calculations that are going
10 to be reflected in the animations?

11 A. That is correct.

12 Q. Okay. Are they true and accurate as to the
13 depictions in those animations?

14 A. Yes they are.

15 MR. WEST: At this time, the State would ask to
16 publish State's 71.

17 THE COURT: You may proceed.

18 [Whereupon, State's exhibit number 71 plays]

19 Q. [Mr. West] What is that depiction of Mr. Lee?

20 A. The lighter colored vehicle is the BMW as it crosses
21 the center line and strikes the Saturn head-on. Then it
22 comes to rest on the shoulder with the Saturn coming to
23 rest in the opposite lane facing the opposite direction.

24 Q. Could you describe how you calculated and displayed
25 in this animation that the BMW is the car that crossed

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1 the center line?

2 A. The -- normally the calculations as far as the BMW
3 at the center or crossed the center line, the physical
4 evidence shows that, that's the gouge marks that are
5 placed on the roadway with the two vehicles the area of
6 impact.

7 Those marks indicate where the collision took place.
8 And the direction of travel is consistent with the final
9 rest positions so we know the BMW was left of center at
10 the time that the impact took place.

11 Q. I'm sorry you're going to have to back that up.
12 Could you re-do that?

13 [Whereupon, State's exhibit number 71 plays again]

14 Q. And what does that animation depict?

15 A. That's a view from the driver's standpoint within
16 the BMW. That's what the driver of the BMW would've seen
17 on the way into impact.

18 Q. In that view does that depict the head-on version
19 that you described earlier?

20 A. Yes, it does.

21 Q. Play the next one.

22 [Whereupon State's exhibit number 71 plays again]

23 Q. This animation, is it a depiction, does it show the
24 types of speeds that these cars would be going? Is that
25 part of the calculations that are used and put into this

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1 program to create this animation?

2 A. That's correct. It shows the BMW at 79 and the
3 Saturn at 42 miles an hour.

4 Q. And that particular display that just played, if you
5 could play it again?

6 [Whereupon, State's exhibit number 71 plays again]

7 Q. Would that angle at all depict the ability of the
8 BMW to maintain its lane of travel?

9 A. Any of those views is actually showing the BMW
10 tracking out into the oncoming lane as it comes into the
11 curve.

12 So, yes, it does show that it's not able to maintain
13 its position in its proper lane but has to move out into
14 the oncoming lane.

15 Q. Mr. Lee, right before impact in that animation --
16 right before impact, it looks as if through that view the
17 BMW attempts to straighten up. Is that correct?

18 A. It looks -- the representation in this video or in
19 this animation is the same as in all the others because
20 it's the same animation it's just different views of the
21 same animation.

22 The BMW straightens up as it's coming into the
23 curve. That's consistent with attempting to maintain
24 position in the roadway. It's trying to turn back into
25 its proper lane of travel. It straightens it out as it's

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1 trying to come to the curve.

2 Q. Is that consistent with the drift because of the
3 speed that you spoke of earlier in your testimony?

4 A. It will be consistent with the -- yes, with the
5 calculations that we've done, that's consistent with what
6 we've represented as our collision report, yes.

7 Q. Okay, now, if -- could you play that animation one
8 more time?

9 [Whereupon, State's exhibit number 71 plays again]

10 Q. If the BMW were to approach the curve, stop it right
11 there. Can you play it from there?

12 If the BMW were maintaining its lane of travel and
13 going sort of almost north on this animation, in a
14 straight line rather than trying to kind of keep in the
15 curve, would that have made any difference as to your
16 determinations of point of impact or angle of impact and
17 the speed that is used in your calculations?

18 MR. MAYER: Objection. Compound.

19 THE COURT: I need to rehear the question.

20 MR. WEST: Okay. I'm sorry; I'll break it up
21 into parts.

22 THE COURT: Thank you. I think it would be more
23 clear that way.

24 Q. [Mr. West] If the BMW was traveling in this
25 depiction what would be directly north, sort of in a

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1 straight line rather than in the curve as is depicted
2 there. Would that have made a different impact in your
3 calculations as to the angle of impact?

4 A. Yes.

5 Q. Okay. Could you describe why you depicted the BMW
6 traveling as it did in this animation, rather than in a
7 straight line fashion just described?

8 A. It is based on the physical evidence or the crush
9 that's done to the 2 vehicles. You see, the pretty much
10 100 percent overlap on the two vehicles where they strike
11 head-on, so that's where we began with that.

12 Secondarily the departure angles -- the way momentum
13 works, the way crashes work, cars act on each other. In
14 this case you see a lot of movement from the Saturn based
15 on its impact or being struck by the BMW. What's less
16 noticeable but is just as much there is the effect that
17 the Saturn has on the BMW.

18 There's always a give and take between this sort of
19 collision. It is just transferred -- changing direction
20 transferred -- and that change in direction or change in
21 velocity or change in acceleration I guess, is a good way
22 to put it, in this case would be the energy that's given
23 back to the BMW from the Saturn. The BMW slows down as a
24 result of this crash, even though it completely redirects
25 the Saturn. It's still just as much affected by the

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1 Saturn as the Saturn is affected by the BMW. If there
2 was a greater angle involved in this, if it was turned as
3 the question indicates where the BMW was headed directly
4 north, then we'd be looking at an angular momentum and
5 that would change the departures for the vehicles.

6 The Saturn wouldn't have traveled directly 180
7 degrees back on its path. It would have traveled at
8 another angle away from the crash scene, and so would the
9 BMW. And because of that we would've looked at this in a
10 different way.

11 We would've done different momentum sort of study as
12 opposed to a conservation of linear momentum which is --
13 which would include angles like a 90 degree intersection
14 here because this is what that would be if that BMW had
15 gone directly north, in this case. It would hit at a
16 different angle and would turn vehicles in a different
17 place after the impact.

18 But we didn't do that because of the post impact
19 travel of the Saturn indicated that it would put it
20 outside. There are certain quadrants that you have to be
21 in that you have to finish in for momentum to work; if it
22 doesn't end up that way, then that's not the scenario
23 that you're in. The best example I can give you and the
24 easiest one to show you is that if you had one vehicle
25 traveling from the left and one traveling straight ahead,

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1 when they hit they're going to end up over here
2 [indicates]. If you've got a coordinate system or a
3 quadrant system, they have to end up over here
4 [indicates]. They have to end up in this quadrant
5 because when they hit, physics requires that they go that
6 way. So, if they don't go that way, then something's
7 wrong with what you're doing or it's a different
8 situation.

9 In this case, when they hit head-on if you start
10 looking at a very narrow angles on that, the Saturn
11 itself travels 180 degrees behind it. It just travels
12 straight backwards which is fairly evident from the
13 physical evidence that's down the road, the fluid -- the
14 fluid path and the evidence that -- where the road is
15 gouged.

16 Everything travels straight back down the road which
17 indicates it was struck and pushed that way. Because of
18 that it never enters the quadrant it has to be in if it
19 were going to be done with an angular momentum. It
20 doesn't work that way, so that's why we didn't approach
21 it from that angle -- from that particular perspective.
22 We looked at it as an inline process.

23 Q. I know you did your best to kind of break that down
24 using your hands as a visual. What I'm going to do is
25 going to actually hand you a blank piece of paper to kind

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1 of draw what you just explained.

2 A. All right. I'm not an artist; I don't pretend to be
3 one.

4 Q. Okay.

5 MR. WEST: Your Honor, I'd ask for an easel so
6 maybe he could draw on a bigger piece of paper.

7 THE COURT: That's fine.

8 A. Should I wait?

9 Q. [Mr. West] If she can find one yes, if not we'll
10 just go with the yellow pad.

11 MR. WEST: Your Honor, do you need to be able to
12 see the easel?

13 THE COURT: Not necessarily but he needs to step
14 down to do that it's fine.

15 MR. WEST: Mr. Lee, I'm going to ask you to step
16 down and...

17 THE COURT: But I need you to speak loudly and
18 clearly toward the court reporter so she can get your
19 responses.

20 THE WITNESS: Yes, ma'am.

21 [Whereupon, the witness steps down from the witness
22 stand]

23 [Whereupon, the witness draws on the easel]

24 A. So, what I was saying just now, if we make a
25 quadrant system and we bring a car in, let's say this

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1 [indicates] is zero degrees and this [indicates] is 90
2 degrees and I have a car that approaches from zero
3 degrees and a car that approaches towards 90 degrees and
4 then they get here [indicates] and they strike each
5 other, the way the mechanics of this works is both
6 vehicles have to end up within this quadrant over here
7 [indicates] in some way shape or form.

8 Now, they don't have to always end up at the same
9 angle it depends on the weights of the vehicles as they
10 approach, it depends on the speed of the vehicles as they
11 approach. But, regardless of those two things, their
12 approaches dictate where they have to go. If they don't
13 end up in those coordinates, then something else is
14 wrong; there's something else going on and we need to
15 determine what it is.

16 It could be something like the -- forces that we
17 talked about earlier. But, for the most part when you
18 have this sort of collision, that's what has to happen.
19 That's not a -- well, we could have something else
20 different going on, that's the rule.

21 The departures have to fall within this area
22 [indicates] even if the ground forces play a part in it
23 and move a different way. Let's say the steering wheel
24 on this car [indicates] was locked up and it turned and
25 traveled out around here [indicates] and it was pushed

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1 that far around. The departure angle, where the center
2 mass goes at this impulse place right here [indicates]
3 where they hit has got to end up in this quadrant
4 [indicates]. If it doesn't, then it's not -- you can't
5 use this momentum study to figure that out. That's what
6 I was trying to explain.

7 Now, whenever you have these sort of crashes, it
8 just -- for demonstrative purposes if this car
9 [indicates] were to come in at 60 miles an hour and this
10 one [indicates] is doing two miles an hour, there's going
11 to be a lot of force applied to this car [indicates] from
12 this one [indicates].

13 But, this car [indicates] is going to be affected by
14 this one as well. It's not going to be a one way street,
15 it never is. There's always that exchange of momentum
16 between the two vehicles, which means that this one
17 [indicates] is going to end up here [indicates] and then
18 come off this direction [indicates].

19 This one [indicates] is going to end up here
20 [indicates] and come off this direction [indicates].
21 Always going to work that way, it always works that way.
22 There's not an if, and, or a but; it always works that
23 way. That's where the departure angles go. In the case
24 that we're looking at, we've got one coming in at zero
25 and we've got one coming in this direction [indicates]

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1 and they come in and hit one another. And the energy is
2 transferred directly back into this one [indicates] and
3 this is 180 degrees -- I'm sorry -- yes, this is the 180
4 degrees over here [indicates].

5 And this car [indicates], the Saturn gets driven
6 directly back. This one [indicates] comes in and hits
7 and because of the way the vehicles damage one another,
8 this is what happens at the impact they rotate. But the
9 center mass for this one [indicates] travels directly
10 straight in a line and goes back that 180 degrees.

11 This one [indicates] at impact, because it's got so
12 much more energy when it gets there turns this one
13 [indicates] around pushes it backward at approximately 30
14 miles an hour it travels out at approximately 30 miles an
15 hour and it rotates out and comes to rest down here
16 [indicates].

17 The angles when they approach one another are pretty
18 close to dead-on when they get there. Their center
19 masses are acting directly through each other or pretty
20 close to directly through each other. So narrow that if
21 you tried to make that calculation, a) it's not really
22 going to work it's going to be so fine that the numbers
23 are going to jump tremendously and b) when you look at
24 the way this one [indicates] rotates out and it actually
25 comes down this way [indicates] after impact that angle

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1 takes it off here [indicates]. Here's our lines
2 [indicates] where they come towards each other. And
3 even if we said that there was a little bit of angular
4 sort of situation here [indicates], this one [indicates]
5 backing up here's [indicates] our approaches to this way.

6 Our vehicles, both of them, have to end up out here
7 [indicates]. The BMW comes this way [indicates] but it
8 doesn't come down -- it's not in the proper place and
9 this one [indicates] doesn't get close. The center mass
10 never travels into that quadrant, so it can't be that
11 sort of study. It has to be the inline study, that's how
12 it works.

13 Q. And in this case -- this particular case with the
14 BMW and the Saturn on Broughton Road, you did an inline
15 study because of the placement and the quadrants on this
16 sort of diagram that you did?

17 A. Yes.

18 Q. Okay. And after inputting this into the inline
19 study, were you able to determine where the collision
20 happened on Broughton Road?

21 A. Yes. Once again we determined where the collision
22 occurred and I keep going back to that. The main thing
23 is not how fast they were going is where the crash
24 happened. Where that pulse took place, where they
25 impacted each other because the BMW is not left of

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1 center, there's not a crash. That's how this works,
2 that's the biggest part of this entire thing. The BMW is
3 not left of center, there's no crash.

4 We looked at the damages done to both vehicles and
5 we're able to -- and the damages done to the road and
6 we're able to determine that the crash took place in the
7 Saturn's lane with the BMW striking it head-on. Once
8 again, it's left of center at the time that the crash
9 takes place.

10 [Whereupon, the witness returns to the witness
11 stand]

12 MR. WEST: No further questions from the state at
13 this time.

14 THE COURT: Any questions for the witness?

15 MR. MAYER: Thank you, Judge.

16 THE COURT: You're welcome.
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State v Shana Robinson
David Lee-Cross-Examination by Mr. Mayer
June 4, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Mr. Lee, how are you? Aaron Mayer. I represent
4 Shana.

5 A. Mr. Mayer.

6 Q. We talked on the phone briefly once. When you're
7 doing this accident reconstruction I guess I want to talk
8 about the margin of error here. What is the -- you said
9 that these speeds were 42 and 79, is that right?

10 A. That's correct.

11 Q. Does that allow for any error on y'all's part?

12 A. The biggest error in an inline momentum study is
13 based on the starting point for one of the vehicles. If
14 you don't have a starting point, if you don't know a
15 starting point then you are basically looking at a
16 situation where the -- you're assuming one vehicle is in
17 its proper travel lane is traveling the posted speed
18 limit and that's your starting point.

19 Now, that's not to say that the other vehicle, that
20 that particular vehicle that one at the starting point is
21 not doing 15 or 20 miles an hour over speed limit or 10
22 or 12 miles under the posted speed limit. But in this
23 case, because we had the A-C-M or that airbag control
24 module really narrowed that speed down to within a mile
25 or two on which we've shown as 42 miles an hour. That's

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1 what we were able to determine from that A-C-M is 42.
2 Once we get that locked in, it's pretty much just doing
3 the calculation to figure out the speed. That pretty
4 much narrows us in on the speed.

5 Q. I once got a speeding ticket as a teenager and my
6 defense lawyer got me off saying my equipment was
7 improper, that my speedometer was wrong. Is it possible
8 for the A-C-M to be recording the wrong speed?

9 A. I would not say that it's not impossible. I'll say
10 that it's highly improbable. In this particular case
11 there are no other -- there are no other anomalies within
12 the crash sequence.

13 The majority of the time when you see something that
14 may be a little bit of difference as far as the speed is
15 concerned where the A-C-M is used to image and look at,
16 there's something that happens prior to the crash or in
17 the crash sequence that acts on it.

18 And even at that you're usually fairly close and
19 that has to go through an analysis process and we do have
20 analysts within the Highway Patrol that look at our
21 A-C-M's to determine if it's consistent with the totality
22 of circumstances and the conditions of the crash. This
23 one was looked at as well --

24 Q. What kind of things might cause an A-C-M to be
25 wrong?

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1 A. The only thing that I can think of and what I've
2 seen the thing that I have seen in the past would be if
3 the vehicle were traveling across a surface that starting
4 to side slip and then it got onto a gravelly surface, but
5 even at that I don't think that the A-C-M is specifically
6 affected.

7 The only time that it would be is if it was -- I
8 keep going back to that. They're usually fairly
9 accurate; I think I'm going to have to say that I will
10 probably have to go with what they have to say on that
11 unless somebody showed me that there was an inaccuracy
12 within it. And, I'm not going to say that nobody can
13 ever find that because it's a machine it's like anything
14 else, it could possibly have some issue with it but...

15 Q. You could damage it? It could be damaged.

16 A. Not really, those things are fairly tough. Even if
17 you submerge then as long as you dry them out well and
18 take and use proper protocol for that you can get that
19 off of them.

20 If they're hit in the collision itself, it can be
21 damaged the actual box itself can be damaged, but
22 ordinarily the data that's on it is still lodged in there
23 so we can use that as long as we're able to connect it
24 properly.

25 Q. But there's no way to confirm whether the data

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1 that's stuck in there is accurate other than just to
2 assume that it is, right?

3 A. Well, and I will say this and as you're asking me
4 this question this way I'll have to use this as the
5 example to answer the question.

6 Those particular pieces of equipment are used solely
7 for safety equipment. That's what that's about it's not
8 necessarily for law enforcement to go back and look at
9 those bag -- those air bag control modules and determine
10 speed. They're used for safety purposes for your airbags
11 and you're for all you're safety equipment to deploy
12 properly.

13 If they are, if they had that great a margin of
14 error in them they would create a situation where the
15 airbags wouldn't react properly and it would put the
16 public at pretty severe risk. So, I think that they make
17 those pretty accurate and to the point where they would
18 be nearly indestructible.

19 Q. Okay, so it's not like a safety helmet where after
20 one wreck you need to buy a new helmet?

21 A. If -- you may likely have to replace that if it was
22 -- if the airbags deployed and there was some damage done
23 to the unit then you may have to replace it. Unless
24 there was some damage directly to the unit where the
25 airbags deployed and even if the airbags deployed it will

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1 overwrite as it comes up on the next event as it works.

2 Q. Safe to say, you didn't have the opportunity to
3 inspect the particular A-C-M unit in this case prior to
4 the accident?

5 A. No. We didn't go -- obviously we can't foretell
6 the future and go find the car and say you're going to be
7 in an accident in a while let me look at your airbag
8 control module.

9 Q. That's a movie with Tom Cruise, I think.

10 A. Exactly.

11 Q. So, but you did know that this car, this A-C-M this
12 Saturn car had been in a wreck prior to this wreck,
13 right?

14 A. When we looked at this A-C-M, this particular A-C-M
15 and its download was consistent with the collision that
16 we were dealing with. We want to look at that as well,
17 the ignition cycles and that sort of thing it was all
18 consistent for the crash that we were looking at.

19 Q. I'm not saying were you looking at the wrong crash,
20 I'm just saying when you downloaded it; it showed another
21 crash on there didn't it?

22 A. [No response]

23 Q. Would it be helpful to look at that thing again?

24 A. Sure.

25 Q. Would it be helpful to look at the download again?

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1 A. Sure.

2 Q. Just to be clear, you're not the person who
3 downloaded this, you would've directed someone to do this
4 right?

5 A. That's correct. That would've been Corporal Ash
6 [phonetic] and Lance Corporal Miller were there at the
7 time of the download.

8 Q. Take a look at that and see if that refreshes your
9 memory.

10 [Whereupon the witness reviews documents]

11 A. There's also a couple other pages in a different
12 section of that, I believe, that are Corporal Ash's
13 [phonetic] notes in reference to what the analysis said
14 for this particular model.

15 Q. Corporal who?

16 A. Ashe, A-S-H-E, I believe that's how you spell it.

17 Q. The gentleman who did the calculations?

18 A. Yes.

19 Q. I will give you everything I got from y'all on that
20 score.

21 A. All right.

22 [Whereupon, the witness reviews documents]

23 Q. So my question was there was another -- this thing
24 was in another accident before this accident, right?

25 A. That's correct; he noted that in his analysis.

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1 That's why I wanted that paperwork because he did look
2 through that some 179 cycles prior to this collision
3 there was a non-deployment. That basically means if you
4 hit a pot hole, a good sized pot hole you can wake that
5 system up.

6 It doesn't deploy the airbag, it doesn't do anything
7 to the machine it just wakes it up and says hey something
8 bad happened maybe we need to be ready to go off and set
9 the airbags off. In this case it didn't set the airbags
10 off it was just...

11 Q. So it could've been a lower speed accident?

12 A. It could've been anything. It could've been
13 something in the parking lot; it could have been like I
14 said a really big pot hole, or a dog ---

15 Q. --- just a yes or no will be fine on that question.
16 Was it -- could it have been a lower speed accident that
17 caused that prior event?

18 A. Much lower, yes.

19 Q. Okay.

20 THE COURT: Sir, you may explain your answer.

21 A. Thank you ma'am, it would've been much lower. If it
22 doesn't set the airbags off, it doesn't reach the
23 threshold for that unit to say this is a bad crash we
24 need to protect the people inside the car.

25 Q. Okay. From that report you said that's tied into

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1 the airbag, is that right?

2 A. Yes.

3 Q. From looking at that report, how do you know that
4 report came from a Saturn and not a BMW?

5 [Whereupon, the witness reviews documents]

6 A. Do you have a copy of the TR-310 or the collision
7 report? I think I see one right -- actually you know
8 what I've got one here. I've got the one that was in our
9 report.

10 Q. Okay.

11 A. Because we had to have that as well. The way we do
12 these is we when we go to the vehicle to download the
13 information we put certain information in the download
14 itself so -- identifiers. One of them is the VIN number
15 while they're doing that particular thing.

16 If you look at the top user entry VIN, it's got 1-G-
17 3-Z and I'll stop there because I don't think the rest of
18 those are the same. On the Saturn is 1-G-3-Z-G so that
19 would indicate that it's the Saturn to me is the one that
20 they downloaded. They would've done this with the
21 vehicle in front of them while they were working on it.

22 Q. That piece of data that you just referred to
23 would've been input by one of your crew, right?

24 A. That's correct. While they ---

25 Q. --- that would not -- I'm sorry go ahead.

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1 A. While they were there working on that car they
2 would've inputted that data.

3 Q. And that would not have been transmitted by the
4 A-C-M module itself as saying here's the VIN number that
5 the A-C-M module is associated with, that's human input
6 right?

7 A. That's correct.

8 Q. Okay, all right. Was the driver of this car wearing
9 a seat belt at the time of crash, can you tell that?

10 A. Driver's belt switch circuit status unbuckled -- so
11 no.

12 THE COURT REPORTER: I didn't hear your answer.

13 A. It says driver's belt switch circuit status
14 unbuckled. So that's indicating there was not an airbag
15 -- seatbelt being used at the time of the crash.

16 Q. [Mr. Mayer] Okay. Now I wanted to keep talking a
17 little bit about some of the ways you're supposed to do
18 these accident reconstructions.

19 The first time I know you're saying you did only one
20 report, but there were some modifications that had to be
21 made right?

22 A. As I stated earlier there was...

23 Q. You got the color of the BMW wrong initially and the
24 model number wrong, right?

25 A. There was a -- it was a typo in the one of the or in

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1 the calculation section that didn't affect anything as
2 far as the specs for the vehicle. It was just placed as
3 a 650 as opposed to a what was it I think 325i and we
4 corrected that and -- in those calculations. Once again,
5 it was just in the header section it didn't have anything
6 to do with the calculations itself.

7 Q. And that was a human input error, right?

8 A. That is correct? And they were placed in the body
9 of the report. It was showing as either vehicle one and
10 it should have been vehicle two or they were vice versa
11 and that was corrected as well. Like I said, there was
12 only ever one report and none of the particulars of the
13 report itself was changed.

14 [Whereupon, defendant's exhibit number 33 is marked
15 by the court reporter]

16 Q. When you're doing one of these reports are you --/
17 you're working as a team, right?

18 A. Correct.

19 Q. Okay. And do you review the report before you send
20 it out?

21 A. Yes sir, I do.

22 Q. And you look and make sure everything is accurate
23 and correct, right?

24 A. There was a -- that is once again one of the things
25 I am supposed to be involved in, yes sir. And I did -- I

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1 did look through that report. I went through the basics
2 of the math and looked at the outcome of the numbers to
3 make sure that all the math was right. I didn't go back
4 and look at the header to make sure that he had put that
5 vehicle in there properly.

6 Q. I'm handing you what's been marked for
7 identification only as defendant's exhibit 33. Do you
8 recognize that?

9 [Whereupon, the witness reviews document]

10 A. Yes, sir.

11 Q. What is that?

12 A. That's the calculation that has the wrong header in
13 it.

14 Q. Okay. And that's from the report that you guys
15 produced, right?

16 A. That's correct. It actually has the little page
17 clips in it where we put the binding together.

18 Q. Okay.

19 MR. MAYER: Your Honor, at this time we would move
20 to enter that into evidence.

21 THE COURT: Any objection?

22 MR. WEST: Nothing from the State Your Honor.

23 THE COURT: Marked admitted without objection.

24 What number is that, sir?

25 THE WITNESS: 33, ma'am.

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1 THE COURT: Thank you. Defendant's 33.

2 [Whereupon, defendant's exhibit number 33 is entered
3 into evidence by the court]

4 Q. [Mr. Mayer] Please read the way you identified the
5 BMW up there.

6 A. It says it's a 2005 BMW 650i black in color.

7 Q. Thank you.

8 A. Yes, sir.

9 Q. At some point in that first report or in all these
10 reports, do you use the term unit interchangeably with
11 item? So like, unit one would later be item one? Or
12 unit two would remain item two, this sort of thing?

13 A. I don't think we ever use item. When we are
14 describing vehicles it's always unit one, or unit two, or
15 unit three; depending on the number of units in the
16 crash.

17 Q. For instance, this exhibit I just had you look at,
18 its describing item number one as the BMW, correct?

19 A. It does say item number one, yeah.

20 Q. But isn't that supposed to be unit number two?

21 A. No, sir. It's not describing the vehicle, that's
22 like this is an item, this particular piece.

23 Q. Okay. So that -- you are not trying to refer to
24 unit number two there?

25 A. No, this is just a -- this is a header, this is a

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1 standard header, and no that's not our description of the
2 vehicle.

3 Q. Okay, fair enough. Let's move on. Did you map the
4 crush of these vehicles? You mentioned on direct there's
5 crush zone. Did you map that?

6 A. No, sir. We didn't map the crush zone.

7 Q. That would've shown the principal direction of force
8 if you'd have mapped it, right?

9 A. It would've shown the depth of the crush and that
10 sort of information. Yes, sir.

11 Q. And you already testified you did not download the
12 black box from the BMW?

13 A. No, sir. We weren't at -- that was not something
14 within our capabilities at the time of the crash.

15 Q. You didn't do a full mechanical inspection on the
16 BMW either, did you?

17 A. I know that there was -- it's actually listed here.

18 [Whereupon, the witness reviews documents]

19 A. Lance Corporal Booker [phonetic] conducted a
20 mechanical exam at approximately 9:30 TriCounty Towing
21 [phonetic].

22 Q. And he checked just one side of the vehicle,
23 correct?

24 A. Yes, he did. It says that the tire tread after
25 being towed which has caused damage to the wheel, damage

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1 to the left rear wheel assembly is all post collision.

2 That's pretty much what he put in here.

3 Q. In your career, I image you've done many a
4 mechanical inspection on a wrecked vehicle, is that
5 right?

6 A. That's correct.

7 Q. Have you had an occasion when you've done a
8 mechanical inspection and you've actually seen that the
9 cause of the wreck was something mechanical?

10 A. It's a possibility, yes sir.

11 Q. Okay. But there was -- you guys were unable to do a
12 full mechanical inspection on Shana's car, is that
13 correct?

14 A. That's the only information that we did on that
15 particular investigation, that's correct.

16 Q. Okay. And did you run a pressure test on the BMW
17 brakes?

18 A. No, sir.

19 Q. Okay. Do you know what the pressure of the wheels
20 was? You would have had to run the test to know that,
21 right?

22 A. That's correct.

23 Q. Okay. So you don't know if the braking on the car
24 was uneven or anything like that?

25 A. No, sir. I'm unaware if she had an unsafe vehicle

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1 on the roadway at the time.

2 Q. Okay. But you are aware there was a recall on that
3 car at the time, right?

4 A. The recalls are actually located within the report I
5 believe.

6 Q. Right. See if that will refresh your memory.

7 [Whereupon, the witness is shown document]

8 A. All right, sir.

9 Q. What did you find?

10 A. There were actually -- it's in three different
11 stages. It's actually referring to the exterior lighting
12 the tail lights.

13 Q. Brake lights?

14 A. Brake lights.

15 Q. Okay.

16 A. That's a warning for anybody coming up behind.

17 Q. Okay. So on Shana's car there was a recall where
18 the brake lights weren't working properly, is that right?

19 A. What is specifically says is that the intermittent
20 light operation reduces the ability to warn other
21 motorists of the driver's intention and this could cause
22 a vehicle to crash without warning.

23 Basically, you hit your brakes and you slow down and
24 the vehicle behind you doesn't see the lights and then
25 strikes you from the rear.

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- 1 Q. Because the lights wouldn't have illuminated.
- 2 A. Yes.
- 3 Q. Can you tell from y'all's report there when that
- 4 recall was implemented by the BMW?
- 5 A. Manufacturers report date is August 25, 2011.
- 6 Q. Okay. And that would have been when the recall
- 7 began?
- 8 A. That's when they are making this report, no.
- 9 Q. Is there also an October 2011 date on there? It
- 10 says the dealer is going to start fixing it then?
- 11 A. In the remedy section it says BMW will notify owners
- 12 and dealers and will repair the vehicles free of charge.
- 13 The safety recall is expected to begin during October
- 14 2011. That's in all three of these; basically, the same
- 15 sort of information.
- 16 Q. So there are three different recalls on it?
- 17 A. Three different basically saying the same thing.
- 18 Q. Okay. Let's move on to the tires on Shana's car.
- 19 Did y'all inspect those tires to match them up to the
- 20 tires in the roadway? The tire tracks?
- 21 A. Tire tracks in the roadway?
- 22 Q. Yes, sir.
- 23 A. I don't think we showed any tire tracks for Shana's
- 24 vehicle on the roadway.
- 25 Q. I'm going to ask you to take a look at what is

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1 already in evidence as State's exhibit 25.

2 [Whereupon, the witness views photograph]

3 A. You mean the gouges?

4 Q. No, I mean the tire marks. It looks to me like on
5 this fog line up towards the BMW where the BMW is sitting
6 up there [indicates] on the screen behind you it looks
7 like there is a tire mark that makes the fog line go from
8 lighter to darker. Can you see that?

9 A. I see there is a dark mark on the fog line -- can I
10 have the lights back up?

11 THE COURT: Yes.

12 [Whereupon, the lights are turned back on]

13 Q. Would marking the tire lines on the asphalt have
14 helped you determine a departure angle for the vehicle?

15 A. If we determined those were marks from her vehicle
16 then yes. But we didn't determine those were marks from
17 her vehicle. That doesn't -- I can't say whether that is
18 or not from that photograph.

19 Here's what we were able to determine when we were
20 out at the scene and we marked that evidence that was
21 down out there. We never marked anything like that on
22 the fog line.

23 So if there was anything there we determined that it
24 was part of this crash scene or it may not have been
25 there and just be a shadow on this photograph.

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1 Q. What physical evidence from the crash scene did you
2 use to determine the departure angle of Shana's vehicle?

3 A. Where her vehicle went off was based on the marks
4 that were on the shoulder of the roadway where the
5 vehicle had gouged and turned over and came to rest.

6 Q. What part of the vehicle gouged the shoulder there?

7 A. I don't recall. I haven't looked -- I haven't gone
8 through that since -- gone back and looked at that. I
9 just know the path of travel of the vehicle at this
10 point.

11 I haven't gone back and looked at those photographs
12 to determine if it was this wheel, or that wheel, on the
13 second car. I just looked at the general path that the
14 vehicle took on the way outbound.

15 Q. And whether it was this wheel or that wheel or a
16 fender or a roof you would have to factor that in to
17 figure out which way the center mass was departing from
18 the collision, right?

19 A. As it came to rest facing the roadway the center
20 mass continued to travel along relatively in a similar
21 line as it goes out and turns over.

22 Because of the fact that the shoulder of the road
23 falls away would also indicate that it would move further
24 in -- relatively -- in this it would move further left
25 because it's rolling over and you have gravity and you

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1 have the slope of the roadway or the shoulder so it's
2 moving off its line that way [indicates] away from the
3 roadway.

4 Q. Had you determined a departure angle for Shana's
5 vehicle?

6 A. No, sir. That's why what we did is an inline on
7 that.

8 Q. Okay. So you did not determine ---

9 A. --- a departure angle, no.

10 Q. And you did not -- and you also did not determine
11 what slope there was on that hill or how that degree of
12 slope on that hill may have pushed the car one way or the
13 other. You wouldn't have needed to because you didn't
14 have any numbers to start with, right?

15 A. I'm sorry, what's that? That was to two ---

16 Q. --- because you had no departure angle on Shana's
17 car there was no -- there would have been no purpose to
18 calculate the angle of the hill that the car later went
19 down to account for how much the hill pushed the car
20 away?

21 A. If we were doing this as a -- not as an inline
22 momentum but as an angular momentum the -- where the two
23 vehicles separate is where you look for the vehicle for
24 the departure angles to be. And that would be before it
25 reached that point where it went down the shoulder. The

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1 pulse is very short, usually somewhere between ten and
2 fifteen feet is where you look for that departure.

3 Q. Okay.

4 A. So where the vehicle starts to mark and where it
5 comes off its line would be beyond that particular place.
6 In this case we didn't look for that because we didn't
7 need it; it was an inline momentum.

8 Q. How do you determine when to use the inline momentum
9 formula versus what you called earlier the -- I can't
10 read my handwriting -- how do you determine when to use
11 the inline momentum formula versus the curve or the
12 angular momentum formula? Is there a threshold there?
13 Can it be a little bit off center and you still use the
14 inline?

15 A. There is a plus or minus factor. I believe its ten
16 percent --

17 Q. It's not five percent? It's not five degrees?

18 A. Its five degrees; plus or minus five degrees on that
19 inline. The ten percent is the offset; I'm sorry, where
20 the vehicles strike one another.

21 If they are that much farther off than that then
22 that creates a problem too. They weren't in this case.
23 I mean this was inside of the five degrees.

24 Q. Now in a circle there is 360 degrees, right?

25 A. Correct.

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1 Q. And in each of your quadrants you drew earlier for
2 the jury there is 90 degrees in each of those quadrants?

3 A. That's correct.

4 Q. So five degrees you're talking about a very small
5 kind of piece of that pie.

6 A. A very small piece of that, yes.

7 Q. Would it have been wrong let's say for argument sake
8 this was a five degree off collision? You could have
9 used the inline formula like y'all did. Would it have
10 been wrong to use the angular momentum formula?

11 A. It would be very difficult.

12 Q. How come?

13 A. Even if you're using an angular momentum situation
14 when you start looking at the way the momentum formula
15 works is using -- when you get inside a five degrees
16 those numbers change dramatically inside of five degrees
17 and they make big differences in the numbers that come
18 out of it.

19 So it makes it very difficult to make a
20 determination without having -- at times a broad range
21 for a speed range within five degrees of that zero line
22 of that one vehicle coming in on.

23 Q. Is it fair to say that the inline formula is a
24 simpler formula?

25 A. It takes that out, yes. It wasn't used because it

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1 was a simpler formula.

2 Q. I understand. You guys did not inspect the
3 undercarriages of the vehicles did you?

4 A. No sir, we didn't have the wrecker lift them up.

5 Q. I'm sorry?

6 A. To my knowledge the wrecker didn't lift them up. We
7 would have taken photographs if we had done that.

8 Q. Okay.

9 A. That's the way you would have to inspect that
10 underside is put it on a lift and we didn't do either of
11 those. If it's not photographed we would document it
12 that way at the time.

13 Q. And it would be important to inspect the underside
14 to see how much -- what's dragging and how much drag
15 you're getting from the carriage.

16 A. Well, part of it you can see from the front end when
17 you look at the damage profiles, just the photographs at
18 scene as well as the ones we took at the wrecker yard.

19 You can see that there are particular parts of the
20 vehicle dragging because the damage is pushed so far back
21 in both vehicles.

22 Q. Yes, but my question was ---

23 A. --- did I see anything else further under it, no.

24 Q. Okay. You didn't inspect for it?

25 A. Not anything further than right there where the

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1 immediate damage to the car is, no.

2 Q. Okay. Were you -- you weren't able then because
3 you didn't inspect the undercarriage you weren't able to
4 determine which part of the cars made the gouges. Were
5 you able to match up the gouges to a particular part of
6 the undercarriages of the cars?

7 A. No, sir. It was the undercarriage that had started
8 hitting between the wheels and that's how we positioned
9 the vehicles --

10 Q. So was your answer no?

11 A. No, sir. We didn't look at each individual gouge
12 mark and make a determination as to which piece of the
13 undercarriage damaged the roadway in those places.

14 Q. Okay. But to calculate a breaking percentage it
15 would be important to know what other friction was going
16 on under the car, right?

17 A. And the way you would do that is if you have metal
18 versus pavement it's approximately point five as far as
19 the F is concerned. You make arrangements for that and
20 then ---

21 Q. --- the F being the coefficient friction?

22 A. The friction values for the -- between the roadway
23 and the vehicle itself and then the braking of the tires
24 or lack of their ability to roll because they were
25 impinged by the damage to the car. So you would take

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1 those things into effect or into account to create a
2 breaking scenario for that and then put that in the
3 calculations and it will adjust to that, which is what we
4 did.

5 Q. Now, while we're talking about friction let me ask
6 you. The way that the Saturn was pushed backwards these
7 tires that was on it would have some friction where they
8 would hold the ground and keep it in a straight line even
9 when there was a lateral force on those tires, isn't that
10 correct?

11 Like going around a curve for instance the cars --
12 the tires keep the car going around the curve instead of
13 sliding sideways off the curve.

14 A. There is so much F -- friction between the roadway
15 surface and the tires themselves. The published numbers
16 for this type of roadway is ---

17 THE COURT REPORTER: --- is how much?

18 A. Point seven -- point seven zero.

19 Q. [Mr. Mayer] You're talking about if it's just
20 rolling straight, right?

21 A. Just rolling straight, just going down the road.
22 Now when you enter a curve you have -- it's all about
23 acceleration. You have forces that apply to the tire
24 when you turn the wheel to make the tire follow along the
25 track that the tire -- that the steering wheel is

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1 turning. And you have the friction value that forces the
2 vehicle to travel in a straight line. And this is kind
3 of getting deep and I apologize for having to use numbers
4 but that's what this is what this is about.

5 The lateral forces you only have about a point two
6 five maybe a point three that keep you on the road.
7 Everything else is pushing you forward.

8 Q. So this point 0 three ---

9 A. --- point three. Point two five to a point three;
10 somewhere in that neighborhood.

11 Q. Versus point 0 seven the friction ---

12 A. --- point seven inline.

13 Q. Point seven inline, okay.

14 A. Yes. And that point seven is actually divided you
15 have so much pushing you this way [indicates] and so much
16 pushing you this way [indicates].

17 So there is those two combined to make the total a
18 point seven through the curve. That's why vehicles
19 become unstable when they enter the curve if they're
20 going too fast they'll slip out of that curve.

21 Q. So I guess without getting too bogged down in the
22 numbers what I want to know is there could be some
23 lateral force on a car such as the Saturn but that
24 lateral force isn't manifested in where the Saturn goes.
25 It just stays where its wheels are kind of pointing it.

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1 It doesn't skid if you will.

2 A. No, it will still skid.

3 Q. If it's above point 0 three. If the force applied
4 to that Saturn is above point 0 three and it breaks the
5 friction and pushes the wheel sideways that's what I
6 understand you to be saying, right? But if you ---

7 A. --- you're going to have to -- you're really going
8 to have to go back because this is getting a little
9 convoluted. What are you trying to ask me exactly?

10 Q. I'm trying to ask you just because the Saturn got
11 pushed straight back that doesn't mean that the force was
12 applied straight.

13 The force could have been applied off of the
14 straight axis and the coefficient of the friction of the
15 tires would have still made the Saturn go back straight.

16 A. Give me a second to think about that one because
17 that's a lot in that question. In this particular case,
18 and I'm going to try to answer your question by answering
19 specifically in this crash.

20 The Saturn starts to rotate clockwise. There
21 appears to be on the roadway some markings from one of
22 the tires as it starts to turn. That could be from the
23 steering wheel being turned in some fashion or the wheel
24 being broken, or it could be just from the tire sliding
25 sideways.

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1 Q. Okay.

2 A. Are you asking me if the ---

3 Q. --- so the answer to my question was yes, right?

4 A. I have no idea because I'm not exactly sure what
5 you're asking.

6 Q. Okay. I think what you just said was the tire on
7 this Saturn did get pushed a little bit also. There was
8 some rotation.

9 A. There's definitely rotation. That's evidenced by
10 the fact that the Saturn is turned around 180 degrees or
11 so to point in the opposite direction.

12 Q. But in terms of the departure angle my question is
13 just because the Saturn rolled -- I'm going to call it
14 straight back -- doesn't mean that the force applied to
15 the Saturn was in a straight line. It could have been
16 slightly off of that straight line, isn't that true?

17 A. Anything is possible and it could have been slightly
18 off of that 180 degrees either -- on either side of it
19 and because that's not the way we viewed this crash I
20 don't have a specific answer for that. My opinion is
21 that the center mass travelled pretty much along the 180
22 degree line or straight back.

23 Q. Okay. Thank you. You guys did not test the
24 critical speed of this curve with an accident
25 accelerometer, is that right?

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1 A. No, sir. On that particular part we just did the
2 math on it. If you ---

3 Q. --- does the math on it account -- I'm sorry, go
4 ahead.

5 A. Which means that we measured the radius of the curve
6 and calculated the speed based on that.

7 Q. Did your math on the calculation of the curve take
8 into consideration the angle of the road?

9 A. You mean the super elevation or the...

10 Q. Like the embankment like we were talking earlier
11 about a racetrack's bank -- but this curve is actually
12 banked the wrong way isn't it? It's an off camber curve
13 as they say. Did you take that into consideration?

14 A. No, sir. And I don't recall that. That may be the
15 case but I don't recall us actually measuring that with a
16 level to see if the point of impact or post-impact what
17 that was.

18 At some point there is a it's called a -- and that's
19 where you get into super elevation -- the road is crowned
20 in the center so water runs off to both sides as opposed
21 to settling in the middle of the roadway. In curves it's
22 elevated to only one side so all the water runs to the
23 center of the curve.

24 Q. If the curve is properly engineered.

25 A. Having said that this particular crash if you look

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1 at the diagrams as well as the animation that we showed a
2 few minutes ago the roadway itself is starting to
3 straighten out at that particular point just prior to the
4 -- or just after the crash the Saturn is just starting to
5 enter the curve and the BMW would be leaving it. So it
6 may be that it's the super elevation that is there as
7 opposed to the banking of the curve.

8 Q. So is your answer that you guys did not consider the
9 off camber nature of this curve in making your
10 calculations?

11 A. It didn't appear that it had a negative banking in
12 that particular position. It appeared to run uphill all
13 the way to the shoulder where it did a drop off.

14 Q. So that's no you did not consider ---

15 A. --- we did not specifically measure it, no sir.

16 Q. Where did you get the point seven coefficient
17 friction that you used?

18 A. That is an industry standard and it's actually a
19 book measurement; something that is in the literature,
20 the collision reconstruction literature, as well as in
21 the software that we use.

22 Q. Is that the same for like a skinny car tire versus a
23 big fat Corvette tire?

24 A. Yes, that friction value is consistent across --
25 it's not related.

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1 Q. So all this stuff to get more mileage use skinnier
2 tires on the cars that's just a bunch of hoey?

3 A. Some of that has to do with the other frictions that
4 are involved; resistances and that kind of thing.

5 Q. Okay. So you did not determine an angle of impact
6 because you didn't determine a departure angle right?

7 A. Correct.

8 Q. You didn't map the fluid trails of the vehicles did
9 you?

10 A. Their path of travel, which is depicted on our
11 diagram by the gouging in the roadway that pretty much
12 mimics the direction of the path of travel for the fluid
13 trails. So no, we didn't specifically do the fluid trail
14 because it was already drawn in as far as the gouging was
15 concerned.

16 Q. And did you chart the damage that was done to the
17 vehicles?

18 A. Chart it in what way? Are you asking me again if we
19 did crush?

20 Q. I'm asking you is there a way to chart the damage
21 that was done to the vehicles to quantify it?

22 A. Are you asking did we do anything to quantify -- to
23 do a crush profile ---

24 THE COURT REPORTER: --- what kind of profile?

25 A. Crush like an orange crush. To do a crush profile

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1 and then to determine speeds based on that is not
2 something we did in this particular case, no.

3 Q. [Mr. Mayer] That would have given you information on
4 relayed to the point of impact on each vehicle, right?

5 A. No, that's not what that, is for.

6 Q. What's that for?

7 A. It's to measure the amount of crush -- like when we
8 talked about the overhang from the front wheels to the
9 front of the bumper when you crush that in that's a crush
10 profile; you're determining how far it got pushed back
11 in. And in doing so how much energy is used for that.

12 There is -- called coefficient for -- stiffness
13 coefficient.

14 If you use that sort of format to determine the
15 speed then you will need to measure that amount of how
16 much pressure is there or measure the lack of overhang
17 and then get an exemplary vehicle and measure what's
18 missing so you will know how deep the crush was for each
19 vehicle.

20 And then it's a variation of the momentum and energy
21 formulas to be able to determine speed based on the
22 energy from the crush. It basically does the same thing
23 in the momentum that it did in this particular case so we
24 didn't do both.

25 Q. The proper way to figure out the crush of a vehicle

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1 is to remove the bumper right?

2 A. I'm sorry?

3 Q. You've got to remove whatever rubberized or
4 plasticized covering there is over the frame to see the
5 real bumper to do a crush, right?

6 A. I've never done it that way in the past, no. When
7 you walk into the car there is a stiffness that is there
8 so that's taking place in the crash so that's part of
9 what you're measuring is that being crushed down and how
10 far it goes back.

11 Q. So there is not such a thing as like a nose cone or
12 something that covers the actual structure, the metal
13 structure of a bumper where you have to pull the nose
14 cone off like an old Camaro for example?

15 A. Vehicles are built to withstand certain thresholds
16 of crashes and not sustain damages. And it is the same
17 if they do sustain damages that's within certain
18 thresholds not to deploy the airbags. And then it gets
19 to the point because they're trying to protect the
20 passengers within the car.

21 And to do that at lower speeds you have to have
22 something that absorbs a lot of energy as it crushes in
23 but that doesn't make it less part of the front of the
24 car, which means it would have to be considered in the
25 crush values.

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1 Q. But crushing plastic is a lot easier than crushing
2 steel, right?

3 A. Absolutely it is.

4 Q. But different energy ---

5 A. --- but most stiffness coefficients -- there are
6 three of them, there is A, B, and C stiffness
7 coefficients that you put into -- that you have to put in
8 the crush values to be able to make a determination as to
9 speed based on the crush. And all of those values take
10 those things into consideration. It's an overall value
11 as opposed to just one particular value.

12 So yes, you would have to -- if you didn't consider
13 that that would be like I'm going to break something but
14 I'm not going to consider the part that I have to break
15 through to break the rest of it; that's not how it would
16 work.

17 [Whereupon, defendant's exhibit number 34 is marked
18 by the court reporter]

19 Q. Mr. Lee, I'm handing you what has marked for
20 identification as defendant's exhibit 34.

21 [Whereupon, the witness is shown document]

22 Q. Do you recognize what that depicts?

23 A. I believe this is the BMW.

24 Q. Is that a fair and accurate representation of the
25 BMW as it stood after the accident?

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1 A. It looks like -- and I think I've seen this
2 photograph before at the wrecker yard ---

3 Q. --- I would represent to you that I think it's one
4 of the ones your team took.

5 MR. MAYER: Judge, we would ask to move defendant's
6 34 into evidence.

7 THE COURT: Any objection?

8 MR. WEST: Nothing from the State, Your Honor.

9 THE COURT: Marked and admitted without objection.

10 [Whereupon, defendant's exhibit number 34 is entered
11 into evidence by the court]

12 Q. [Mr. Mayer] It kind of goes without saying but I'm
13 going to say it anyway. You weren't there at the
14 accident?

15 A. No, sir.

16 Q. And you don't know what happened in the moments
17 before this accident, right?

18 A. No, sir.

19 Q. From the physical evidence that you see on the scene
20 you can't tell if Ms. Zoll had been in the other lane
21 sometime prior to the accident, right?

22 A. It would be my opinion that she was travelling
23 within her lane.

24 Q. At the time of the accident.

25 A. At the time the collision occurred, yes.

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1 Q. But you don't know what happened in the moments
2 prior to the collision, correct?

3 A. I don't see anything within the dynamics of this
4 crash that indicates that she was heading toward the
5 shoulder or back towards the center line. It appears
6 that she was travelling in that lane straight ahead.

7 Q. Okay. How much would using an angular formula have
8 reduced your calculation of Shana's speed?

9 A. I would have to do those calculations and have some
10 idea of what kind of angle I would want to use to do
11 that. We didn't do that because we didn't see that in
12 this crash.

13 Q. Okay.

14 MR. MAYER: Court's indulgence.

15 [Whereupon, Mr. Mayer views documents]

16 MR. MAYER: No further questions.

17 THE COURT: Any redirect?

18 MR. WEST: Quickly, Your Honor.
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State v Shana Robinson
David Lee-Redirect Examination by Mr. West
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1 REDIRECT EXAMINATION

2 BY MR. WEST:

3 Q. Mr. Lee, you were asked a lot of questions just now.

4 In your expert opinion does anything you were asked

5 change the calculations that you found that this

6 defendant was travelling at 79 miles an hour?

7 A. None whatsoever.

8 Q. Has anything that you were just asked change your

9 expert opinion that this collision happened in the

10 vehicles lane of travel -- the victim's lane of travel?

11 A. No, sir.

12 Q. Thank you.

13 MR. WEST: No further questions from the State.

14 THE COURT: Any objection to the witness being

15 excused from the State?

16 MR. WEST: Nothing from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. MAYER: No, Judge.

19 THE COURT: Sir, you're excused.

20 [Whereupon, the witness is excused and exits the

21 witness stand]

22 THE COURT: Mr. Foreman and ladies and gentlemen

23 we're going to take advantage of this break in -- well,

24 actually does the State have any further witnesses or

25 does the State rest?

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1 MR. WEST: The State rests at this time, Your
2 Honor.

3 THE COURT: Ladies and gentlemen, we're going to
4 take advantage of this break in testimony as I need to
5 take up some matters of law with the attorneys now that
6 the State has rested their case. During this break
7 please do not discuss the case in any matter whatsoever
8 and please leave your notepads in your seats.

9 [Whereupon, the jury exits at 3:36 p.m.]

10 THE COURT: The State has rested their case. Are
11 there any motions?

12 MR. MAYER: Yes, Judge.

13 THE COURT: You may proceed.

14 MR. MAYER: Thank you, Judge.
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State v Shana Robinson
Motion for Directed Verdict-Remarks by Mr. Mayer
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1 MOTION FOR DIRECTED VERDICT

2 BY MR. MAYER:

3 The defense moves to dismiss on the basis that the
4 State has failed to carry the burden and even at this
5 point has failed to prove that there is opportunity for
6 the jury to find that Shana was impaired at the time of
7 this accident.

8 The blood reading was done after major abdominal
9 surgery and should not be something considered by a jury
10 as result there is no reading that is reliable that would
11 show that she was impaired at the time of the collision,
12 Judge.

13 Additionally, under the South Carolina statute for
14 felony D-U-I's there has been no roadside video produced,
15 no other testing video produced. And while that may be
16 understandable because of the nature of this accident
17 neither has there been an affidavit of non production ---

18 THE COURT: --- that's only required when there is
19 a B-A test; not when it's done under these circumstances
20 is my understanding of the meaning of the statute. You
21 have to have a video when the mouth is suitable for
22 testing and during the observation period. But that
23 portion of the statute is not applicable when someone is
24 not conscious or there has been a catastrophic accident
25 requiring medical care; like an either or.

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1 MR. MAYER: Or if there is no video my
2 understanding, Judge was that if there is no video ---

3 THE COURT: --- only where there is B-A.

4 MR. MAYER: There would have to be an affidavit.

5 THE COURT: Where there is a B-A test that is being
6 recorded yes, but not under these circumstances. That's
7 for the D-U-I portion of the statute when you are
8 offering the breathalyzer test for the mouth the total
9 observation period to make sure there has been no
10 hypothecation to the mouth or otherwise or some way that
11 the test could have been hypothecated or tampered with
12 and where the person is competent for the administration
13 of their Miranda warnings.

14 But your client was basically under the statute
15 unconscious. And for a blood draw there really is no
16 requirement. The requirements are different than when
17 you're administering a breath test. So I don't -- at
18 least on my reading of the statute that portion of the
19 statute is not applicable.

20 MR. MAYER: Sure. I'm just making my motion;
21 that's all.

22 THE COURT: And I think you would have had to have
23 raised that before now as a basis for your suppression
24 motion instead of now after all the evidence has been
25 produced. You may continue.

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1 MR. MAYER: Thank you, Judge. And so because
2 there has been no video and because -- I'm sorry, no
3 affidavit for non-production and because there has been
4 only unreliable testimony as to Ms. Robinson's blood
5 alcohol level taken, again after she was given something
6 like 28 different substances in the hospital we would ask
7 that the court dismiss the State's case at this point.

8 THE COURT: Would the State like to respond?

9 MR. WEST: Yes, Your Honor.

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Motion for Directed Verdict-Remarks by Mr. West
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1 REPLY TO MOTION FOR DIRECTED VERDICT

2 BY MR. WEST:

3 In the light most favorable to the State the State
4 feels that it has met its burden for this case to go to
5 the jury. This court as you know is only concerned with
6 the existence or non-existence of evidence. In this case
7 we have presented sufficient evidence that goes to all
8 elements of the charge of felony D-U-I; specifically we
9 presented evidence to the defendant's intoxication, to
10 the act or neglect which proximately caused the accident,
11 which caused the death of the victim, Candy Zoll in this
12 case.

13 We've presented accident reconstructionists,
14 toxicologists that go to the impairment. We feel -- we
15 have also stipulated as to the cause of the death in this
16 case, which that cause being the result of this accident.
17 In response to the B-A requirements the State would agree
18 with Your Honor in regards that they are not applicable
19 in this scenario. The statutes and case law are pretty
20 clear on that issue. As such the State feels we have met
21 our burden and that this case should go to the jury.

22 THE COURT: Anything further from the defense?

23 MR. MAYER: No, Judge.

24 [Whereupon, the court reviews documents]
25

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1 RULING ON MOTION FOR DIRECTED VERDICT

2 THE COURT: In considering a motion for directed
3 verdict the court is not concerned with the weight of
4 evidence; only the existence or non existence of
5 evidence. The court is not the fact finder and the court
6 is not required to find that the evidence produced by the
7 State infers guilt to the exclusion of any other
8 reasonable hypothesis.

9 The court is only concerned again with the existence
10 or non existence of evidence. If there is any direct
11 evidence or any substantial circumstantial evidence
12 reasonably tending to prove the accused guilt it is
13 appropriate that the matter be submitted to the jury.

14 In a case for a felony D-U-I with death the State is
15 required to prove the following elements pursuant to
16 56-5-2945. The State must prove beyond a reasonable
17 doubt that the defendant drove a vehicle while under the
18 influence of alcohol and or drugs and that is the
19 operative language.

20 The State is not required to prove that the
21 defendant was solely impaired by alcohol. It could be
22 and or any other combination of drugs, which is the
23 language parenthetically in the statute. I don't think
24 there was any question that it was clear that she was
25 driving a motor vehicle and that vehicle was in motion.

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1 And I don't think that is in contention that she was
2 actually driving the vehicle. The State then also has to
3 prove beyond a reasonable doubt that the defendant was
4 sufficiently under the influence to impair his or her
5 ability to drive with reasonable care, with due regard
6 for others and himself, or as a reasonably prudent person
7 would drive.

8 It is not necessary that they show that the
9 defendant was helpless, that the defendant was passed out
10 or even that the defendant was intoxicated. Unlike the
11 D-U-I statute which requires proof of material -- that
12 the driver is materially and appreciably impaired; that
13 is not a requirement in the felony D-U-I statute. The
14 State must then prove beyond a reasonable doubt that
15 while the defendant was driving that the defendant did an
16 act forbidden by law or neglected a duty imposed by law.

17 And there is direct and substantial circumstantial
18 evidence in the record of those elements; that being that
19 she was exceeding the speed limit, that she crossed the
20 center line, that she was driving recklessly as well as
21 having violated certain common law duties the least of
22 which is to keep your vehicle under proper control as
23 well as keep a proper look out and being able to keep
24 control of your vehicle such to avoid colliding with
25 other vehicles or pedestrians on the highway. The State

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1 must then finally prove beyond a reasonable doubt that
2 the act or the neglect of the defendant proximately
3 caused great bodily injury or death to another person.
4 And the parties have already conceded by stipulation that
5 this collision was the proximate cause of Ms. Zoll's
6 death.

7 And we know that proximate cause is the direct cause
8 of an incident, however there can be more than one
9 proximate cause. There can be two acts which combine to
10 complete the act of proximate cause or the death of a
11 person, but again it becomes a bit of a moot issue as the
12 parties have conceded that this collision was the
13 proximate cause of the death of Ms. Zoll.

14 There is direct evidence as well as substantial
15 circumstantial evidence in the testimony of the two
16 eyewitnesses which amounts to substantial circumstantial
17 evidence that they saw Ms. Robinson's car speed past
18 their homes at a high rate of speed. That while they did
19 not see the actual crash as they lost sight in the curve
20 that they both said to themselves, she's not going to
21 make that curve, and then subsequently -- she's going too
22 fast -- subsequently hearing a crash or hearing the
23 collision, which is the subject of the indictment in this
24 case. There is also the direct testimony of medical
25 personnel through the toxicology reports -- well, the

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1 toxicologist and the medical reports that not only did
2 she have alcohol in her system but she had other
3 prescribed medications, which while there was no
4 testimony elicited regarding certain warnings or
5 otherwise on this medication I think we all know that
6 when you take anxiety medications or other type of
7 neurological depressants that there is a warning that
8 says you should not take with alcohol of any amount.

9 So clearly the combination of those medications as
10 well as her own admission through that of her friend, Ms.
11 Brittany, that they had been at Applebee's and that over
12 a two hour period she had ingested two alcoholic drinks
13 combined with the testimony of the toxicologist there is
14 direct as well as substantial circumstantial evidence
15 that would rise to the level of the State being able to
16 prove beyond a reasonable doubt that she was sufficiently
17 under the influence to impair her ability to drive with
18 reasonable care and with due care and regard for the
19 safety of herself and others or as a reasonably prudent
20 person would drive, and that she drove the vehicle while
21 under the influence of alcohol and or other drugs or some
22 combination thereof.

23 I do not find persuasive the defense's argument that
24 somehow these tests were deficient in their nature due to
25 the fact that they were taken after she had had surgery;

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1 that being the splenectomy. In fact the medical
2 testimony bears out that the test being taken after that
3 surgery enured substantially to her benefit because if we
4 consider the testimony of the doctor and the amount of
5 fluids that had to be placed into her body as well as the
6 toxicologist's testimony regarding the rate of
7 elimination of alcohol from the system it would seem to
8 me that the reading would have been higher if taken as
9 Mr. Mayer suggests it should have been rather than the
10 lower reading that bore out in the testimony.

11 So I can't discern any prejudice to her and frankly
12 I think it enures greatly to her benefit that the tests
13 were taken and administered as they were in light of the
14 body's ability to metabolize and eliminate substances and
15 the substantial amount of fluids and other procedures
16 that were performed on her that basically would have
17 eliminated a great amount of the intoxicants from her
18 system. So, I do not find that argument persuasive.

19 As it regards the requirement of a roadside video
20 that argument is misapprehended as that portion of the
21 statute only applies to the breathalyzer test. And it's
22 very clear from the statute and it says very clearly that
23 when you're being tested under -- it does not exclude
24 felony D-U-I, it includes that but that portion of the
25 statute anticipates that a person is ambulatory, that

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1 they are able to walk, that there are no impairments to
2 their mouth, that you are then able to go to the
3 breathalyzer site and to follow the breathalyzer
4 requirements that are set forth in that portion of the
5 statute as well as 56-5-2953, which is specifically
6 entitled Incident Site and Breath Test Video Recording.

7 And without belaboring the hour that test very
8 clearly anticipates that once someone is stopped for the
9 offense of D-U-I or felony D-U-I that the officer will
10 activate his video at the time of the stop, record the
11 field sobriety test, and then continue that recording at
12 the time that the person arrives for the breathalyzer
13 exam, for them to be Mirandized, and then to decide
14 whether they want to accept or reject taking the
15 breathalyzer test, and then if they decide to take it the
16 recording of that test.

17 And the statute is very clear that even if there
18 wasn't a recording as we know many cars even at this late
19 juncture after the statute has been passed are not
20 equipped with cameras because of certain deficits in
21 budgets of different municipalities that is not the basis
22 for the dismissal of a charge but that the officer can
23 supplement the record with an affidavit. But I would
24 find for the record that the portion of the statute
25 that's being articulated by the defense is not applicable

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1 in this circumstance as 2950, which I'm referring to
2 56-5-2950 subsection (h) clearly anticipates this
3 situation where it clearly articulates that when a person
4 is unconscious or otherwise incapable -- a person who is
5 unconscious or otherwise in a condition rendering him
6 incapable of refusal is considered to be informed and not
7 to have withdrawn the consent provided by subsection (a)
8 of this section.

9 Very clearly while Ms. Robinson, well she was
10 unconscious at some point because she had to be sedated
11 for purposes of this procedure, but she was certainly
12 otherwise in a condition rendering her incapable of
13 refusal. And her consent is presumed to not have been
14 withdrawn.

15 She very clearly was given her informed consent at
16 the hospital. The statute anticipates these types of
17 situations where people are subject to catastrophic
18 injuries and then have to be treated for those injuries.

19 There is no way that the police could have complied
20 or that the statute anticipated complying with videoing
21 of a chaotic scene as it was in this instance where upon
22 arrival at the scene I believe the testimony was Ms.
23 Robinson had already been evacuated. So there was no
24 way for them to have videoed her at any event; it just
25 would have been a video of a chaotic emergent scene. But

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1 clearly the statute by its heading anticipates there
2 would be the reporting at the incident site and breath
3 test video recording and it very specifically articulates
4 that the field sobriety test and otherwise as well as the
5 actual administration of the B-A test is what is to be
6 recorded. But it is not applicable under these
7 circumstances nor is it required statutorily, therefore
8 there is no basis for directed verdict on that ground.

9 As such the court finds that there is direct as well
10 as substantial circumstantial evidence reasonably tending
11 to prove the defendant's guilt and therefore the motion
12 for directed verdict is denied. Mr. Mayer, do you have
13 any of your witnesses here ready to go forward today?

14 MR. MAYER: I do, Judge.

15 THE COURT: Who do you have present today?

16 MR. MAYER: Judge, I think it might be a little
17 late to get into our MAIT reconstruction testimony today.
18 It is probably going to take an hour for me and probably
19 another hour for Mr. West. I do have some lay witnesses
20 sobriety witnesses ---

21 THE COURT: --- how many witnesses you got?

22 MR. MAYER: I believe I have four or five here
23 Judge ---

24 THE COURT: --- you want to double check right
25 quick before we start?

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1 MR. MAYER: Yes, Judge.

2 THE COURT: We'll take a quick restroom break while
3 he does that and then we will be ready to start when he
4 gets me a number of how many witnesses he has.

5 [Whereupon, court takes a brief recess]

6 Whereupon, an off the record discussion of the
7 defendant's witness list is held]

8 THE COURT: Please bring in the jury.

9 [Whereupon, the jury enters at 4:20 p.m.]

10 THE COURT: You may proceed.

11 MR. MAYER: Thank you, Judge. The defense would
12 call Janet Jurosko to the stand.

13 [Whereupon, Ms. Jurosko comes forward]

14 [Whereupon, the witness is duly sworn by the Clerk
15 of Court]

16 CLERK OF COURT: Please be seated. State your full
17 name and spell your last name for the record.

18 THE WITNESS: Janet Brown Jurosko, J-U-R-O-S-K-O.

19 THE COURT: You may proceed.

20 MR. MAYER: Thank you, Judge.

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State v Shana Robinson
Janet Jurosko-Direct Examination by Mr. Mayer
June 4, 2014

1 JANET JUROSKO,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MAYER:
6 Q. Ms. Jurosko, please tell the jury a little bit about
7 yourself, what you do for a living and all that?
8 A. I was born and raised in Berkeley County all my
9 life. I'm the Auditor for Berkeley County and have been
10 the Auditor for 25 years.
11 Q. Do you recall where you were on the night of
12 November 10th of 2011?
13 A. Yes. I was at Gilligan's Bar and Grill -- I mean
14 Geronimo's, excuse me.
15 Q. Now Gilligan's, it used to be Geronimo's, is that
16 right?
17 A. No.
18 Q. Okay. But it was Geronimo's?
19 A. Yes.
20 Q. Okay. And on that night did you have occasion to
21 see the defendant, Shana Robinson?
22 A. Yes, I did.
23 Q. And where did you see her?
24 A. At Geronimo's.
25 Q. Okay. Did you have occasion to talk to her?

State v Shana Robinson
Janet Jurosko-Direct Examination by Mr. Mayer
June 4, 2014

- 1 A. Yes, I did.
- 2 Q. All right. Did you from talking to her and
3 interacting with her did you get any impression that she
4 was impaired in any way?
- 5 A. No, I did not.
- 6 Q. Okay. And on that same night were you aware that
7 there was an accident sometime later?
- 8 A. Yes, I was.
- 9 Q. In fact it was not too long after you were talking
10 to Shana right?
- 11 A. Probably 20 to 30 minutes, yes.
- 12 Q. Okay. And how did you become aware of the
13 accident?
- 14 A. We were eating dinner and someone at the Grill said
15 that there was a terrible accident.
- 16 Q. Okay. And so that accident from your understanding
17 occurred 20 or 30 minutes after you had just seen Shana
18 leave?
- 19 A. That's correct.
- 20 Q. And again, she was not impaired when she left?
- 21 A. Oh, no.
- 22 Q. Okay. She was sober?
- 23 A. Yes, we talked probably about five minutes before
24 she left.
- 25 Q. Okay. She wasn't bonging beers or anything crazy,

State v Shana Robinson
Janet Jurosko-Direct Examination by Mr. Mayer
June 4, 2014

1 right?

2 A. No. I never did see her with a drink.

3 Q. Okay. Did you at some point that same night talk
4 to a trooper named Trooper Southerland?

5 A. Pearson.

6 Q. I'm sorry, Trooper Pearson. And you reported to him
7 that Shana had been at Geronimo's?

8 A. That's correct.

9 Q. Okay. But you did not tell him she was impaired or
10 anything like that?

11 A. No because when we first heard about the accident we
12 wasn't sure who had died; we hadn't heard that someone
13 had passed so we weren't sure.

14 Q. Okay. But when you talked to him -- when you
15 talked to Trooper Pearson you never said -- maybe you
16 never said whether she was impaired or not. Did the
17 subject come up?

18 A. No. I was basically asking about her safety.

19 Q. Okay. From your interactions with Shana at
20 Geronimo's and your opinion as a human being do you think
21 she would have been safe to drive home?

22 A. I would have, yes.

23 Q. And if she had exhibited signs that she wasn't safe
24 or something like that you would have tried to stop her
25 or someone would have tried to stop her.

State v Shana Robinson
Janet Jurosko-Direct Examination by Mr. Mayer
June 4, 2014

1 A. I would have taken her home. I went to church with
2 her. She's like my daughter; I would have taken her home
3 with me.

4 Q. Thank you very much. Please answer any questions
5 the State has.

6 THE COURT: Any questions for the witness?

7 MR. WEST: Yes, Your Honor.

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State v Shana Robinson
Janet Jurosko-Cross-Examination by Mr. West
June 4, 2014

1 CROSS-EXAMINATION

2 BY MR. WEST:

3 Q. Good afternoon, Ms. Jurosko.

4 A. Good afternoon.

5 Q. Were you with Shana before Geronimo's?

6 A. No.

7 Q. Okay. So you're not going to be able to testify

8 whether she was drinking before you met her?

9 A. No, I cannot say.

10 Q. Okay. Now you were with her at Geronimo's and you

11 said that there was about a 30 minute gap between the

12 wreck and Geronimo's. So in those 30 minutes you can't

13 testify as to how many drinks Shana would have had in

14 that gap in time?

15 A. That's correct. I cannot.

16 Q. Did you see the accident?

17 A. No.

18 Q. Did you ever go to the scene?

19 A. No.

20 Q. So you can't testify to anything about the cause of

21 the wreck?

22 A. I cannot.

23 MR. WEST: No further questions for this witness.

24 THE COURT: Any redirect?

25 MR. MAYER: No, Judge.

State v Shana Robinson
Janet Jurosko-Cross-Examination by Mr. West
June 4, 2014

1 THE COURT: Any objection to the witness being
2 excused from the State?

3 MR. WEST: Nothing from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. MAYER: Nothing, Judge.

6 THE COURT: Ma'am, you're excused.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

9 THE COURT: You may call your next witness.

10 MR. MAYER: Thanks, Judge. The defense would call
11 Ms. Michelle Metts.

12 [Whereupon, Ms. Metts comes forward]

13 [Whereupon, the witness is duly sworn by the Clerk
14 of Court]

15 CLERK OF COURT: Please be seated. State your full
16 name and spell your last name for the record.

17 THE WITNESS: Michelle Susan Metts, M-E-T-T-S.

18 THE COURT: You may proceed.

19 MR. MAYER: Thank you, Judge.
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State v Shana Robinson
Michele Metts-Direct Examination by Mr. Meyer
June 4, 2014

1 MICHELE METTS,
2 Having been first duly sworn,
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MAYER:

6 Q. Ms. Metts, Aaron Meyer; I represent Shana. Thanks
7 for coming today. Do you recall the night of November
8 10th of 2011?

9 A. Yes.

10 Q. Did you have occasion on that night to see Shana?

11 A. Yes.

12 Q. And where did you see Shana?

13 A. I saw her next door to the bar.

14 Q. Next door to the bar being Geronimo's?

15 A. Yes.

16 Q. Okay.

17 A. That was where my son wrestled at the time.

18 Q. Okay. And how old is your son?

19 A. Today he's 13.

20 Q. Back then he was about ---

21 A. --- probably 9. He was going to be ten that summer.

22 Q. Okay. Were there other kids around when you were
23 talking to Shana?

24 A. My two children -- that's what I was trying to
25 figure out -- I would have had them with me. They are

State v Shana Robinson
Michele Metts-Direct Examination by Mr. Meyer
June 4, 2014

1 two girls; one would have been about five and the other
2 one was an infant.

3 Q. And were you teaching him wrestling?

4 A. No, his coach was there.

5 Q. Who is his coach?

6 A. I called him Rece. I could not offhand tell you his
7 first and last name other than Coach Rece right this
8 second.

9 Q. And do you remember approximately what time that
10 evening you saw Shana?

11 A. No. I know that it wasn't completely dark yet but I
12 couldn't tell you what time it was other than it wasn't
13 dark dark and if my son was practicing by himself then it
14 was probably duskish.

15 Q. Okay. So were y'all inside?

16 A. Yes.

17 Q. When you talked to Shana -- did you talk to her that
18 day?

19 A. Yes.

20 Q. When you interacted with her and talked to her did
21 she seem impaired in any way?

22 A. No.

23 Q. Did she in fact seem sober?

24 A. Yes.

25 Q. Okay. Did you later that night hear about an

State v Shana Robinson
Michele Metts-Direct Examination by Mr. Meyer
June 4, 2014

1 accident?

2 A. Yes. I'm not sure if I heard about it that night or
3 in the morning. I couldn't tell you exactly, but I
4 definitely heard about it.

5 Q. Okay. When you saw Shana what was she doing?

6 A. She came in -- she apparently graduated with Rece or
7 with to school with Rece and she came in because she saw
8 him through the window and said oh, hey and then saw that
9 it was me and my son and was like oh, hey.

10 So while they were practicing she talked to me for a
11 long time just about things going on and how big the kids
12 were and how cute they are.

13 Q. Was she drinking alcohol at that time?

14 A. No.

15 Q. Okay. So she was sober and she was not drinking
16 when you saw her besides Geronimo's?

17 A. Yes.

18 Q. Thank you very much. Please answer any questions
19 the State may have.

20 THE COURT: You may proceed.

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State v Shana Robinson
Michele Metts-Cross-Examination by Mr. West
June 4, 2014

1 CROSS-EXAMINATION

2 BY MR. WEST:

3 Q. Do you know if Shana Robinson was drinking prior to

4 when you saw her?

5 A. No, I do not know.

6 Q. Okay. And it's your testimony that you don't

7 whether Shana Robinson was drinking after you saw her?

8 A. Do I know if she was drinking after I saw her, no.

9 Q. Okay. Did you see the accident?

10 A. No.

11 Q. So you don't know what caused the accident?

12 A. No.

13 MR. WEST: No further questions for this witness.

14 THE COURT: Any redirect?

15 MR. MAYER: No, Judge.

16 THE COURT: Any objection to the witness being

17 excused from the State?

18 MR. WEST: Nothing from the State.

19 THE COURT: From the defense?

20 MR. MAYER: No, Judge.

21 THE COURT: Ma'am, you're excused.

22 [Whereupon, the witness is excused and exits the

23 witness stand]

24 THE COURT: You may call your next witness.

25 MR. MAYER: Judge, the defense would call Mr. Jeff

State v Shana Robinson
Michele Metts-Cross-Examination by Mr. West
June 4, 2014

1 Forinash.

2 [Whereupon, Mr. Forinash comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please be seated. State your full
6 name and spell your last name for the record.

7 THE WITNESS: Jeffrey Lee Forinash, F-O-R-I-N-A-S-H.

8 THE COURT: You may proceed.

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State v Shana Robinson
Jeffrey Forinash-Direct Examination by Mr. Mayer
June 4, 2014

1 JEFFREY FORINASH,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MAYER:
6 Q. Mr. Forinash, do you remember -- please tell the
7 jury what you do for a living -- what your background is?
8 A. I'm retired Air Force.
9 Q. Okay. Do you remember the night of November 10,
10 2011?
11 A. Yes, sir.
12 Q. Where were you that night?
13 A. A local sports bar, restaurant; Geronimo's.
14 Q. Okay. And did you have occasion that night to see
15 Shana?
16 A. I did.
17 Q. Okay. Where did you see her?
18 A. She came in and sat right beside me; her an another
19 young lady.
20 Q. Okay. Did you talk to her?
21 A. Absolutely. We discussed her condo that had come up
22 for rent. My step-son wanted to rent it.
23 Q. Okay. About how did you talk with her for?
24 A. No more than 15 or 20 minutes.
25 Q. Okay. Please describe where you guys were sitting

State v Shana Robinson
Jeffrey Forinash-Direct Examination by Mr. Mayer
June 4, 2014

1 when you said she came up and sat down.

2 A. You come in the front door there's a little tiny bar
3 area and then there's another one that goes the length of
4 the building. We were approximately maybe three seats in
5 on that long bar; three or four seats in there.

6 Q. Okay. And did she order a drink while she was
7 sitting there talking to you?

8 A. There was a glass. I don't know what was in it.
9 Probably -- I don't know; I know I had a beer and it
10 takes me about 20 minutes to drink a beer so she was only
11 there about 20 minutes or so.

12 Q. Okay. And so you were only there for a beer?

13 A. Yes, sir.

14 Q. Okay. And then you left?

15 A. No, Shana left before me.

16 Q. Okay. Were you still at Geronimo's when you heard
17 about the accident?

18 A. No sir, I had left. As a matter of fact I tried to
19 call her about 15 or 20 minutes after I'd seen her to
20 tell her my step-son wanted the condo. But no answer.

21 Q. So 15 to 20 minutes after you saw her you said you
22 then tried to call her.

23 A. Yes, sir.

24 Q. Would it have been unusual for Shana not to answer
25 your phone -- not answer your call?

State v Shana Robinson
Jeffrey Forinash-Direct Examination by Mr. Mayer
June 4, 2014

1 A. Yes, sir.

2 Q. Okay. When you were talking to her there was she
3 intoxicated?

4 A. Did not appear to be at all, sir.

5 Q. Okay. Did she appear to be sober?

6 A. Yes.

7 Q. Was that a yes?

8 A. Yes, sir.

9 Q. Okay. Was she slurring her words or anything like
10 that?

11 A. No, sir.

12 Q. Okay. Was she unsteady on her feet or anything?

13 A. No.

14 Q. Okay. Thank you. Please answer any questions the
15 State may have.

16 THE COURT: Any questions for the witness?

17 MR. ALFARO: Yes, Your Honor.

18 THE COURT: You may proceed.

19 MR. ALFARO: Thank you.

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State v Shana Robinson
Jeffrey Forinash-Cross-Examination by Mr. Alfaro
June 4, 2014

CROSS-EXAMINATION

1
2 BY MR. ALFARO:

3 Q. Good afternoon Mr. Forinash. You said you were with
4 her or you saw her in Geronimo's for 15 to 20 minutes?

5 A. Yes, sir.

6 Q. You didn't have any contact with her at Applebee's
7 before that?

8 A. No, sir.

9 Q. And do you have any knowledge whether she was taking
10 any prescription pills at the time you were talking with
11 her?

12 A. I don't know. I doubt it. I mean I don't know if
13 she has prescriptions or not; I don't know.

14 Q. You don't if she was taking any?

15 A. No, sir.

16 Q. Okay. Thank you.

17 THE COURT: Any redirect?

18 MR. MAYER: Just very briefly.

19 THE COURT: You may proceed.
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State v Shana Robinson
Jeffrey Forinash-Redirect Examination by Mr. Mayer
June 4, 2014

1 REDIRECT EXAMINATION
2 BY MR. MAYER:
3 Q. Shana wasn't popping pills or anything there in the
4 bar.
5 A. No.
6 Q. Had you ever seen her pop pills like that that
7 night?
8 A. No, sir.
9 Q. Okay. Thank you.
10 THE COURT: Any objection to witness being excused
11 from the State?
12 MR. ALFARO: No, Your Honor.
13 THE COURT: From the defense?
14 MR. MAYER: No, Judge.
15 THE COURT: Sir, you're excused.
16 [Whereupon, the witness is excused and exits the
17 witness stand]
18 THE COURT: You may call your next witness.
19 MR. MAYER: Judge, the defense would call Rob
20 Mittelstadt.
21 [Whereupon, Mr. Mittelstadt comes forward]
22 [Whereupon, the witness is duly sworn by the Clerk
23 of Court]
24 CLERK OF COURT: Please be seated. State your name
25 and spell your last name for the record.

State v Shana Robinson
Jeffrey Forinash-Redirect Examination by Mr. Mayer
June 4, 2014

1 THE WITNESS: My name is Robert Eugene Mittelstadt,
2 III; it's M-I-T-T-E-L-S-T-A-D-T.

3 THE COURT: You may proceed.

4 MR. MAYER: Thanks, Judge.
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State v Shana Robinson
Robert Mittelstadt-Direct Examination by Mr. Mayer
June 4, 2014

1 ROBERT MITTELSTADT,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MAYER:
6 Q. Mr. Mittelstadt, please tell the jury where you were
7 employed on the night of November 10th of 2011?
8 A. I was employed at Geronimo's in Moncks Corner on
9 Barony Street.
10 Q. What was your job?
11 A. Bartender.
12 Q. Okay. And when you were there that night did you
13 have occasion to see Shana Robinson?
14 A. I did. She sat directly across from me next to Mr.
15 Jeff at the bar.
16 Q. Okay. And did you serve her any food or beverages?
17 A. I served her a vodka and cranberry.
18 Q. Okay. Just one?
19 A. Actually she ordered two and she never drank the
20 second one because I asked her if she wanted it and I
21 actually discarded that in the sink before she left.
22 Q. Okay. So when she first came in she ordered one?
23 A. Yes.
24 Q. Okay. And do you have any recollection about how
25 long it took her to drink that one?

State v Shana Robinson
Robert Mittelstadt-Direct Examination by Mr. Mayer
June 4, 2014

- 1 A. I would say 30 maybe 45 minutes' tops I would say.
2 Q. Okay. So it wasn't like she was slugging them
3 back?
4 A. No, not by any means.
5 Q. Okay. And then would it have been after she drank
6 that one that she asked for a second one?
7 A. Yes. Well, actually I asked her if she wanted
8 another one because her cup had gotten low. They said
9 yes, and I then made one and then shortly after that they
10 left and it was still a full cup on the bar and I
11 remember because I ended up discarding that and throwing
12 it away.
13 Q. Okay. Please describe Shana's demeanor when she
14 came in the bar?
15 A. She seemed normal. She was completely lucid. I
16 didn't see anything as far as slurred speech. Her gait
17 seemed totally normal. So it just seemed like a normal
18 regular day.
19 Q. Okay. So from your assessment as a bartender I
20 imagine you see a lot of drunk people?
21 A. Yes, on a daily basis.
22 Q. But she was not one of them?
23 A. No, not that evening.
24 Q. I'm sorry?
25 A. No, she was not.

State v Shana Robinson
Robert Mittelstadt-Direct Examination by Mr. Mayer
June 4, 2014

1 Q. Okay. And when she was there would you say she was
2 sober?

3 A. Yes.

4 Q. Okay. How long would you say that it was from the
5 time that you first saw her to when she left? Do have a
6 sense for that?

7 A. I would say it would be roughly right about an hour
8 total time.

9 Q. Okay. And was someone named Mickie -- Michele
10 Metts also around the bar that night?

11 A. I believe she was next door where they had the
12 wrestling practices. And from time to time she will come
13 over and speak with us.

14 Q. Okay. And was there also someone named Janet
15 Jurosko there that night?

16 A. She was. She was sitting at one of the tables I
17 believe.

18 Q. And was there someone named Chuck Holmes there that
19 night?

20 A. Yes, Chuck was there.

21 Q. To your knowledge did Chuck and Shana know one
22 another?

23 A. Yes.

24 Q. Okay. And how would you describe your relationship
25 with Shana? Are y'all acquaintances or friends or?

State v Shana Robinson
Robert Mittelstadt-Direct Examination by Mr. Mayer
June 4, 2014

1 A. We've been friends for a while. I met her through
2 just previous jobs and so on.

3 Q. Okay. And when was kind of the last time that you
4 guys talked on a regular basis?

5 A. I mean it had to be before the accident. We haven't
6 really spoken much since then.

7 Q. It's been a couple of years?

8 A. Yes.

9 Q. Okay. Please answer any questions the State may
10 have.

11 THE COURT: You may proceed.

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State v Shana Robinson
Robert Mittelstadt-Cross-Examination by Mr. Alfaro
June 4, 2014

1 CROSS-EXAMINATION

2 BY MR. ALFARO:

3 Q. Good afternoon Mr. Mittelstadt. How long were you a

4 bartender at Geronimo's?

5 A. I would say about a year and two months, year and

6 three months I believe.

7 Q. Did you tend bar in other places before that?

8 A. Yes. I've been a bartender since I was 23 so

9 roughly ten years.

10 Q. And was the defendant a regular customer at

11 Geronimo's?

12 A. I wouldn't say a regular as far as like -- I mean it

13 depends on your perception of regular. Like a daily

14 person? No. It was someone who would come in and get

15 food and a drink from occasion to occasion, yes.

16 Q. Daily would be a lot I would think. But once a

17 week, couple of times a week?

18 A. Maybe every other week I'd see her; maybe once or

19 twice a month at most.

20 Q. Was vodka and cranberry her normal drink?

21 A. I would say so, yes.

22 Q. And you said you'd been friends with her a while.

23 Did you know her before you started working at

24 Geronimo's?

25 A. Yes, I've probably known her seven years previously.

State v Shana Robinson
Robert Mittelstadt-Cross-Examination by Mr. Alfaro
June 4, 2014

1 Q. And you know if that night she was -- did you know
2 that night she was taking prescription pills?

3 A. I had no knowledge of that.

4 Q. Okay. Thank you.

5 MR. ALFARO: No further questions.

6 THE COURT: Any redirect?

7 MR. MAYER: No, Judge.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MR. ALFARO: No, Your Honor.

11 THE COURT: From the defense?

12 MR. MAYER: No, Your Honor.

13 THE COURT: Sir, you're excused.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: Mr. Foreman, ladies and gentlemen we're
17 going to take advantage of this break in testimony to
18 take our evening recess. The next witness would take us
19 well beyond 6 o'clock and so we're going to break for the
20 evening. During this break please do not discuss the
21 case among yourselves or with anyone else. Please don't
22 do any independent research of any type on the Internet
23 and please do not watch, read, or listen to any media
24 accounts about this case. Also, please do not make any
25 comments regarding your status on any social networking

State v Shana Robinson
Robert Mittelstadt-Cross-Examination by Mr. Alfaro
June 4, 2014

1 sites. We will resume in the morning at 9:30. If you
2 will leave your notepads in your seats and follow
3 directions of the bailiff we will see you in the morning
4 at 9:30. Have a great evening.

5 [Whereupon, the jury exits at 4:42 p.m.]

6 THE COURT: Is there anything before we break for
7 the evening from the State?

8 MR. WEST: Nothing from the State, Your Honor.

9 THE COURT: From the defense?

10 MR. MAYER: Nothing from the defense, Your Honor.

11 THE COURT: All right guys, have a good evening.

12 See you in the morning at 9:30.

13 MR. MAYER: Thanks, Judge.

14 [Whereupon, court adjourns at 4:43 p.m.]

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State v Shana Robinson
Certificate of the Court Reporter
June 4, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Berkeley County, South
Carolina on the 4th day of June, 2014.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

September 12, 2014


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON)

DOCKET NO. 2014-GS-08-0313

STATE OF SOUTH CAROLINA)

vs.)

SHANA CECIEL ROBINSON)

Defendant)

TRANSCRIPT OF RECORD

June 5, 2014

Moncks Corner, S. Carolina

VOLUME 4 (OF 5)**B E F O R E:**

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

A P P E A R A N C E S:MASON WEST, ESQ.
BRYAN ALFARO, ESQ.
Attorneys for the StateAARON C. MAYER, ESQ.
Attorney for the DefendantJOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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[All exhibits pre-marked prior to start of trial unless
otherwise indicated in transcript]

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1	Box with beer cans	787
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COURT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
3	Toxicology report	943

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1 PROCEEDINGS

2 THE COURT: Is the State ready to proceed?

3 MR. WEST: Yes, Your Honor.

4 THE COURT: Is the defense ready to proceed?

5 MR. MAYER: Yes, Judge. Just a brief matter of
6 evidence ---

7 THE COURT: --- wait one second for me please?

8 [Off the record momentarily]

9 THE COURT: Now Mr. Mayer you were saying?

10 MR. MAYER: Thank you, Judge. During some of the
11 motions pretrial we put in a foundation for evidence for
12 defense 1 and 2 are.

13 THE COURT: I don't know what 1 and 2 are.

14 MR. MAYER: It's the beer that was found in the car
15 and also the beer can is defense exhibit 2 that ---

16 THE COURT: --- you can't lay a foundation in a
17 pretrial in camera to admit evidence in the case in
18 chief. In camera is for that purpose. It's for fact
19 finding purposes of the court. Nothing in the pretrial
20 can be admitted in the case in chief. You'd have to lay
21 the appropriate foundation for the admissibility of those
22 items in your case. I assume you would have a witness to
23 be able to do that.

24 MR. MAYER: In that case Your Honor we'd like to
25 recall to the stand Ms. Tammy Atkins [phonetic].

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1 MR. WEST: Your Honor, she has been present in the
2 courtroom during the entire time in violation of the
3 sequestration order.

4 THE COURT: Well, let me ask what might seem a more
5 basic question. Does the State have any exception to the
6 admission of the beer cans?

7 MR. WEST: Yes, Your Honor. There is no real
8 foundation to be laid. There was never a chain of
9 custody produced for this. We don't know whether these
10 beer cans are actually the beer cans that were found in
11 the car. We don't know how many there were. The
12 officers testified they didn't count them, so there's
13 really not an establishment that these beer cans can be
14 considered the beer cans that were found in the car.

15 THE COURT: Let me think about that for a little
16 while. Who is your next witness?

17 MR. MAYER: Judge, we'd like to call Mr. David Hill
18 to the stand.

19 THE COURT: Are all the jurors present?

20 [Whereupon, the jury enters at 9:42 a.m.]

21 THE COURT: Good morning ladies and gentlemen. I
22 hope that you all had a pleasant evening. We will now
23 going to resume testimony. You may call your next
24 witness.

25 MR. MAYER: Thank you, Judge. The defense calls

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1 Mr. David Hill to the stand.

2 [Whereupon, Mr. Hill comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please be seated. State your full
6 name and spell your last name for the record.

7 THE WITNESS: My name is David Aaron Hill, H-I-L-L.

8 THE COURT: You may proceed.
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1 DAVID HILL,
2 Having been first duly sworn,
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MAYER:

6 Q. Mr. David Hill, what do you do for a living?

7 A. I do accident reconstruction and product liability
8 cases on the civil side.

9 Q. Okay. And what is your background in accident
10 reconstruction?

11 A. Basically it's the same as David Lee. We started
12 out our troopers. He was a trooper in Berkeley and I was
13 a trooper in Dorchester. We went to ---

14 Q. --- now David Lee is who testified yesterday ---

15 A. --- yes, Sergeant Lee. We both went to the same
16 schools in Columbia. We were both the original MAIT
17 team. We both took the same courses and we were both
18 team members on the Charleston reconstruction MAIT team.

19 We went through as he testified reconstruction,
20 commercial vehicle reconstruction, pedestrian, technical,
21 at scene detective's level one and two, commercial
22 vehicles one and two. Both of us were in the same
23 classes and both of us were on the same team.

24 Q. How did you get involved in this case?

25 A. I was retained around January by you.

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1 Q. And you retired from MAIT about ten years before Mr.
2 Lee didn't you?

3 A. I retired in October of '04.

4 Q. Okay. And you were here and you listened to his
5 testimony?

6 A. Yes, I was.

7 Q. Were you asked to come up with an opinion in this
8 case?

9 A. I was asked to look at the MAIT report and come up
10 with an opinion about the speed analysis in this
11 collision.

12 Q. What all did you review to do that?

13 A. I reviewed the MAIT team's report, the photographs
14 the MAIT team produced, I personally met you out at the
15 collision site, and I went out to the collision site
16 again at dark to see what it would look like.

17 MR. MAYER: Judge, at this time we would tender Mr.
18 Hill as an expert in accident reconstruction.

19 THE COURT: Any questions or objections?

20 MR. WEST: No objection to his qualification as an
21 expert, Your Honor.

22 THE COURT: So admitted without objection. You
23 may proceed.

24 MR. MAYER: Thank you.

25 Q. [Mr. Mayer] Did you come up with opinions as to a

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1 reasonable degree of accident reconstruction certainty as
2 to what happened in this accident?

3 A. Yes.

4 Q. Okay. Please tell the jury what those opinions
5 are.

6 A. At first you have to look at what I did. I reviewed
7 the MAIT report and looked at their speed of 79 miles per
8 hour. When you do a calculation there are ways to check
9 your calculation or basically when we were in school we
10 were always taught does your numbers make sense?

11 You have to use common sense. Does the collision
12 make any sense? Does your numbers make sense? Can you
13 cross check your numbers to see if they make sense?

14 So that's the first thing I did before I calculated
15 my own speed analysis is analyze did the 79 miles per
16 hour make any sense?

17 Q. Did it?

18 A. No it didn't.

19 Q. Why not?

20 A. Could we put the picture of the scene up?

21 Q. The picture of the scene?

22 A. Of the scene please?

23 Q. We're going to pull up State's exhibit 25 for you in
24 a minute.

25 MR. MAYER: Judge, could we go ahead and set up the

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1 drawing board?

2 THE COURT: Uh Huh.

3 Q. [Mr. Mayer] On the board behind you is a picture of
4 the scene.

5 A. What I'm looking for is the daytime picture of the
6 scene.

7 Q. Oh, let me see which one that is going to be. The
8 daytime photos don't have the cars in them.

9 [Whereupon, Mr. Mayer reviews photographs]

10 A. The picture that they would be coming from Lyon's
11 Beach and a picture of the curve in that area.

12 [Whereupon, the photograph is shown]

13 A. The speed of 79 miles an hour and the speed of the
14 curve is calculated at 77. And the testimony was the
15 forces were taking the car from the right lane out into
16 the oncoming lane because the speed was so great.

17 There are no tire marks. If the car was being
18 pushed out because of force there would be tire marks
19 showing the car tracking to the other lane, but there are
20 no tire marks. So I said that don't make sense. So then
21 I said well, I want to look at some calculations. Can we
22 put this up?

23 MR. MAYER: Judge, may the witness step down to
24 mark on the board?

25 THE COURT: Yes.

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1 [Whereupon, the witness steps down from the witness
2 stand to demonstrate on the board]

3 A. So we want to cross check the 79 miles per hour.
4 First we don't see no tire marks. And if the car is
5 being accelerated out to the outside lane there would
6 have been tire marks.

7 Q. [Mr. Mayer] And they would have marked those, right?

8 A. They would have marked them -- if there would have
9 been some marks they would have marked it and we don't
10 see that. So now we have to look at the evidence that
11 was gathered and see if we can find something else to
12 check that 79 miles per hour with.

13 The CDR report with the black box out of the Saturn
14 it shows the Saturn was approaching the impact at 42
15 miles per hour. One second before impact the break light
16 switch went on. It means she recognized the hazard and
17 she put her foot on the brake.

18 Q. One second before ---

19 A. --- one second before the collision. That's in the
20 report, one second. It's in the report and it shows the
21 brake light circuit off, off, off, off until it gets to
22 one second before impact and the break light circuit is
23 on.

24 Q. And that's from the airbag download ---

25 A. --- right ---

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1 Q. --- the black box device from the Saturn.

2 A. So we have one second before this impact but she has
3 to go through a reaction phase. She has to see the
4 hazard, recognize the hazard, and start reacting to it;
5 and that takes two and half seconds.

6 Q. Now who does that two and half seconds in?

7 A. The driver of the Saturn has to have recognized the
8 hazard, see the hazard, and start reacting to it.

9 Q. Now let me ask you this. Just a quick -- that's in
10 a regular healthy person, right?

11 A. Right.

12 Q. Would that reaction time potentially be longer if
13 someone is on a cell phone?

14 A. Yes.

15 Q. Would it be potentially longer if they are
16 distracted by something else in the vehicle?

17 A. Yes.

18 Q. Like a dog in a car?

19 A. Right.

20 Q. Okay.

21 A. But two and half seconds in a nighttime collision is
22 a good standard number. A normal person reacts to the
23 hazard, which is two and half seconds. Daytime we use
24 one and half, one point six. So now we have two and half
25 seconds plus one second before impact we have three

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1 seconds. All right, the car ---

2 Q. --- two and half seconds plus one second I get three
3 and half seconds.

4 A. That's three and half seconds, right.

5 Q. Okay.

6 A. Three and half seconds the box shows the car at 42
7 miles per hour, 42 miles per hour. But now I want to
8 know distance.

9 Q. Okay.

10 A. I want to change that 42 miles per hour to feet per
11 second.

12 Q. Okay.

13 A. I want to know how fast this car is moving in those
14 three and half seconds.

15 Q. Okay.

16 A. So the conversion factor -- there is a conversion
17 factor to change it from miles per hour to feet per
18 second. There is 5,280 feet in a mile, 3,600 seconds in
19 an hour. The conversion factor is 1.466

20 So now to change this car to feet per second you're
21 going to multiply 42 -- these two numbers and it's going
22 to come to this car traveling 61.57 feet per second.

23 Q. You just used like a regular calculator ---

24 A. --- regular calculation. So now we have something
25 to work with. All right, we have something to work

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1 with. The car is traveling 61 feet a second, 61 and half
2 feet per second. Every second this car moves 61 half
3 feet per second. But we have three and half seconds to
4 work with.

5 Q. That's over 180 feet.

6 A. It's actually 215 feet the car is back when it
7 recognizes the hazard. That's how far the car is back
8 from impact when it recognizes the hazard.

9 So we know that. We know that the car was 42 miles
10 per hour. We know the brake circuit went on one second
11 before impact. A good reaction time is two and half
12 seconds.

13 We can lower it to two seconds or we can go up but
14 two and half seconds is a good reaction time for a normal
15 person. So the car is 215 feet from impact. The other
16 car, the BMW, is at 79 miles per hour.

17 Q. That's what MAIT has it at.

18 A. That's what MAIT has it at. The same math I want to
19 know what feet that car is traveling per second. So it
20 would be 79 miles per hour times 1.466 that car is
21 traveling 115 feet -- so its 115 feet that car is
22 traveling per second.

23 Q. Okay.

24 A. Now if I', going to back the Saturn up three and
25 half seconds I'm going to back the BMW from collision

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- 1 three and half seconds back and see when the car was
2 reacting. So once I back it up its 405 feet from impact.
3 Q. That's just the BMW.
4 A. That's the BMW.
5 Q. Okay.
6 A. The Saturn is 215 feet.
7 Q. So we've got 620 feet ---
8 A. --- apart.
9 Q. Okay.
10 A. Can we have the picture back up please?
11 Q. Coming from Lyons Beach?
12 [Whereupon, the photograph is shown]
13 A. Right in there [indicates] is the second telephone
14 pole, right in here [indicates] the second telephone
15 pole. That telephone pole is 428 feet from the area of
16 impact. The Saturn ---
17 Q. --- you know that from being out in the scene ---
18 A. --- I went out there and measured it.
19 Q. Okay.
20 A. The Saturn is 215 feet from impact. Why would she
21 react to a car that she can't even see?
22 Q. So just so I'm following you and the jury is
23 following you the impact site can you point it with the
24 pointer here where the impact site is?
25 A. Right here [indicates].

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1 Q. That's the impact site. So that telephone pole you
2 pointed to up in the background sort of is ---

3 A. --- the second telephone pole around the curve and
4 around the bushes is 428 feet.

5 Q. Okay. What you can't see from here?

6 A. Basically I can barely see it. But in the nighttime
7 why would she react to a car that she can't even see.
8 That doesn't make sense.

9 Q. So if the impact site is where that orange mark is
10 would the Saturn at 215 feet from that be back behind the
11 photographer of this picture?

12 A. Right.

13 Q. Okay.

14 A. And the embankment to the left and as she is sitting
15 in the Saturn she is about 36 inches off the ground.

16 Q. So really what you would see is headlights maybe?

17 A. You wouldn't even see the headlights at that point.

18 Q. Okay.

19 A. The car is around the curve and this [indicates] car
20 is traveling up a grade. So that doesn't make sense why
21 somebody would react to a car they cannot see.

22 So I said let's look at one other thing. Let's
23 bring the car in -- let's bring the car in to where you
24 can see the car where you can see the car and react to
25 the car. So let's bring the car in 250 feet before the

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1 impact. So if we bring the car in at 250 feet before the
2 impact and like we said the BMW is traveling at 115 feet
3 per second. The BMW is traveling 115 feet per second.
4 250 feet takes it past the impact. It takes it off the
5 road.

6 So we bring the car in where the driver of the
7 Saturn can see the hazard. The BMW at 215 feet and
8 traveling at the rate of speed -- movement of 250 feet --
9 moving 250 feet and a speed of -- velocity of 115 feet
10 per second ---

11 Q. --- so we're still assuming the 79 miles per hour?

12 A. At 79 miles per hour it takes the BMW to get off the
13 road two point one seven seconds. But the Saturn is
14 three point five seconds down the road. They would have
15 never hit.

16 Q. Okay.

17 A. The BMW is already off the road. It's done past the
18 impact area before the Saturn gets there if the speed is
19 79 miles per hour. So that can't happen.

20 Q. Okay. Is there another reason that speed can't be
21 right?

22 A. Well, we're going to get into that. But that cannot
23 happen if the car is at 79 miles per hour even if I
24 changed that reaction time to two seconds, to one and
25 half. The BMW is traveling 115 feet per second but the

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1 Saturn is traveling 61 feet per second. So you always
2 move them -- if you move this one [indicates] back three
3 seconds in time you move this one [indicates] back three
4 seconds in time. You move both vehicles back the same
5 amount of time.

6 Q. So would your analysis still be right if Ms. Zoll's
7 reaction would have been super quick of a second and
8 half?

9 A. They can't hit.

10 Q. Okay.

11 A. There's no way they can hit because this one
12 [indicates] is almost traveling twice the distance this
13 one [indicates] is per second; so they never can hit.

14 So we look and say that can't happen. So 79 miles
15 an hour makes no sense. Let's look at the animation
16 again. Today we're taking the magic out of the
17 animation. When the car is at 79 miles per hour and the
18 force it takes the car to the other lane the forces don't
19 quit. The forces keep taking that car on out.

20 But in the animation they had the car going to the
21 left lane and then it travels perfectly around the curve
22 and then it magically straightens up for an inline
23 momentum crash. It can't happen. If the force is go
24 great to make the car go to the left the force is going
25 to keep making that car go to the left until it runs off

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1 the road. It cannot go to the left lane and then drive
2 around the curve and then straighten up right before an
3 impact.

4 Q. And I just want to clarify again the amount of force
5 you're talking about would have left tire marks along
6 this [indicates] curve.

7 A. Yes.

8 Q. That the MAIT team either didn't find but presumably
9 weren't there because they weren't marked.

10 A. They wasn't marked because what happened is the car
11 is out tracking itself because of the forces, the speed
12 of the curve is calculated at 77, the speed of the curve,
13 the car was calculated at 79. So the car is out tracking
14 itself.

15 A. But the car once those forces are working once it
16 goes to the left lane, the oncoming lane, if the forces
17 continued to work the car would have gone off the road.
18 But in the animation the car goes to the left lane and
19 then drives perfectly around the curve and then lines up
20 for an inline crash.

21 Q. So the animation is just a cartoon based on their
22 assumptions from the team.

23 A. It's not done from the reconstruction. If they
24 would have checked their numbers and seen the cars can
25 never hit or she never could have seen the car around the

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1 curve that would have told them to start with their 79
2 miles per hour was wrong. We went to school together.
3 We were taught to see if your collision makes sense.

4 Another thing they kept preaching to us when we were
5 in school garbage in, garbage out. If you put the wrong
6 values in the computer you're going to get the wrong
7 values out the computer.

8 Q. Okay.

9 A. So the number of 79 miles an hour could have been
10 checked and it wasn't. And then you could have looked at
11 the bigger picture.

12 [Whereupon, the witness returns to the witness
13 stand]

14 Q. Okay. Let's talk about the bigger picture a little
15 bit. You were here yesterday and you heard Mr. Lee
16 testify right?

17 A. Yes, I did.

18 Q. You heard how he said he did not map the crush of
19 the vehicles.

20 A. That's correct.

21 Q. Is that a big mistake on his part?

22 A. You're not mapping the crush of the vehicle. You're
23 mapping the profile of the vehicle so you can line the
24 vehicles up on impact. What we used to do and David Lee
25 was the one who did it too we would map outside the

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1 vehicle. But then if we have crush further in he would
2 change the line to a blue color so we could see how the
3 vehicles crushed in.

4 Once you map both vehicles you can take the computer
5 in and you can align the impact up vehicle to vehicle
6 then you can get your approach angle.

7 Q. From studying the photographs of the damaged
8 vehicles in this case were you able to make a visual
9 matchup between where the vehicles impacted?

10 A. Well yes, we're going to go through some pictures.

11 Q. Great.

12 A. All right. Like I said once the 79 miles an hour
13 didn't make sense and the animation didn't make sense I
14 went back to researching the photographs again, the
15 damage profiles of the vehicles. So there was a picture
16 of the Saturn, the frame wheel of the Saturn. Do you
17 have that picture up?

18 Q. I've got to get you to tell me which one first.

19 A. I believe it's the first one. It's this picture
20 right here [indicates].

21 [Whereupon, the photograph is shown]

22 Q. That one there?

23 A. Yes.

24 Q. For the record the witness is indicating defense
25 exhibit number 35. And where did you come by that

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1 picture? How did you get this picture?

2 A. This is the MAIT team photographs.

3 Q. Okay. Is that a fair and accurate representation
4 of the Saturn there?

5 A. Yes.

6 Q. Okay.

7 MR. MAYER: Judge, we'd move to enter defense
8 exhibit 35 into evidence.

9 THE COURT: Any objection? Did you show it to him?

10 MR. MAYER: I don't know if I did.

11 THE COURT: You need to.

12 [Whereupon, Mr. Mayer shows photograph to Mr. West]

13 MR. WEST: No objection, Your Honor.

14 THE COURT: Marked and admitted without objection.

15 [Whereupon, defendant's exhibit number 35 is entered
16 into evidence by the court]

17 Q. [Mr. Mayer] Okay. If you want to get down -- that's
18 a small picture if you want go get down and show it to
19 them it would be great.

20 [Whereupon, the witness steps down from the witness
21 stand]

22 A. The Saturn's frame rail is this right here

23 [indicates] this --

24 THE COURT: You're going to have to speak louder so
25 the court reporter can hear you.

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1 A. The Saturn's frame rail, and strut houses is what
2 I'm looking at. If it was head-on the strut houses and
3 the frame rails would be pushed back. It's actually
4 pushed in.

5 Q. [Mr. Mayer] So it's pushed ---

6 A. --- the angle of the impact is coming in this way
7 [indicates].

8 Q. You're saying it is pushed more towards the
9 passenger compartment?

10 A. Right. It's pushed this way [indicates] towards the
11 passenger compartment. If it was a head-on it would be
12 pushed back.

13 Q. Okay.

14 A. So this [indicates] is the frame rail of the Saturn
15 and the impact is pushing it toward the passenger side
16 instead of a head-on it would be pushing the frame rail
17 back.

18 Q. Okay.

19 A. So the whole front end is actually pushed over.

20 [Whereupon, the witness returns to the witness
21 stand]

22 Q. Okay. Is there another photo of that Saturn that
23 you analyzed? I'm handing you what has been marked for
24 identification purposes only as defense exhibit 40. Is
25 that also a photo that you analyzed?

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1 [Whereupon, witness is shown photograph]

2 A. Yes.

3 Q. Is that also from the MAIT team records?

4 A. Yes.

5 Q. Did you rely on this in coming up with your opinion?

6 A. I relied on this photograph.

7 Q. Okay. Mr. Hill I'm just checking to see if we've

8 already got this same picture in evidence already. I

9 don't duplicate it. Bear with me.

10 [Whereupon, Mr. Mayer reviews photographs]

11 Q. I think we have.

12 MR. MAYER: Judge, at this time we would move to

13 enter defense exhibit 40.

14 THE COURT: Have you shown it to the State?

15 MR. MAYER: I have, Judge.

16 THE COURT: Any objection?

17 MR. WEST: No objection, Your Honor.

18 THE COURT: Marked and admitted without objection.

19 [Whereupon, defendant's exhibit number 40 is entered

20 into evidence by the court]

21 Q. [Mr. Mayer] I'm handing you back what has been

22 marked as -- what has been entered into evidence as

23 defense 40. I'm also handing you what is in evidence

24 already as State's exhibit 37. I think it is just a

25 closer photograph.

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1 [Whereupon, the witness is shown photographs]

2 Q. Please describe for the jury -- and I'm going to
3 hold one of these for him -- please describe for the jury
4 the significance of these photographs.

5 A. Well, the bumper shock from the BMW into the Saturn.
6 There is not one marking to the other side.

7 Q. And so in this photograph you're pointing to the
8 bumper shock is on the right hand side of the photograph?

9 A. Right, the indentation.

10 Q. Okay. The indentation on the right hand side, okay.
11 And that's a bumper shock from what?

12 A. The BMW.

13 Q. From the BMW's...

14 A. Front bumper.

15 Q. Front bumper behind which you say there is a shock?

16 A. Yes, a shock absorber.

17 Q. Let me just slow you down a little bit because you
18 know more about mechanics than I do. You're saying
19 behind the bumper of a car there is a shock absorber?

20 A. Right. We have a picture of it. This other car the
21 bumper can take an impact and come back.

22 Q. Okay. I'm handing you what has been marked for
23 identification as defense exhibit 42.

24 [Whereupon, the witness is shown photograph]

25 Q. Do you recognize that?

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1 A. Yes, that's a bumper shock.

2 Q. And is this something that you got from the MAIT
3 report?

4 A. Yes.

5 MR. MAYER: Judge, at this time we would move to
6 enter defense exhibit 42 into evidence.

7 THE COURT: Any objection?

8 MR. WEST: Nothing from the State, Your Honor.

9 THE COURT: Marked and admitted without objection.

10 [Whereupon, defendant's exhibit number 42 is entered
11 into evidence by the court]

12 Q. [Mr. Mayer] Mr. Hill, please show that picture to
13 the jury and explain how that is oriented behind the
14 bumper of the BMW.

15 A. You have this [indicates] bumper shock, then you
16 have a bumper brace, and then a bumper cover.

17 Q. Okay. Is it oriented this way [indicates] or is it
18 oriented this way [indicates]?

19 A. This way [indicates]. It sits down and the bumper
20 brace goes across it.

21 Q. Okay. So the brace bolt is along this right side
22 of this picture?

23 A. Right.

24 Q. Okay. And this is -- this end [indicates] is
25 screwed into the?

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- 1 A. Frame rail.
- 2 Q. Frame rail, okay.
- 3 A. Bolted into the frame rail.
- 4 Q. And from your review of this material where is this
5 exact bumper shock from?
- 6 A. The left side.
- 7 Q. The left side?
- 8 A. Of the BMW.
- 9 Q. So that's the driver's side of the BMW.
- 10 A. Right.
- 11 Q. And is it your opinion this is the bumper shock that
12 caused that damage we just looked at to the Saturn?
- 13 A. Yes. Now where is the picture -- I want a picture
14 of the left side of the BMW. We have a photograph of the
15 left side of the BMW.
- 16 Q. Well, we've got a bunch. We've got this one
17 [indicates] is zoomed out further. I'm showing you
18 defense exhibit 36, which is identification only.
- 19 [Whereupon, the witness is shown photograph]
- 20 Q. You want the left side of the BMW; the driver's side
21 of the BMW?
- 22 A. I want the driver's side and then I want the
23 passenger side.
- 24 Q. I'm handing you what has been marked for
25 identification only as defense exhibit 34.

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1 [Whereupon, the witness is shown photograph]

2 Q. Is that what you're looking for?

3 A. That's one of them. I'm going to go ahead with this
4 one.

5 Q. Hang on one second. Is this a picture you got from
6 the MAIT report?

7 A. Yes.

8 Q. Is this a picture you relied on in coming up with
9 your opinion of this case?

10 A. Yes.

11 MR. MAYER: Judge, we would move to enter defense
12 exhibit 34 into evidence?

13 THE COURT: Have you shown it to the State?

14 MR. MAYER: I have.

15 THE COURT: Are there any objections?

16 MR. WEST: No objection from the State.

17 THE COURT: Marked and admitted without objection.

18 [Whereupon, defendant's exhibit number 34 is entered
19 into evidence by the court]

20 Q. [Mr. Mayer] Mr. Hill, please explain to the jury how
21 you analyzed this picture and what you found.

22 A. Yesterday the testimony was it was an inline
23 collision; center mass to center mass front to front.
24 The right side fender is not pushed back. It's bent a
25 little bit from the roll over and somebody opened the

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1 door and caught the fender and that's what got the back
2 of the fender bent. But there is no damage to this
3 fender [indicates] that would indicate that it's a
4 frontal collision because this fender [indicates] is not
5 pushed back.

6 The other side fender is bowed in and the damage to
7 this [indicates]. So it's not a true front to front
8 collision. It's an angle. The Saturn is marked with a
9 bumper cover and we just went through that picture, the
10 frame rail is pushed.

11 The angle of the BMW and the impact with the Saturn
12 is coming in an angle. If they would have hit head-on
13 front to front, center mass to center mass the left
14 fender would have been bucked and pushed back the same as
15 the right fender.

16 It would have been pushed back the same as the
17 driver's side. The whole front end would have been
18 pushed back. But if you look through the photographs the
19 left side is pushed back and the right side is not.

20 Q. How many of those shock absorbers are on the front
21 of that BMW's bumper?

22 A. Two.

23 Q. Let me ask you to take a look at what has been
24 previously marked for identification as defense exhibit
25 36.

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1 [Whereupon, the witness is shown photograph]

2 Q. Is that photograph that you got from the MAIT
3 report?

4 A. Right.

5 Q. Okay. Is that something you relied on in coming up
6 with your opinion?

7 A. A little bit, yes. I'm looking more at the crush.

8 Q. And would this help you illustrate your description
9 of these bumper shocks to the jury?

10 [Whereupon, the witness is shown photograph]

11 A. This is a good picture of the bumper shock we talked
12 about. There is another bumper shock. But the better
13 picture is what the Saturn did to the front of that car.

14 MR. MAYER: Judge, we would move to enter defense
15 exhibit 36.

16 MR. WEST: No objection, Your Honor.

17 THE COURT: Marked and admitted without objection.

18 [Whereupon, defendant's exhibit number 36 is entered
19 into evidence by the court]

20 THE COURT: Marked and admitted without objection.

21 Q. [Mr. Mayer] Let me just have you come over and
22 explain to the jury where these two bumper shocks are
23 located.

24 [Whereupon, the photograph is shown to the jury]

25 Q. This is a nighttime photo -- let me have you stand

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1 so the jury can see -- and this is a nighttime photo so
2 it was taken at the scene is that right? You can see the
3 crime tape still up?

4 A. Right.

5 Q. Okay. Where are the two bumper shocks on this
6 vehicle?

7 A. One bumper shock is right here [indicates] and
8 another bumper shock is right here [indicates].

9 Q. Okay. In the first place you indicated a bumper
10 shock on the driver's side. Does that look from this
11 picture to be depressed?

12 A. Yes. The damage is all -- see how the fender was
13 pulled back [indicates], the frame rail is pulled back,
14 the core support, but you don't see it on this fender
15 [indicates]. And naturally the hood is going to be
16 damaged but it was damaged at an angle.

17 Q. Okay. So on the passenger side fender here
18 [indicates] where the bumper shock is its not depressed
19 is that correct?

20 A. No. This [indicates] is pushing out. There
21 [indicates] is the cover. It's still pushing out, this
22 one [indicates] is pushed in.

23 Q. What does that indicate to you?

24 A. It's an offset. The vehicle is coming in at an
25 angle.

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1 Q. Okay. Let's just match up this impact area with
2 the impact area from the Saturn if you would. Please
3 explain to the jury, and again try not to stand in front
4 of them, please explain to the jury how these two cars
5 impacted.

6 A. This is the Saturn [indicates] and there [indicates]
7 is the bumper and the shock absorber mark.

8 Q. And that's the driver's side?

9 A. That's the driver's side. You don't have one over
10 here [indicates]. The same as that one you have the
11 driver's side pushed back and the passenger is not.

12 The car came in at an angle because we also have the
13 frame rail of the Saturn pushed back at an angle towards
14 the driver's side.

15 Q. So you can actually match up the bumper shock from
16 the BMW and where it impacted the Saturn.

17 A. True.

18 Q. Okay. And that impact occurred right here
19 [indicates] where you indicated earlier?

20 A. Yes.

21 Q. Okay. Will you take this magic marker if you would
22 and just draw an arrow on this photo maybe up here into
23 the area but not covering the area where the impact
24 occurred?

25 A. Well the angle of the impact occurred...

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1 Q. Let me have you mark my copy of this picture. I'm
2 going to have you mark the defense exhibit 40 with this
3 red marker I'm handing you.

4 I don't want you to draw into the impact zone. I
5 just want you to make an arrow indicating where that
6 driver's side shock absorber impacted the driver's side
7 Saturn bumper.

8 [Whereupon, the witness complies]

9 Q. Okay.

10 MR. WEST: Objection, Your Honor.

11 THE COURT: Basis ---

12 MR. WEST: --- may we approach?

13 THE COURT: You may.

14 [Whereupon, an off the record bench conference is
15 held]

16 THE COURT: Proceed.

17 THE BAILIFF: Your Honor, excuse me a minute.

18 THE COURT: Yes?

19 [Whereupon, the Bailiff approaches the bench]

20 THE COURT: Mr. Foreman, ladies and gentlemen I
21 need to take up a very brief matter of law. During the
22 break please do not discuss the case and please leave
23 your notepads in your seats. If you will, go with the
24 bailiff for me.

25 [Whereupon, the jury exits at 10:20 a.m.]

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1 THE COURT: I took a break because ma'am you cannot
2 leave the courtroom unescorted ---

3 THE DEFENDANT: --- I am so sorry ---

4 THE COURT: --- you're on bond ---

5 THE DEFENDANT: --- I had a bathroom emergency ---

6 THE COURT: --- and you caused my security a great
7 degree of concern and disruption of the proceedings. So
8 you cannot leave the courtroom at all unless you have the
9 court's permission. Are we clear?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Get the jury for me,
12 please.

13 THE BAILIFF: One of the alternates said they were
14 not able to see down there.

15 THE COURT: They probably need to put them on an
16 ELMO. Do we have one? Do we have an ELMO or any kind of
17 projection you can use, Mr. Mayer?

18 MR. MAYER: I don't have a projector, Judge. I've
19 got my paralegal here looking through the electronic
20 files.

21 [Whereupon, Mr. Mayer confers with his paralegal]

22 THE COURT: What was your answer? Do you have
23 something that you can project the pictures?

24 MR. MAYER: We've got to look up which exhibits
25 they are in the electronic file and it just takes a

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1 minute. Should we go ahead and do that?

2 THE COURT: Yes.

3 [Off the record momentarily as Mr. Mayer reviews
4 photographs]

5 MR. MAYER: Judge, I think we are ready. May we
6 just briefly approach?

7 THE COURT: Uh Huh.

8 [Whereupon, an off the record bench conference is
9 held]

10 THE COURT: Are you ready?

11 MR. MAYER: Yes, Judge.

12 THE COURT: Please bring in the jury.

13 [Whereupon, the jury enters at 10:30 a.m.]

14 THE COURT: You may proceed.

15 MR. MAYER: Thank you, Judge.

16 Q. [Mr. Mayer] Mr. Hill, since my pictures aren't big
17 enough I want to see if we can put a couple of these up
18 on the big screen and have you just point to them if you
19 could.

20 [Whereupon, photograph is shown]

21 Q. Mr. Hill if you would, use that laser pointer and
22 point to the area where the BMW shock from the driver's
23 side impacted that Saturn.

24 A. Right in there [indicates].

25 Q. Okay. I'm going to show you the BMW now.

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1 [Whereupon, photograph is shown]

2 Q. From this photograph here State's exhibit 38, which
3 is very similar to the defense exhibit that we were
4 looking at on a smaller version can you see in this
5 picture where the shock absorber was removed from later,
6 the damaged one?

7 A. There [indicates] is where the damage was and there
8 [indicates] is the other one that is still pushed out.

9 Q. So that one on the passenger side is not damaged
10 nearly to the same degree as the one on the driver's side
11 is that right?

12 A. Right. The driver's side is pushed back in. That's
13 what the shock absorber is designed to do.

14 THE COURT: I need you to speak up, please. I know
15 I can barely hear so I doubt the court reporter can hear
16 you.

17 A. The driver's side is pushed in and that's what the
18 shock absorber is designed to do.

19 Q. [Mr. Mayer] All right. Let's pick up with your
20 analysis from here. What else did you do to evaluate
21 what happened in this accident?

22 A. Like I said after I went and looked at 79 miles an
23 hour and went through all of that and none of that made
24 sense and none of that is true. So then I reviewed all
25 the photographs and searched all the evidence in the

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1 photographs and any values I could use to use what we
2 call 360 momentum.

3 Q. Okay. Is that different from inline momentum?

4 A. Yes. It deals with the approach angles and
5 departure angles. It's not an inline collision.

6 Q. Now ---

7 A. --- yesterday David Lee testified that over five
8 degrees would make a huge difference ---

9 MR. WEST: --- objection, Your Honor. Pitting.

10 THE COURT: Sustained. Pitting. Sir, you are not
11 to make reference to what someone else testified to or
12 the veracity of that testimony. You have to limit your
13 testimony to your own opinions. You may proceed.

14 Q. [Mr. Mayer] You can compare your opinions to the
15 MAIT report. So you were going to say about the MAIT
16 report?

17 A. The MAIT report inline momentum, inline momentum the
18 rule is the vehicle has to approach within certain
19 degrees.

20 So the vehicle is approaching at an angle. Could we
21 put the MAIT diagram up? The one you have over there
22 [indicates].

23 MR. MAYER: Judge, I have here a demonstrative
24 blown up page of the MAIT report.

25 THE COURT: Any exception?

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1 MR. WEST: Nothing from the State, Your Honor.

2 THE COURT: Proceed.

3 Q. [Mr. Mayer] Mr. Hill, if you will step down.

4 Hopefully I've got this big enough for the jury to see it
5 okay without projecting it.

6 [Whereupon, a photograph is shown]

7 Q. What is this showing?

8 A. The BMW is coming in at an angle. It is coming in
9 at an angle.

10 Q. Now this is ---

11 A. --- this is their diagram.

12 Q. This is their diagram.

13 A. And it is coming -- they have it coming from this
14 lane coming into the Saturn at an angle. So I measured
15 what the angle it's coming in at. It's coming in at
16 twelve degrees.

17 So if we knew certain values like the testimony of
18 the inline -- the MAIT report shows the Saturn departed
19 out at 180 degrees. We know that the Saturn was coming
20 in at 42 miles an hour. We used those values that we
21 already have that were the MAIT's values.

22 We have the measurements where the cars came to rest
23 MAIT's values. We have the angle the car is coming in on
24 the MAIT's diagram. We put it into a 360 momentum the
25 actual speed is 47 miles an hour plus or minus three.

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1 Q. For Shana's car?

2 A. For Shana's. Yes, her car, the BMW.

3 Q. So you came up with a speed of 47 miles an hour for
4 Shana?

5 A. Plus or minus three.

6 Q. Okay.

7 A. Yesterday the testimony of 79, the MAIT report said
8 it was 79 there is no absolute on the speed. There was
9 no video cameras out there that actually recorded the
10 crash so we can say this car [indicates] come in at
11 exactly this angle and departed out [indicates] at
12 exactly this angle.

13 Q. You would have to know -- do you have to know a
14 departure angle to come up with the speed?

15 A. You have to know the approach angles and we always
16 are going to put one car coming in on -- heading zero.
17 Then you put the other approach angle, and then you have
18 the departure angle and the weights of the cars;
19 everything that was in the MAIT report.

20 Q. So you're telling a jury that either one of these
21 cars was coming in on approach angle of zero the other
22 car was coming in on an approach angle of twelve degrees?

23 A. No. We're always going to put one car in on the
24 approach angle of zero and that's the car that was
25 heading straight. In this case the Saturn was heading

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1 straight.

2 Q. Okay.

3 A. So we put the Saturn in on heading of zero.

4 Q. Okay.

5 A. And the other one coming in to the left of the
6 Saturn twelve degrees so it is heading in at an angle.
7 We know these angles they are coming in so we put them in
8 the calculation.

9 Q. Okay.

10 A. So like I said the speed of 79 miles an hour is not
11 an absolute. My speed of 47 miles per hour plus or minus
12 three -- 47 miles per hour you can't have an absolute.
13 There is no video camera to record this crash.

14 So I said the vehicle by the MAIT team was coming in
15 at twelve degrees. It could have come in at fourteen; it
16 could have come in at thirteen, if it's coming at eleven
17 it's a different speed.

18 Q. Okay.

19 A. Is it coming out at 180 or 181 it is a different
20 speed. So just because we need to make sure that we're
21 not off one or two degrees we have a window of speed.

22 It's no less than this and it's no more than that.
23 That's why we have a plus or minus to account for the
24 absolutes you can't be 100 percent sure on.

25 Q. Okay. Now I want to talk just a minute about the

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1 inline formula that was used in the MAIT report versus
2 the angular formula that you used. When is it
3 appropriate to use the inline formula that was used in
4 the MAIT report?

5 A. On the formulas they tell you it says the approach
6 angle of the vehicle has to be ten or less degrees to use
7 an inline momentum.

8 Q. I thought it was five degrees.

9 A. Well, that was the test -- that is what the rules
10 say.

11 Q. Okay.

12 A. Somebody -- that's what the rules say.

13 Q. So the safest thing is to use the inline momentum
14 only if the approach angle is five degrees or less?

15 A. It would be safer but you could go up to ten
16 degrees. But anything out at ten degrees you're way out
17 of the ball park.

18 Q. And as you go off of zero degrees with that inline
19 formula don't you get increasing amounts of error as you
20 go higher and the degree is offset?

21 MR. WEST: Objection. Leading.

22 THE COURT: Sustained. Leading.

23 Q. [Mr. Mayer] What happens if you're using the inline
24 formula with a higher degree offset?

25 A. You're going to come up with some bad numbers.

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1 Q. Okay.

2 A. If the car is not a true inline collision you are
3 saying the forces of the two cars come straight in. So
4 the forces are going to be greater than the car is coming
5 in at an angle and rotates the car around.

6 Q. So using -- are you saying that using the inline
7 formula when you shouldn't creates a larger number than
8 is really there?

9 A. Yes.

10 Q. Okay. And is that what happened in the MAIT
11 report?

12 A. Yes.

13 Q. Okay. Please explain to the jury why you used the
14 other formula?

15 A. Because the car -- as I looked at the damage to the
16 car I could tell the car came in at an angle. It's not a
17 head-on. Like we explained the right fender of the BMW
18 is not damaged except for where somebody opened the door.
19 If it had been a true head-on the right side would have
20 looked like the left side. It would all be pushed back.

21 The Saturn the frame support and strut houses is
22 pushed over when it should have pushed back if it was a
23 head-on. And the way these bumper shocks lined up. You
24 had two on each car. If it had been head-on it would
25 have marked both sides but it only marked one and one.

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1 So we could tell the car came in at an angle. And then
2 looking at the MAIT report they have it at an angle. And
3 then the most common sense is the car is coming around
4 the curve and crosses the center line and makes impact.

5 It can't be coming in straight because the car is
6 coming around a curve and it comes over the yellow line
7 it's coming in at an angle. It cannot be a head-on
8 center mass to center mass.

9 Q. And did you proof check your analysis using common
10 sense?

11 A. When I looked at it like I said we knew she was on
12 her brakes one second before impact. We backed her up.
13 And the time if you look at the BMW at the 47 plus or
14 minus three puts it in the window of 250, 230 feet from
15 impact. Now both vehicles could see each other and the
16 collision can take place. They are going to hit.

17 Q. Okay. Do you have an opinion as to whether or not
18 Shana's speed was what caused her to cross the yellow
19 line?

20 A. The speed absolutely has nothing to do with her
21 crossing the yellow line. The 79 miles an hour is 100
22 percent wrong just like the animation is 100 percent
23 wrong. And we know that because we did the math. We
24 already know the values of the Saturn. We know she is
25 not going to react to a car that she can't even see so we

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1 brought the car back in to where she could see it and at
2 79 miles per hour it never made contact.

3 Plus there were no black tire marks out there for a
4 car who was running 79 miles per hour and the force is
5 taking it in the other lane. So speed is not the factor.

6 Q. Do you know why the accident occurred where it did?

7 A. No. I don't know why she is on that side of the
8 road. There is another tire mark that hasn't been
9 explained. Well, there were actually two tire marks that
10 are in the collision photographs.

11 One is somebody pulling out and making an
12 acceleration mark and the tire mark on the fog line
13 actually is the one that came from the Saturn on the
14 rotation. I could zoom in on the pictures. It's a tire
15 mark. It's not debris; it's a tire mark.

16 Q. Okay. I'm going to ask you to take a look at what
17 is already in evidence as State's exhibit 25.

18 [Whereupon, the photograph is shown]

19 Q. I believe it shows the fog line. I'm not sure how
20 well it shows the tire mark but if you'll turn around and
21 take a look there behind you do you see that tire mark on
22 the fog line we were talking about ---

23 A. --- that's [indicates] the tire mark of the Saturn
24 rotating going back. That is a tire mark. It's not
25 marked but that is a tire mark.

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1 Q. Okay. Now there may or may not have been a tire
2 mark approaching this accident in the bottom right hand
3 corner of State's 10 that I am showing you now.

4 [Whereupon, the photograph is shown]

5 Q. When did you go out to look at the scene?

6 A. In January.

7 Q. In January 2014?

8 A. Yes, this year.

9 Q. Is that over two years after this accident occurred?

10 A. Yes.

11 Q. If there had been a tire mark in the bottom right
12 corner of this photograph where the paint is would that
13 tire mark still have been in evidence two plus years
14 later?

15 A. No. None of the tire marks are out there.

16 Q. Okay. But as -- please describe what we are
17 looking at in State's exhibit 10 here.

18 A. That [indicates] is going to Lyons Beach that
19 [indicates] is coming from Lyons Beach going to Moncks
20 Corner. The collision is somewhere right in that area
21 [indicates].

22 Q. So this would be a photograph approaching from
23 Shana's direction of travel into the collision zone.

24 A. That's correct.

25 Q. All right. What was your next conclusion you came

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1 up with from your evaluation?

2 A. When we were with the MAIT team and we were trained
3 we did everything. We did a full mechanical inspection
4 to see if there was a mechanical defect. We checked both
5 vehicles out. The BMW should have been checked to see if
6 it had anything wrong with the brakes making the brakes
7 pull.

8 The State has the equipment to pressurize and check
9 the brake system and they did look at the data from the
10 ECM on the Saturn but there should have been a full
11 mechanical inspection on the BMW.

12 Q. Now let me ask you. How many of these types of
13 investigations have you conducted in your career?

14 A. I was a founding member of the MAIT team.

15 Q. Is it fair to say hundreds?

16 A. Hundreds. I actually had to work the whole state.
17 David Lee -- we were assigned to the Coastal team.

18 Q. Okay.

19 A. We were assigned to the Coastal team, I was, but I
20 ended up having to work the whole state.

21 Q. So in your experience investigating these accidents
22 do you -- have you discovered by doing mechanical
23 inspections have you discovered the cause of accidents
24 before?

25 A. Yes. That's the whole reason why we did mechanical

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1 inspections to find out if a defect did cause the
2 collision or it didn't cause the collision.

3 Q. And in this case was there an adequate mechanical
4 inspection done of Shana's car?

5 A. No.

6 Q. So we don't know if it may have discovered a defect
7 or not?

8 A. No, we don't know.

9 Q. Okay. What else should have been done in this MAIT
10 investigation?

11 A. The car should have been -- when the cars are at the
12 tow lots and when I was with the MAIT team we would ask
13 the wrecker company to lift the cars up and we would
14 measure where the marks are under the car and photograph
15 where the damage is under the car so we could actually
16 line it up with the marks in the roadway.

17 Q. To make it a more accurate understanding of what
18 happened?

19 A. Well it gives you a more accurate approach angle and
20 helps you understand the departure angle a little better.

21 So we would lift both cars up and we would measure
22 the damage if there was a mark on an engine cradle left
23 of center we would mark from the wheel -- we would
24 measure so we would know where that mark was. And then
25 we would know how to place the car back in the roadway

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1 the same way as far as the way the cars departed. So both
2 vehicles should have been photographed the bottom side
3 and a mechanical should have been done on the BMW.

4 Q. Did you evaluate in one of these pictures -- did you
5 measure an approach angle on the computer and put it on
6 one of the pictures?

7 A. I was turning around measuring what I said common
8 sense a car that is coming around a curve is constantly
9 coming around a curve and it has to come across the
10 yellow line so it is coming at an angle the whole time.

11 Q. But Mr. Hill, you just didn't eyeball it and come up
12 with twelve degrees did you?

13 A. No, I had to measure it. I have the same program
14 the State has. I measured their diagram on my computer.

15 Q. Okay. So you didn't redraw a diagram to make it
16 favor your opinion of things?

17 A. No.

18 Q. You just used their ---

19 A. --- I used their ---

20 Q. --- diagram and what type of tool did you use to
21 measure that twelve degree angle?

22 A. Well, it's the FX program, visual statement program.
23 It has a tool in there where you can measure angles.

24 Q. Okay. And how do you -- please describe to the
25 jury how you measure that angle and where you take your

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1 measurements from.

2 A. You put one line on zero and as you move the line
3 out it will tell you the angle all the way back to 360
4 degrees.

5 Q. But are you using just any old part of the car?

6 A. No. I was looking at the roadway. I was looking at
7 the roadway coming from Lyons Beach and I set that line
8 up on a zero head, the same way the Saturn traveled on a
9 zero head. That's the way I lined the first...

10 Q. Mr. Hill let me ask you to look at this
11 demonstrative enlargement of the State's diagram and if
12 you would just step down and illustrate your testimony
13 with this a little bit if you would.

14 There are some different parts of the cars here that
15 are shown. And I think -- let me ask you what is this
16 little circular -- if you'll stand out of the view of the
17 jury -- what is this [indicates] little circular thing
18 indicate on top of the cars there?

19 A. When you are doing reconstruction you track what the
20 center mass is doing. You don't track which way the
21 front end or the back end is pointed. You want to know
22 where the weight of the car is going.

23 Q. Where the momentum is going?

24 A. That's right. And we track it through the center
25 mass of the car.

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1 Q. So when you took this here diagram what type of
2 instrument, physical instrument, did you use to measure
3 that twelve degree angle?

4 A. I took their diagram; I set the line back up on a
5 zero heading to the Saturn. I took the other line like I
6 said it would go all the way back around to 360 degrees
7 and when I brought it back its twelve degrees. Their
8 diagram is twelve degrees.

9 Q. Is that a protractor?

10 A. Well it's a protractor inside the program.

11 Q. Okay. But you also measured it manually didn't
12 you?

13 A. You can measure it manually. Set this [indicates]
14 on zero and run your line through with the protractor.
15 But I did mine computer ---

16 Q. --- you did it that way. You did it both ways?

17 A. Both ways.

18 Q. Would it have been wrong for the MAIT report to have
19 used the angular formula instead of the linear formula
20 even if they thought it was just five degrees?

21 A. No.

22 Q. It still would have -- at five degrees the angular
23 formula would have yielded a more correct number.

24 A. True.

25 Q. And as they measured it that MAIT report is thirty

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1 miles per hour faster than what Shana was traveling.

2 A. True.

3 Q. Okay. What degree of confidence do you have that
4 Shana was traveling 48 miles per hour plus or minus
5 three?

6 A. I'm really confident.

7 Q. Okay.

8 A. Because like I said if I would have checked the 79
9 miles per hour and found it to be true through the math I
10 would have told you and I would have quit with this case.

11 But once we knew the 79 miles per hour the cars
12 would have never hit and then once I looked at the
13 animation and knew that the forces that takes the car to
14 the outside magically stopped once the car gets there and
15 continues around the curve and then straightens up for
16 impact no, that's not right.

17 Q. Let me just clarify something so the jury knows.
18 You're on a flat fee on this case right?

19 A. Yes.

20 Q. You don't have any incentive to draw this case out?

21 A. No.

22 Q. Would have saved your time to say hey, 79 was right.

23 A. Well, I'm going to call it the way I see it. And
24 that's why I said if it had been 79 miles per hour I
25 would have showed you it was 79 miles per hour and said

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1 I'm out of here. I'm gone. But we had values that we
2 knew to be true the 42 miles per hour on the Saturn, the
3 break light switch coming on, and we backed the car back
4 up and we backed the BMW up to see if it could have
5 happened.

6 Q. Do you have any other conclusions from your
7 evaluation?

8 A. No. All I did was a speed analysis and realized the
9 full investigation was not done. But the speed of 79
10 miles per hour and the animation is 100 percent wrong.

11 MR. MAYER: Court's indulgence.

12 [Whereupon, Mr. Mayer confers with his client]

13 Q. [Mr. Mayer] Just to sum up this could have been a
14 mechanical error that caused this wreck.

15 A. It could have been.

16 Q. It could have been a deer run out in front of these
17 people?

18 A. It could have been.

19 MR. WEST: Objection. Speculation.

20 THE COURT: Sustained. Speculation, no foundation
21 and assuming facts that are not in evidence.

22 Q. [Mr. Mayer] But what you are certain of is that the
23 speed is not what caused this accident.

24 A. The speed is not what caused the car to go to the
25 other lane.

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1 Q. Thank you very much. Please answer any questions
2 of the State.

3 THE COURT: Any cross-examination of the witness?

4 MR. WEST: Yes, Your Honor.

5 THE COURT: You may proceed.
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1 CROSS-EXAMINATION

2 BY MR. WEST:

3 Q. Good morning Mr. Hill.

4 A. How are you?

5 Q. I'm doing great. So just a minute ago just to

6 clarify you said either forty seven or forty eight plus

7 or minus three, which one was it?

8 A. Forty seven plus or minus three.

9 Q. Okay. Forty seven plus three is fifty, right?

10 A. Right.

11 Q. Okay. Fifty is greater than thirty five, correct?

12 A. Yes.

13 Q. Okay. Forty seven minus three is forty four.

14 A. Uh Huh.

15 Q. Okay. Forty four is greater than thirty five,

16 correct?

17 A. It is.

18 Q. Correct. Just making sure I had my math right

19 there. You testified that this collision happened in

20 Candy Zoll's lane of travel, correct?

21 A. In the Saturn's lane.

22 Q. Okay. That's across the center line?

23 A. True.

24 Q. Could you step down for a minute if you don't mind?

25 [Whereupon, the witness complies]

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1 Q. On this diagram that Mr. Mayer showed you, you
2 calculated your angles from this very diagram?

3 A. True.

4 Q. Okay. And you said that for inline it can go up to
5 ten degrees.

6 A. True.

7 Q. And for angular it's twelve degrees?

8 A. The equation says ten degrees or less you can use
9 inline.

10 Q. Okay.

11 A. Ten degrees or less.

12 Q. Okay. So there is a two degree difference from
13 what you just testified to.

14 A. Right.

15 Q. Okay. Without a doubt in your opinion this
16 collision happened in Candy Zoll's lane of travel.

17 A. That's exactly right.

18 [Whereupon, Mr. West and Mr. Alfaro confer]

19 Q. And at least a speed nine over the speed limit at
20 that curve?

21 A. Possibly nine over.

22 Q. Okay. Thank you. No further questions.

23 THE COURT: Any redirect?

24 MR. MAYER: Just briefly, Judge.

25 THE COURT: You may proceed.

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REDIRECT EXAMINATION

1
2 BY MR. MAYER:

3 Q. Now Mr. Hill you know what the speed limit is on
4 that curve?

5 A. The posted speed limit is forty five on the white
6 signs.

7 Q. Okay.

8 A. The suggested speed limit with the yellow signs say
9 thirty five.

10 Q. Okay. So what you just were talking with Mr. West
11 about nine over is nine over the suggested speed limit.

12 A. Nine over the suggested speed limit.

13 Q. Okay. How far over the posted speed limit is it?

14 A. Four miles an hour or five miles an hour.

15 Q. At a maximum?

16 A. At a maximum.

17 Q. Okay. So if Shana was going fifty that's five
18 miles an hour over the posted speed limit of forty five?

19 A. Right. Forty four she's going a mile under.

20 Q. Okay. With -- even though the accident took place
21 in Candy Zoll's lane can you say where in the lane the
22 accident occurred given the crush zones of the cars?

23 A. If I knew a little better on the under sides of the
24 car I could have positioned that it did happen in the
25 Saturn's lane, but I don't know if the engine cradle of

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1 the BMW marks are coming from left side of the car
2 because I really can't position the car 100 percent in
3 the lane.

4 Q. Okay. So some of Shana's car could have been in
5 her lane in her own lane?

6 A. Well yes, some of hers is in her lane.

7 Q. Okay.

8 A. But the impact is in the Saturn's lane. But if we
9 knew where the markers from the bottom side of the car
10 was we could actually put it in the roadway better.

11 Q. From your evaluation of this case is your evaluation
12 of this case consistent with both cars trying to get out
13 of Shana's lane at the same time?

14 A. Repeat that.

15 Q. Is your evaluation of this case consistent with both
16 cars getting to that point getting out of Shana's lane
17 into ---

18 MR. WEST: --- objection. Leading ---

19 Q. [Mr. Mayer] --- Candy Zoll's lane ---

20 THE COURT: --- sustained. Leading. Rephrase.

21 Q. [Mr. Mayer] Okay. From what is here in the
22 evidence do you know Ms. Zoll's trajectory coming into
23 the accident?

24 A. She was coming in on a zero heading.

25 Q. Okay. Do you know if she was coming from Shana's

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1 lane from a second before?

2 A. No, I don't know that.

3 Q. Okay. Nothing further.

4 THE COURT: Any objection to the witness being
5 excused from the State?

6 MR. WEST: Nothing from the State.

7 THE COURT: From the defense?

8 MR. MAYER: No, Judge.

9 THE COURT: Sir, you are excused.

10 THE WITNESS: Thank you.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: Mr. Foreman, ladies and gentlemen I'm
14 going to take advantage of this break in testimony and
15 give you a mid morning break. I also have another
16 hearing that I need to take care of during that break
17 which should take probably take about 15 minutes. During
18 the break please do not discuss the case among yourselves
19 and please leave your notepads in your seats. I
20 appreciate your patience in advance.

21 [Whereupon, the jury exits at 11:01 a.m.]

22 THE COURT: Is there anything we need to take up
23 before the break from the State?

24 MR. WEST: Nothing from the State.

25 THE COURT: From the defense?

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1 MR. MAYER: Just a matter of law before the jury
2 comes back, Judge.

3 THE COURT: Which is?

4 MR. MAYER: I moved earlier to enter evidence ---

5 THE COURT: --- I didn't forget. I'm still
6 thinking. When I'm ready to deal with it I will let you
7 know.

8 MR. MAYER: Thank you, Judge.

9 THE COURT: You're welcome.

10 MR. MAYER: Up next after a brief witness is going
11 to be the toxicologist, which will be my only remaining
12 opportunity to get into that matter than we...

13 THE COURT: I haven't heard any testimony that
14 would make any marijuana use germane. The only testimony
15 that is uncontroverted at this point is that the incident
16 impact took place in Ms. Zoll's lane.

17 So there is no evidence that somehow she was
18 comparably negligent or somehow was the proximate cause
19 of this incident. So it wouldn't matter if she was -- it
20 just isn't relevant and it's misleading and I'm not going
21 to deal with it right now.

22 [Whereupon, court takes a brief recess]
23
24
25

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1 THE COURT: Proceed.
2 MR. MAYER: Yes, Judge.
3 THE COURT: All right. Who is your next witness?
4 MR. MAYER: I'd like to call Tammy Atkins to the
5 stand, Judge.
6 THE COURT: Do you have her listed as Morris on
7 your witness list?
8 MR. MAYER: No, I don't Judge. This is Shana's Mom
9 who testified ---
10 THE COURT: --- I understand that but was she ever
11 listed on our witness list?
12 MR. MAYER: No, Judge.
13 THE COURT: So she was not a part of Voir Dire
14 then. Is there some issue with Ms. Atkins?
15 MR. WEST: From the State, Your Honor?
16 THE COURT: Yes.
17 MR. WEST: She has been in violation of the
18 sequestration order this entire trial.
19 THE COURT: Mr. Mayer?
20 MR. MAYER: Judge, two points on that. First, I
21 don't know if the court ever actually ever issued that
22 order or just ---
23 THE COURT: --- I sure did at your request.
24 MR. MAYER: Okay. I thought the court may have
25 just said ---

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1 THE COURT: --- no I'm clear about what I said.

2 You asked for sequestration and I granted it and you all
3 agreed that it was reciprocal. Don't fudge now.

4 MR. MAYER: Also ---

5 THE COURT: --- it cuts both ways.

6 MR. MAYER: Yes. And also if the sequestration the
7 significance of that is to keep the testimony from
8 influencing other witnesses. The court and the
9 prosecutor both ---

10 THE COURT: --- well it's designed to make sure
11 that the veracity of each witness -- it's reciprocal.
12 It's not that -- it's that the witnesses will not change
13 their testimony or hypothecate based on other testimony.

14 MR. MAYER: And Judge I would submit that since we
15 all heard Ms. Atkins testify pretrial that we would all
16 know if her testimony now were to deviate in any way.
17 I'm only going to ask her the very narrow issue of where
18 she got that beer from and what she did with it.

19 THE COURT: I guess that brings us to the next
20 question or issue which you all indicated earlier which
21 is does the State have some opposition of the admission
22 of the -- what number was that that was marked for I.D.?

23 MR. MAYER: Exhibit 1 and 2, Judge.

24 THE COURT: Is that correct, Madame Court Reporter?

25 THE COURT REPORTER: Yes, ma'am.

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1 THE COURT: What is 1?

2 THE COURT REPORTER: One is the entire box of beer
3 cans here.

4 THE COURT: And what is 2?

5 THE COURT REPORTER: Two is one individual beer can.

6 THE COURT: Okay.

7 THE COURT REPORTER: The one that was not -- the
8 one that was kind of empty.

9 THE COURT: Okay. And what is the State's
10 position regarding the admissibility of defense 1 and --
11 well, they're court's 1 and 2 aren't they?

12 MR. MAYER: Yes, Judge.

13 THE COURT REPORTER: No, they are not.

14 THE COURT: What number are they Madame Court
15 Reporter?

16 THE COURT REPORTER: I'm sorry?

17 THE COURT: What numbers are they?

18 THE COURT REPORTER: You're talking about the beer?

19 THE COURT: Yes.

20 THE COURT REPORTER: Defendant's 1 is all the beer
21 cans and defendant's 2 is the one beer can.

22 THE COURT: Okay. Those were marked in camera?

23 THE COURT REPORTER: Yes, ma'am.

24 THE COURT: Okay.

25 MR. WEST: Your Honor, there has been no foundation

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1 laid that this is actually the beer that was taken out of
2 the car. We have pictures and testimony signifying that
3 the beer found in the car was photographed by Officer
4 Poston. The only pictures that are indicated as the
5 amount of beer cans in the car are the three. They are
6 all photographed. They are in evidence. Other than that
7 we have no way of knowing that this is the actual
8 containers that was inside the car or the box that was
9 actually found inside the car.

10 THE COURT: Will you be able to question her
11 regarding that?

12 MR. WEST: Well, there has been no chain of
13 custody, there has been ---

14 THE COURT: --- well, I don't know. I haven't
15 heard her testify so I don't know whether...

16 MR. WEST: Well in pretrial what she said she did
17 was she took it to Mr. Mayer's office and that would make
18 Mr. Mayer a witness.

19 THE COURT: Yes, it kind of would wouldn't it.

20 MR. MAYER: I've got an investigator for the chain
21 of custody, Judge. He's sitting outside.

22 THE COURT: Oh, you've got an investigator that it
23 was handed to?

24 MR. MAYER: That's observed the beer in the office.

25 THE COURT: I mean was it turned over to this

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1 person? Who was it turned over to?

2 MR. MAYER: It was turned over to me.

3 THE COURT: And you made no attempts to turn it
4 over to the police?

5 MR. MAYER: I offered it to them and they didn't
6 want it.

7 THE COURT: What day did you offer it to them?

8 MR. MAYER: Judge, I really don't know. I'm sure
9 it was the week that I got it. I'd have to go back in my
10 emails somehow. I mean we have talked about the beer.

11 THE COURT: Is that correct that he offered it to
12 you all?

13 MR. MAYER: I think I actually got it before Mr.
14 West was on this case. I think it was when the other
15 prosecutor was on the case. I have talked to him about
16 it too.

17 MR. WEST: To be fair, Your Honor, and candid to
18 the court he has informed me that he had a beer box and
19 beer cans in his custody before this trial. But I still
20 don't think that goes to the establishment that this is
21 the actual true materials taken from the car.

22 THE COURT: Well, I don't know whether he can
23 establish a chain without hearing her testimony. And I
24 would imagine since she testified pretrial we would know
25 we have a record as to whether her testimony will deviate

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1 in any way based on her augmenting her testimony as a
2 result of having heard or have the benefit of being in
3 the courtroom and hearing the other testimony. So I
4 really can't discern any prejudice to the State in
5 allowing her to testify and violate -- although there was
6 a violation of the sequestration order.

7 I would say to both sides if there is anybody else
8 you intend to call as a witness they need to be excluded
9 from the courtroom or it defeats the whole purpose of
10 having a sequestration order. It was not done sua
11 sponte. It was at the request of the defense and the
12 court granted the motion and at the request of the
13 defense it was made reciprocal. The only people who
14 cannot be excluded are the victim's family and that's by
15 State law, they have an independent statutory right to be
16 present, and the case agent. So I expect everyone to
17 comply with the order.

18 Now those witnesses who have been excused are not
19 subject to the sequestration order and case law supports
20 that they can be called in rebuttal and that does not
21 presume any prejudice on either side. And then I'll have
22 to hear whether he can lay the foundation. But it sounds
23 to me at this point absent something changing that that
24 would be a weight issue, not an admissibility issue.
25 That would be something you would have to attack the

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1 veracity of the chain or where it's been, whether it's in
2 substantially the same condition, whether someone
3 hypothecated it, did something to it to have caused it's
4 condition to have changed. But I at this point can't
5 make that assessment without having heard the testimony
6 and someone making a contemporaneous objection.

7 MR. WEST: Thank you, Your Honor. In light of the
8 sequestration order we would ask that if she is to
9 testify that that testimony be limited to her involvement
10 in the taking of the beer cans.

11 THE COURT: I would imagine that's all Mr. Mayer is
12 going to ask her about.

13 MR. MAYER: That's all I planned to ask her about
14 and I'll warn her not to get into the prescription
15 medicine if that's what you're talking about.

16 MR. WEST: Well, I'm talking specifically about in
17 her proffer testimony earlier she talked about things
18 about her own inspection of the car. She could get into
19 the car instead of Pearson and Poston getting into the
20 car, she gave I assume the officer some list that she
21 took from the car; these are all things that have not
22 been established...

23 THE COURT: Do you plan to question her regarding
24 that?

25 MR. MAYER: No, Judge, I don't.

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1 THE COURT: Okay. That's a moot issue then.
2 Anything else before we resume testimony?

3 MR. WEST: Your Honor, after Ms. Atkins is Mr.
4 Bennett?

5 MR. MAYER: After Ms. Atkins I'm going to put up my
6 investigator slash paralegal, Chris Robertson.

7 THE COURT: Chris who?

8 MR. MAYER: Chris Robertson.

9 THE COURT: Is he on your list as well?

10 MR. MAYER: Yes, Judge.

11 THE COURT: What number was he?

12 MR. MAYER: On my original witness list I think he
13 was ---

14 THE COURT: --- he was 28. Are you ready to
15 proceed?

16 MR. WEST: Yes, Your Honor.

17 MR. MAYER: Yes, Judge.

18 THE COURT: Please bring in the jury.

19 [Whereupon, the jury enters at 12:09 p.m.]

20 THE COURT: Ladies and gentlemen, let me apologize
21 for your wait. As I had explained before the break I had
22 to take up some hearings that had been scheduled earlier
23 in the week; about six of them actually it turned out
24 that were unrelated to this case. Please know that we do
25 not take your time for granted and I am completely

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1 appreciative of you all indulging us so that I could
2 dispose of those matters. I hate waiting so I know.
3 That's not my strong suit but I can wait as long as I
4 know why. But sometimes that still can wear on my
5 patience. So I understand -- at least I am appreciative
6 of Berkeley that we have windows in that room so at least
7 you all could enjoy the sunshine while you waited. But
8 again, we truly appreciate your patience. We're now
9 going to resume testimony. You may proceed.

10 MR. MAYER: Thank you very much, Judge.

11 THE COURT: You're welcome, sir.

12 MR. MAYER: The defense would call Ms. Tammy
13 Atkins.

14 THE COURT: Ma'am, if you would come to the stand
15 to be sworn.

16 [Whereupon, Ms. Atkins comes forward]

17 [Whereupon, the witness is duly sworn by the Clerk
18 of Court]

19 CLERK OF COURT: Please be seated. State your full
20 name and spell your last name for the record.

21 THE WITNESS: Tammy Atkins, A-T-K-I-N-S.

22 THE COURT: You may proceed.
23
24
25

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Tammy Atkins-Direct Examination by Mr. Mayer
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1 TAMMY ATKINS,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MAYER:
6 Q. Ms. Atkins, please tell the jury how you are related
7 to the defendant?
8 A. She's my daughter.
9 Q. Did you have occasion to go out to the scene of this
10 accident?
11 A. Yes, I did.
12 Q. And when did you go out to the scene?
13 A. The night of the accident I was out there.
14 Q. Okay. Were you able to view inside Shana's car;
15 not go into her car but view inside Shana's car?
16 A. Once they took Shana and Brittany out of the car
17 yes, I was.
18 Q. Okay. And in that car did you see any alcohol?
19 A. Yes, I did.
20 Q. What did you see?
21 A. I seen an 18 pack of Bud Lite beer.
22 Q. Okay. And was it all neatly packed like you buy it
23 from the store?
24 A. No.
25 Q. Okay. Now, that car in your understanding was

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1 taken to investigation? That car was taken away?

2 A. Yes.

3 Q. Okay. Some days later did you get access to that
4 car?

5 A. Yes.

6 Q. Okay. About how many days after the accident did
7 you get access to the car?

8 A. A couple of days. I spent most of my time at the
9 hospital but a couple of days later I went with Shana's
10 two uncles and they took me to the impound.

11 I was not allowed to get anything out of the car at
12 first until police or whoever had to flip through it
13 before I could get anything out of it.

14 Q. But at some point you were allowed ---

15 A. --- some point, yes. A few days later I was allowed
16 to take jewelry or whatever needed to be taken out of
17 there.

18 Q. And that beer you mentioned earlier that you had
19 seen at the accident scene was that beer still in the
20 car?

21 A. Yes, it was.

22 Q. And what did you do with that beer at the time that
23 you went back to remove things from the car?

24 A. I wanted to see if all 18 cans were in there.

25 Q. Okay. And did you see that?

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- 1 A. Yes, I did.
- 2 Q. Did you count them?
- 3 A. Yes, I did.
- 4 Q. Did you stack them all together and take them
- 5 somewhere else?
- 6 A. I put them in that box right there, yes.
- 7 Q. You put them in this here box?
- 8 A. Yes.
- 9 Q. Did you collect the beer cans and also the box that
- 10 the beer was apparently sold in?
- 11 A. Yes, I did.
- 12 Q. When you collected those did you look and see if any
- 13 of those beer cans were open?
- 14 A. Yes, I did.
- 15 Q. How many of those beer cans were popped open?
- 16 A. None of them -- not the pop top, no; not a one.
- 17 Q. Okay. Were any of them busted?
- 18 A. Yes, one.
- 19 Q. Okay. I'm showing you what has now been marked as
- 20 defense exhibits 1 and 2.
- 21 [Whereupon, the witness is shown items]
- 22 Q. You're welcome to stand up if you need to, to get a
- 23 view inside here. Let me show you this can in the corner
- 24 that [indicates] is defense exhibit 2.
- 25 A. Can I touch it?

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1 Q. Yes, you may. Don't turn it upside down. Is that a
2 full can of beer?

3 A. No, it's not.

4 Q. Is that the same can that you found in the car that
5 you said was punctured?

6 A. Yes.

7 Q. How do you know that?

8 A. Well, it's not been opened on the top. I'm just
9 assuming there is a puncture hole in it somewhere.

10 Q. Okay. If you look closely toward the top lip
11 somewhere is there a puncture hole up there?

12 A. Yes, there is.

13 Q. Okay. And from your memory and recollection in
14 removing these items from her car are the items that you
15 removed the very same items that are sitting here before
16 you today?

17 A. Yes, they are.

18 Q. Is there anything different about the condition of
19 these items from when you removed them?

20 A. No, no.

21 Q. Okay. So from your inspection of these items now
22 they have not been tampered with or otherwise touched?

23 A. No. Some of them are scratched up and you can tell
24 they have been jumbled, but this is...

25 Q. Were they scratched up ---

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1 A. --- yes ---
2 Q. --- when you got them out of the car?
3 A. Yes.
4 Q. Okay..
5 A. And all 18 are here.
6 Q. Okay. So they are in the exact same condition in
7 fact as when you got them out of the car?
8 A. Yes.
9 Q. Okay. And after you removed those from the car and
10 put them in this box what did you do with them?
11 A. I called you.
12 Q. Okay. And then who did you give them to?
13 A. You.
14 Q. Okay. And is there any doubt in your mind that
15 this box and these cans are the exact same ones that you
16 gave me that day?
17 A. I know for a fact those are it.
18 Q. Okay.
19 MR. MAYER: Judge, we would offer defense exhibit 1
20 and 2 into evidence.
21 THE COURT: Any objection?
22 MR. WEST: None from the State, Your Honor.
23 THE COURT: Marked and admitted without objection.
24 [Whereupon, defendant's exhibit numbers 1 and 2 are
25 entered into evidence by the court]

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1 Q. [Mr. Mayer] Ms. Atkins, please answer any questions
2 the prosecution has for you.

3 THE COURT: Any questions for the witness?

4 MR. WEST: Nothing from the State, Your Honor.

5 THE COURT: Ma'am, you're excused. You may step
6 down.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

9 MR. MAYER: Judge, may I publish these exhibits to
10 the jury?

11 THE COURT: She's off the stand. There is no
12 vehicle to do that. You would use your witness. You may
13 proceed.

14 MR. MAYER: Judge, we'd call Mr. Christopher
15 Robertson to the stand.

16 [Whereupon, Mr. Robertson comes forward]

17 [Whereupon, the witness is duly sworn by the Clerk
18 of Court]

19 CLERK OF COURT: Please be seated. State your full
20 name and spell your last name for the record.

21 THE WITNESS: My name is Chris Robertson,
22 R-O-B-E-R-T-S-O-N.

23 THE COURT: You may proceed.

24 MR. MAYER: Thank you, Judge.

25

State v Shana Robinson
Christopher Robertson-Direct Examination by Mr. Mayer
June 5, 2014

1 CHRISTOPHER ROBERTSON,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MAYER:
6 Q. Mr. Robertson, where are you employed?
7 A. With the Mayer law practice.
8 Q. Is that my law practice?
9 A. Yes.
10 Q. Okay. And what is -- in what capacity are you
11 employed?
12 A. As a paralegal.
13 Q. And do you also do some investigations?
14 A. I do.
15 Q. Okay. Did you have occasion to do an investigation
16 related to this case?
17 A. I did.
18 Q. Please tell the jury what kind of investigation you
19 did.
20 A. Well, I started out with the understanding that Ms.
21 Zoll at the time of the accident was on the phone. So I
22 ---
23 MR. WEST: --- objection, Your Honor.
24 THE COURT: Basis?
25 MR. WEST: Relevance.

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1 THE COURT: Please approach.

2 [Whereupon, an off the record bench conference is
3 held]

4 THE COURT: Proceed. Sustained. Foundation,
5 speculation, and relevance.

6 Q. [Mr. Mayer] Chris, please back up and explain to the
7 jury how your investigation progressed to the conclusion
8 that you came to later. Just start at the beginning;
9 don't start at the completion.

10 A. Okay. Well, I was first looking into you know were
11 there were any factors that would leave Ms. Zoll
12 distracted while she was driving. And during that
13 investigation it came up that apparently she was on the
14 phone with somebody ---

15 MR. ALFARO: --- objection ---

16 A. --- at the time of the accident ---

17 THE COURT: --- sustained. Ladies and gentlemen, I
18 have a matter of law I need to take up with the
19 attorneys. During the break please do not discuss the
20 case and please leave your notepads in your seats. If
21 you would go with the bailiff for me please.

22 [Whereupon, the jury exits at 12:22 p.m.]

23 THE COURT: I guess I'm trying to ascertain Mr.
24 Mayer what does this witness know of his own personal
25 knowledge because he can't testify as to what he thinks,

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1 what he thought, what he speculated, what he surmised ---

2 MR. MAYER: --- I agree, Judge ---

3 THE COURT: --- the purpose of an investigator is
4 to find something for you ---

5 MR. MAYER: --- right ---

6 THE COURT: --- that amounts to a lead that would
7 amount to something that you could pursue to have an
8 eyewitness or other witness qualified to testify under
9 some exception to come to court. He doesn't get to kind
10 of just say...

11 MR. MAYER: I know Judge, I know. I'm sorry, I
12 should have prepped him better. What Chris did in his
13 investigation is he looked at the time of the accident
14 under the accident report. He then pulled the certified
15 phone records from Candy Zoll ---

16 THE COURT: --- he can't pull certified records.
17 The only person that can testify as to her phone records
18 would be somebody from the cell phone company who would
19 then give an exception under the hearsay rule. He can
20 look at her phone records all day long. This isn't a
21 civil case and even in a civil case he couldn't testify
22 to that.

23 MR. MAYER: Well Judge, he obtained the ---

24 THE COURT: --- it doesn't matter. He is not
25 someone under the business records exception that can

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1 testify to cell phone records. They are hearsay unless
2 you can bring it within an exception and then you have to
3 comply with the rules as to who can testify to it, how
4 you can lay the foundation for it. You don't get to just
5 because you got it pursuant to subpoena doesn't mean he
6 gets to testify about it ---

7 MR. MAYER: --- Judge ---

8 THE COURT: --- that may have provided a lead for
9 you to pursue to then establish the foundational aspects
10 of testimony. But he doesn't get to come to court and
11 say I looked at her records pursuant to a subpoena and
12 she was on the telephone.

13 MR. MAYER: It was my understanding that certified
14 records from the cell phone company did not need a
15 sponsoring witness.

16 THE COURT: They have to. You'd have to have
17 somebody that can certify that in fact they created the
18 records, that they are their records that they pulled
19 them, how they pulled them, how they maintain them to
20 come within the exception.

21 MR. MAYER: And the notarized certification that
22 Chris has doesn't work?

23 THE COURT: That's not how the rules work as far as
24 I know. I've never seen it done that way unless there is
25 a stipulation or an agreement.

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1 MR. MAYER: I don't know that there is.

2 THE COURT: I don't think there is any exception to
3 the rules in how you establish that something is a
4 business record.

5 MR. MAYER: These are the same records that were
6 sent directly to the Berkeley Clerk's office from the
7 phone company.

8 THE COURT: They couldn't come testify either, it's
9 still hearsay. It's not their records. They didn't
10 create them, they didn't compile them, they can't tell me
11 how they were compiled, they can't tell me how they were
12 kept, he can't tell me how they were kept.

13 The certification is provided to you for purposes of
14 a subpoena under the rules to comply or certify that they
15 have complied with the subpoena. That's the only purpose
16 of that certification. Witnesses have to testify based
17 on their rational perception.

18 If this were allowed you could have a third party
19 investigate something and come in and testify as to what
20 they surmised happened, what they assumed happened;
21 that's not evidence. The purpose of an investigator is
22 to find some witnesses for you who can testify as to
23 their first hand knowledge and their rational perception
24 of events. You've got to have the custodian of records.

25 MR. MAYER: Okay.

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1 THE COURT: And I'm not sure it's relevant. I
2 still haven't heard anything connecting the dots for that
3 because you've not established that the accident did not
4 happen in Ms. Zoll's lane. You've not established that
5 Ms. Zoll in some way crossed the center line or exited
6 her lane of travel. Both expert witnesses have testified
7 and I've listened very intently to your expert's
8 testimony, his testimony was and if I recall it
9 accurately was it happened in Ms. Zoll's lane of travel.
10 That is exactly right.

11 So if there were some testimony that somehow she
12 drifted out of her lane, that somehow the accident
13 happened even at the demarcation point of the center lane
14 where they both could have drifted because as I have
15 explained the felony D-U-I statute with death is really a
16 negligence statute that attaches alcohol to it in lay
17 person's standards. It's a lesser standard than D-U-I,
18 which requires the proof of material and appreciable
19 impairment.

20 Felony D-U-I statute does not require that. It's a
21 negligence standard that requires that a person driving
22 under the influence of drugs, alcohol, or both does not
23 even have to rise to the level of .08 -- fail to do
24 something legally required of them, or did something
25 against the law. In other words its almost -- its kin to

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1 comparative negligence. And if you could show me some
2 proof that in fact Ms. Zoll was comparatively negligent;
3 in other words that she drifted out of her lane, that she
4 -- that the accident took place in Ms. Robinson's lane of
5 travel, even if the accident occurred at the demarcation
6 center line of the highway I think the evidence would be
7 relevant because then it would be relevant if she was
8 distracted from a comparative negligence standard because
9 then she would have comparably contributed to the
10 accident and that would make it relevant.

11 It's just like at sidebar where I explained to you
12 if I'm riding down Highway 52 and I am totally absorbed
13 in a telephone conversation and somebody comes into my
14 lane of travel and hits me I still had the right of way.
15 I still had the right to be on the telephone because
16 there is nothing that precludes me from being on the
17 telephone in Berkeley unlike Charleston where you can't
18 text or otherwise.

19 And we are slowly but surely moving to hands free.
20 If there were a statute that required -- I know each
21 county probably would take it differently, I know we have
22 a texting ban I think in Charleston now and the State
23 legislature there is a bill pending for State-wide text
24 ban -- State-wide ban on text messaging. But at this
25 point you are free much to my chagrin you can ride down

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1 the highway as much as you want with a cell phone up
2 under your -- you know, you see it everyday people
3 driving down the highway talking and otherwise on the
4 telephone.

5 It could arguably amount to distracted driving but I
6 can be distracted all I want as long as I'm in my lane
7 and I didn't contribute to an accident. If I followed
8 your theory that would put comparable negligence on its
9 head and somehow I would be responsible just because I
10 was on the telephone and somebody crossed the center line
11 and hit me.

12 MR. MAYER: I'm not asking to do that, Judge. I'm
13 just asking that -- what I heard -- I heard Mr. Hill
14 testify as to how the court quoted but I also heard him
15 testify as to a portion of Shana's car was still in her
16 lane, which would ---

17 THE COURT: --- doesn't mean she didn't cross over.
18 He said she crossed over. She would not have crossed
19 over as extremely as the video animation depicted it.
20 The basic thrust, the gravamen of his testimony was that
21 the mile per hour calculation was in error, that the
22 wrong formula was employed, that the impact was not as
23 extreme as it had been testified to based on what was
24 left of the physical evidence of the cars, and that she
25 did not drift completely into Ms. Zoll's lane but that it

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1 was an off center hit. Nonetheless it occurred in Ms.
2 Zoll's lane that her car left the lane of travel, but
3 some portion of her car was still in the lane of travel.
4 That does not negate where the accident took place, where
5 the point of impact took place and it does not make Ms.
6 Zoll comparatively negligent at all. I don't care of Ms.
7 Zoll was in millimeters of that center lane she was still
8 in her lane of travel.

9 And if I were to follow -- because I listened very
10 carefully -- if I were to follow his logic the incident
11 would never have occurred. I was waiting to hear but he
12 ultimately within a certain amount of -- I would use the
13 word loosely scientific certainty that the accident in
14 fact took place in Ms. Zoll's lane. Now, if the accident
15 had taken place outside of Ms. Zoll's lane distraction
16 would be relevant because then she could have contributed
17 to the accident.

18 MR. MAYER: Judge, what about Ms. Zoll's violation
19 of the statute being relevant?

20 THE COURT: Violation of what statute?

21 MR. MAYER: Driving under the impairment of
22 marijuana.

23 THE COURT: Doesn't matter unless it contributed to
24 this accident.

25 MR. MAYER: I mean ---

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1 THE COURT: --- if she came out of her lane and hit
2 your client it would be completely relevant because then
3 your client couldn't be the proximate cause of the
4 accident.

5 MR. MAYER: We don't have a single eyewitness to
6 this, Judge. Everybody who has testified has been ---

7 THE COURT: --- the only eyewitnesses you have are
8 the empirical testimony of these calculations which do
9 not controvert one another. They very slightly one puts
10 her completely in the lane and one puts her partially in
11 the lane. Neither one of them negate that the point of
12 impact was in Ms. Zoll's lane.

13 MR. MAYER: But neither one of them say that Ms.
14 Zoll wasn't in Shana's lane at some other point. And
15 that's the defense theory ---

16 THE COURT: --- there is no factual support for
17 that. If you had some eyewitness, if your client
18 remembered that happening, if -- you have to have some
19 good faith basis to present evidence. You can't just
20 hypothetically say I think this happened. You have to
21 have some good faith basis for it to be relevant.
22 Otherwise what people think would be evidence and it's
23 not. They are wonderful theories. You have to have some
24 empirical support for them. And if that in fact happened
25 the way you are suggesting there would be some empirical

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1 proof for it. And it doesn't matter if she drifted out
2 of her lane before the incident happened. That's not
3 where the point of impact took place.

4 MR. MAYER: But it would matter for Shana's reason
5 for swerving, right?

6 THE COURT: There is no testimony that she swerved.
7 The testimony is that she was at a high rate of speed,
8 which basically based on impairment she lost control of
9 her vehicle based on the impetus at which the vehicle was
10 traveling around the curve ---

11 MR. MAYER: --- Judge, our expert just testified
12 that he is absolutely positive that is not what happened.

13 THE COURT: His testimony is still that the point
14 of impact was in her lane. You have no empirical -- you
15 know, I'm not an adversary. I don't have a position. I
16 have to make sure that the playing field is level for
17 everyone, which means I have to be the only objective
18 voice basically in this process.

19 So when I look at things I look at empirical proof.
20 I don't look at what people think, what they feel, I look
21 at empirically what has been presented. And empirically
22 what has been presented scientifically is that the point
23 of impact was in Ms. Zoll's lane.

24 MR. MAYER: But how does it prejudice the State
25 Judge if the State did the blood draw and the State did

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1 the testing. I mean it's their facts they sent to me.

2 THE COURT: It still has to be relevant because
3 otherwise it misleads the jury. We're all bound by the
4 same rules.

5 MR. MAYER: Why would it mislead the jury any more
6 than it would mislead us? Its common sense ---

7 THE COURT: / --- because you have to prove to this
8 court as the gatekeeper that it makes some fact of
9 consequence in this case more or less probable.

10 MR. MAYER: That's what makes it prejudicial to
11 them isn't it that it does make it more probable ---

12 THE COURT: --- that's not the standard. It's what
13 fact of consequence in this case does it make more or
14 less probable.

15 MR. MAYER: But Judge, in the consequence of this
16 case it makes it more probable that before the narrow
17 snapshot the experts can recreate for us that Ms. Zoll
18 was out of lane.

19 THE COURT: You don't have an expert that says that
20 and only an expert is qualified to say that. You can't
21 speculate or hypothecate about what you think may could
22 have happened.

23 MR. MAYER: I can have a defense theory though,
24 Judge.

25 THE COURT: You can have a defense theory but it

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1 has to be supported by some empirical proof. You have to
2 have an expert that says that because that's outside the
3 ambit of common knowledge.

4 MR. MAYER: What we've got is an expert who says
5 that the wreck did not occur because of Shana's drift.
6 It occurred not because of her speed. So there is --
7 that opens it up, Judge ---

8 THE COURT: --- you can argue all of that.

9 MR. MAYER: That opens it up to some other reason
10 but then the jury is left ---

11 THE COURT: --- your expert needs to be able to
12 take the leap to what that some other reason is. You
13 don't get to speculate about what that some other reason
14 is that is not supported by facts that are not in
15 evidence. There is no evidence that some animal was in
16 the road, that something else happened.

17 MR. MAYER: But there is evidence of her
18 impairment, Judge and that's all I want.

19 THE COURT: You can be impaired all day as long as
20 you're in your lane.

21 MR. MAYER: But we don't have ---

22 THE COURT: --- it doesn't contribute to the
23 accident unless she was out of her lane. Unless the
24 point of impact took place some place -- in other words
25 you can show that she drifted out of her lane. That's

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1 when it becomes relevant because then it becomes
2 comparatively negligent. That means she contributed to
3 the accident. That affects the proximate cause
4 determination because then your client conceivably and
5 arguably would not be the proximate cause of the incident
6 otherwise it's just prejudicial. It almost rises to the
7 level of character. It almost says she was a bad person,
8 she was high, and she was driving erratically when you
9 have no proof of it.

10 MR. MAYER: Not at all, Judge. We're only talking
11 about that one instant in time which is when her blood
12 was drawn. We're not talking about before the whole rest
13 of her life. We -- the last thing I wish to do is
14 disparage the deceased. And all I'm trying to do is get
15 a fair trial for my client, Judge.

16 THE COURT: And that's all this court's intention
17 is. I told you on I don't have a position. I'm not an
18 advocate. I'm only bound -- and I'm really I'm a bit of
19 a stickler. It frustrates lawyers but the only way
20 everybody can be treated fairly is if everybody is fed
21 out of the same spoon. We have one hymnal; it's the
22 Rules of Evidence and the Rules of Procedure. We all
23 sing from it, we're all bound by it. And that is my only
24 barometer. It's not personal.

25 MR. MAYER: It's only relevance, Judge. I mean

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1 they've already stipulated to the fact that it's
2 authentic. There is no question that this evidence came
3 from her and was properly tested.

4 THE COURT: Well, we're sort of wasting time at
5 this point because we're not dealing with that witness
6 and I need to deal with this witness. So I need to know
7 what is it exactly that you plan to elicit from this
8 witness that would be admissible. I would assume the
9 chain dealing with the beer?

10 MR. MAYER: Yes, Judge.

11 THE COURT: Is there anything else that you would
12 need to ask of this witness?

13 MR. MAYER: No, the beer already came in so we
14 don't need him for the chain. No, I guess that would be
15 it.

16 THE COURT: So do we need for him to remain on the
17 stand or do you ---

18 MR. MAYER: --- I don't think there is anything for
19 me to elicit from him.

20 THE COURT: You can create a proffer if you would
21 like as to what you plan to elicit from him that the
22 court has ruled was -- where the court sustained the
23 State's objection.

24 MR. MAYER: Thank you, Judge.

25 THE COURT: You're welcome.

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Christopher Robertson-Proffer- Direct Examination by Mr. Mayer
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1 PROFFER-DIRECT EXAMINATION
2 BY MR. MAYER:
3 Q. Chris, in your investigation did you look at the
4 accident report in this case?
5 A. Yes, I did.
6 Q. And did you note -- what did you note from the
7 accident report?
8 A. Primarily that the time of the accident was about
9 8:42 or 8:43 I believe.
10 Q. Okay. What did you do from there in your
11 investigation?
12 A. I found Candy Zoll's cell phone number at the time
13 and I subpoenaed the records for it.
14 Q. How did you find her cell phone number?
15 A. She had previously been involved with an eviction
16 action in Berkeley County with the YMCA and I called them
17 for a contact number a couple of months before the
18 accident happened.
19 Q. So it was not the phone number that was listed on
20 the accident report?
21 A. No, that was her brother's phone number.
22 Q. Okay. And once you obtained her correct phone
23 number or what you believed was her correct phone number
24 what did you do next?
25 A. I subpoenaed the phone records from I believe it was

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Christopher Robertson-Proffer- Direct Examination by Mr. Mayer
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1 Verizon.

2 Q. Okay. Did you obtain those records from Verizon?

3 A. Yes.

4 Q. In what form did you get those?

5 A. We received just the paper records with the
6 subscriber information and the ingoing and outgoing call
7 list.

8 Q. And were those certified by some custodian there at
9 Verizon?

10 A. Yes.

11 Q. In your judgment were those certified records?

12 A. Yes.

13 Q. Okay. And did you rely on those records for your
14 investigation?

15 A. Yes.

16 Q. What did you do after you got those records?

17 A. I looked through the records that we received and
18 noted that the last call made on that -- for that number
19 was at 8:39, actually I believe it was an incoming call
20 to that phone at 8:39 and it ran for four minutes so it
21 ran to 8:43, which was the time of the accident.

22 Q. Okay. And did you figure out what number that came
23 from?

24 A. Yes. The call it was another number from the same
25 account.

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Christopher Robertson-Proffer- Direct Examination by Mr. Mayer
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- 1 Q. How did you find that out?
- 2 A. I subpoenaed the other -- the records for that
- 3 number and when we received the records it listed Candy
- 4 Zoll as also the subscriber for that phone.
- 5 Q. So both phone numbers that seem to have been talking
- 6 to each other at the time of the accident were registered
- 7 to Candy Zoll?
- 8 A. Yes.
- 9 Q. Okay. And how long was the duration of that call?
- 10 A. Four minutes.
- 11 Q. Okay. And were you able to identify who the user
- 12 of that number was who called Candy Zoll four minutes
- 13 before the wreck?
- 14 A. Well, it listed Candy Zoll as the name on both
- 15 phones on the account but the billing address was [REDACTED]
- 16 [REDACTED], Summerville and I found that at the time
- 17 or at least previously to be the address of Patricia
- 18 Malphrus [phonetic].
- 19 Q. Okay. And did you confirm with Verizon that there
- 20 was another user on this account?
- 21 A. Well in their customer service portal the only other
- 22 person able to call and access information for the
- 23 account listed was Patricia Malphrus.
- 24 Q. Did you draw any conclusions based on your
- 25 investigation?

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Christopher Robertson-Proffer- Direct Examination by Mr. Mayer
June 5, 2014

1 A. It appeared to me that they had been on the phone
2 together at the time of the accident.

3 Q. They being who?

4 A. Patricia Malphrus and Candy Zoll.

5 Q. And you reached that conclusion by comparing the
6 times of the calls in the records provided to you by
7 Verizon with the time in the accident report for the
8 accident?

9 A. Yes.

10 MR. MAYER: That's it, Judge.

11 THE COURT: Any questions for the witness?

12 MR. ALFARO: Your Honor, as far as the State ---

13 THE COURT: --- well you need to preserve a proffer
14 is the only purpose and then I will take argument.

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State v Shana Robinson
Christopher Robertson-Proffer- Cross-Examination by Mr. Alfaro
June 5, 2014

1 PROFFER-CROSS-EXAMINATION

2 BY MR. ALFARO:

3 Q. Do you also work for Verizon?

4 A. No.

5 Q. Are you a records custodian for Verizon?

6 A. No.

7 Q. The phone numbers -- you said you got two phone

8 numbers. Both were registered to Candy Zoll?

9 A. Yes.

10 Q. Which one of those numbers -- which phone attached

11 to which number was inside the car with Candy Zoll at the

12 time of the accident?

13 A. It would be the one I believe it was [REDACTED]-8076.

14 Q. And how do you know that?

15 A. Because that was the last call made from that phone

16 was at that time and the other phone continued to show

17 records for a few months after that.

18 Q. Do you know -- do you have any first-hand knowledge

19 whether that phone was in the car with Ms. Zoll or not?

20 A. I do not.

21 Q. And you were asked to give a couple of opinions. Do

22 you have any qualifications or training in investigations

23 or cell phones that would possibly qualify you to give an

24 expert opinion as to cell phone records and when those

25 calls are made and locations and things of that nature?

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Christopher Robertson-Proffer- Cross-Examination by Mr. Alfaro
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1 A. All I had to go by was the certified records showing
2 incoming and outgoing calls.

3 Q. So your answer would be that you have no training or
4 experience or qualifications that would make you an
5 expert?

6 A. No formal training, no.

7 MR. ALFARO: No further questions.

8 THE COURT: Any redirect?

9 MR. MAYER: No, Judge.

10 THE COURT: I'll hear argument on the State's
11 objection to the admissibility of his testimony.

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State v Shana Robinson
Christopher Robertson-Argument on Admissibility of Testimony-Mr. Alfaro
June 5, 2014

1 MR. ALFARO: Your Honor, initially he will be
2 testifying outside of the scope of his personal first-
3 hand knowledge. Regarding phone records specifically he
4 is not a phone records custodian. There is no way to
5 authenticate that the testimony he is giving is accurate
6 or correct regarding phone numbers or the times of the
7 phone calls.

8 In addition he has stated that he has no knowledge
9 as to whether either of the phones in question were even
10 inside the victim's vehicle at the time of the collision.
11 In addition Mr. Mayer elicited opinion testimony that
12 would be outside of a lay person's opinion. It would be
13 in the realm of an expert. And the witness has also
14 under my cross-examination acknowledged that he has no
15 specialized training, experience, or qualifications that
16 would allow him to make such expert opinion.

17 THE COURT: Any response Mr. Mayer?

18 MR. MAYER: No, Judge.
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State v Shana Robinson
Christopher Robertson-Ruling on Admissibility of Testimony
June 5, 2014

1 THE COURT: The court sustains the State's
2 objection on several grounds. One of which is
3 relevance. There has been no showing that this testimony
4 will make any fact of consequence in this litigation more
5 or less probable. In addition it has the potential to
6 mislead the jury, confuse the issues. And its probative
7 value is substantially outweighed by any danger of unfair
8 prejudice.

9 In addition it does not comply -- the cell phone
10 records are hearsay. There has not been a compliance
11 with Rule 803 that being exception (8) or (6), which
12 requires the establishment of the authenticity of the
13 records pursuant to Rule 901 and again subsections (8)
14 and (6) of 803, which require the production of a records
15 custodian who can provide compliance with the rules
16 regarding the potential admissibility of those records.

17 In addition it is -- the defense is attempting to
18 elicit opinion evidence from this witness. And our rules
19 are very clear that the opinions of witnesses are not
20 admissible except in certain instances where we have
21 exceptions that being Rule 701, which is the opinion
22 testimony by a lay witness as well as opinion testimony
23 from an expert witness. Very clearly the witness is not
24 an expert under Rule of 702. The defense has not
25 established by education, training, experience or

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Christopher Robertson-Ruling on Admissibility of Testimony
June 5, 2014

1 otherwise that he is qualified to render any opinions
2 regarding cell phone records. And just as an aside as I
3 have heard many record custodians testify regarding cell
4 phone records there are certain codes and other things
5 that are on those records that tell us much about those
6 records, the inceptions of the calls and otherwise who
7 the bill belongs to, and they can also through tracking
8 and other methods ascertain the actual locations of the
9 telephones at the time that calls are made.

10 And so clearly that would be beyond the testimony of
11 a lay witness as it would be outside of information that
12 could have been rationally perceived by the witness and
13 that does not require specialized knowledge, skill,
14 training, or experience. And clearly phone personnel are
15 trained in that aspect and therefore qualified.

16 They don't have to be qualified as experts. They
17 can give opinion testimony regarding that because that is
18 within the scope of their employment. That is what they
19 are trained to do and that is what they do every day and
20 they have qualifications to interpret those records. But
21 in any event the foundation has not been laid to elicit
22 opinions from him as an expert, which is basically what
23 the defense is seeking to do in terms of his opining
24 about what happened or did not happen at the time of this
25 wreck and therefore it would not be admissible and would

State v Shana Robinson
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1 be more prejudicial than probative and it would have a
2 tendency to mislead the jury. And the defense is not
3 established pursuant to Rule 701 that he has the ability
4 to provide a lay opinion as the opinion that is being
5 elicited does require specialized knowledge, skill,
6 experience, and training outside of the ambit of his
7 training as a paralegal who does investigative work for
8 the law firm as well.

9 The defense has also not established that the
10 testimony is that which was rationally based on the
11 perception of the witness. It's helpful to a clear
12 understanding of the witness's testimony as well as
13 requiring specialized knowledge, skill and training. In
14 other words this is not testimony that would be within
15 the average person's capacity. It would not be within
16 the average layperson's ability to surmise or to be able
17 to come to a conclusion or opinion regarding it. And
18 therefore, the State's objection is sustained. Thank you
19 very much, sir. You may step down.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 MR. ALFARO: Your Honor?

23 THE COURT: Yes.

24 MR. ALFARO: We would also ask based off this that
25 his testimony be stricken and the jury be instructed to

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1 disregard anything that he testified to.

2 THE COURT: Would the defense like to respond?

3 MR. MAYER: I mean I would prefer that his
4 testimony not be stricken. I don't think he...

5 THE COURT: Well, he's stated some stuff I've
6 already ruled would be inadmissible based on your not
7 establishing the appropriate foundation.

8 MR. MAYER: Oh, okay. So we would oppose it be
9 stricken but that's all.

10 THE COURT: I'll note your objection for the
11 record. I'm going to give a curative instruction that
12 the testimony be stricken from the record and that the
13 jury give it absolutely no consideration in their
14 deliberative process.

15 MR. ALFARO: Thank you.

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1 THE COURT: You standing up for a reason?

2 MR. WEST: Yes, Your Honor.

3 THE COURT: I need to deal with the toxicologist
4 and then we'll work backwards from there. Is that why
5 you're standing up?

6 MR. WEST: That is and the State's fear is that
7 much like this witness especially since -- you can't un-
8 ring certain bells and I don't want any mention of
9 marijuana being mentioned in front of the jury. I don't
10 think striking something like that from the record is
11 curative in the sense that it is highly prejudicial and
12 we would still oppose the introduction of any evidence or
13 elicit any testimony on the subject of marijuana as
14 nothing has been brought to the court's attention that
15 would make that in any way probative.

16 THE COURT: What I'm going to do is break for lunch
17 because it's 10 of 1:00 and the jury has been sitting --
18 they had to sit while we did those guilty pleas, which
19 was not their fault. I would imagine that they are
20 hungry and so what I am going to do is break for lunch
21 for an hour and then we'll resume dealing with this when
22 I have a full stomach and y'all have a full stomach. And
23 I need to do a little research during the break as well.
24 Is there any exception to that from the State?

25 MR. ALFARO: No, Your Honor.

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1 THE COURT: From the defense?

2 MR. MAYER: No, Judge.

3 THE COURT: Okay. Please bring in the jury.

4 [Whereupon, the jury enters at 12:51 p.m.]

5 THE COURT: Ladies and gentlemen, we still have
6 some matters of law that we need to deal with so we're
7 going to break for lunch. Prior to me giving you
8 instructions regarding that I have ordered stricken from
9 the record any testimony of Mr. Robertson. So you are
10 not to give it any consideration in your deliberations.
11 It is not to be discussed in any manner whatsoever and
12 you are to disregard and disabuse your mind of any of
13 that testimony during the deliberative process.

14 We're going to break for lunch and I'm going to give
15 you until 2 o'clock, which gives you about an hour and
16 ten minutes. Hopefully -- well it says its 91 in
17 Charleston so I hope it's not 91. It was a little cooler
18 here yesterday I think than it was in Charleston but
19 either you cut it I guess two degrees is still hot.

20 I hope that you all enjoy your lunch break. You all
21 have been incredibly patient with us today and I
22 appreciate it. I know sometimes it would seem to the
23 layperson that we should be able to do a lot of this
24 stuff before court starts but unfortunately it really is
25 the nature of the process and much of it we can't do

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1 until the process begins along its road. So again I'm
2 sure the State and the defense we appreciate your
3 patience as we work through those things today. We're
4 going to resume again at 2:00. Please leave your
5 notepads in your seats. Please do not discuss the case
6 among yourselves or anyone else and you'll return
7 directly to your jury room as instructed by the bailiffs
8 after lunch and we will resume at 2:00. Have a good
9 lunch.

10 [Whereupon, the jury exits at 12:53 p.m.]

11 THE COURT: Is there anything before we break for
12 lunch from the State?

13 MR. WEST: Nothing from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. MAYER: Nothing from the defense.

16 THE COURT: And could y'all make sure the court
17 reporter has all the exhibits because sometimes they get
18 strewn about; especially all these photos so she can make
19 sure she is keeping track of all of them and then we
20 won't have such a burden to do it at the end of the case.
21 Have a good lunch. See y'all at 2:00.

22 [Whereupon, court is recess from 1:00 p.m. until
23 2:14 p.m.]
24
25

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1 THE COURT: Is the State ready to proceed?
2 MR. WEST: Yes, Your Honor.
3 THE COURT: Is the defense ready to proceed?
4 MR. MAYER: Yes, Judge.
5 THE COURT: Is your witness present and ready to
6 proceed?
7 MR. MAYER: Judge, I think we're going to call him
8 last. I think I'd like to call the defendant to the
9 stand first.
10 THE COURT: Okay. Ma'am, if you would stand for
11 me please and raise your right hand to be sworn.
12 [Whereupon, the defendant complies]
13 THE COURT: Does she have any record that the State
14 would be seeking to introduce to impeach her
15 creditability?
16 MR. MAYER: I don't think so, Judge.
17 THE COURT: Is there any record you will be seeking
18 to use to impeach her creditability?
19 MR. WEST: No, Your Honor.
20 THE COURT: Ma'am, raise your right hand to be
21 sworn.
22 [Whereupon, the witness is duly sworn by the Court]
23 THE COURT: State your full name for the record.
24 THE DEFENDANT: Shana Ceciel Robinson.
25

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1 THE COURT: Ms. Robinson, at this time I am going
2 to explain to you certain of your rights. If you do not
3 understand something that I say please let me know or if
4 you need me to repeat something please let me know. Do
5 you understand?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Ma'am, we've now reached the stage of
8 the trial where you may present your defense. You have
9 the right to claim the protections given to you by the
10 Fifth Amendment to the Constitution of the United States,
11 which states in relative part that a person cannot be
12 compelled to be a witness against themselves. That means
13 that you cannot be required to testify in this case,
14 however you can make the independent decision to testify
15 but no one can make you testify. This is a personal
16 right and no one can waive this right except you.

17 If you decide to testify you will be subject to the
18 same rules that govern other witnesses and you may be
19 examined and cross-examined on any relevant issue in this
20 case. In addition if you have any convictions involving
21 dishonesty or false statement or for crimes punishable by
22 imprisonment for more than one year and this court
23 determines that the probative value of admitting this
24 evidence outweighs its prejudicial effect to you the
25 State will be allowed to use your record -- to introduce

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1 your record to attack your creditability. If you decide
2 to testify this decision on your part must be made
3 freely, voluntarily, and intelligently with knowledge of
4 the protections given to you by the Fifth Amendment to
5 the Constitution and the consequences of your decision to
6 testify.

7 If you decide not to testify I will instruct the
8 jury that they cannot give that fact any weight
9 whatsoever, that you have no burden of proof in this
10 case, that the burden of proof remains on the State to
11 prove your guilt beyond a reasonable doubt and that your
12 failure to testify is not to be discussed in any manner
13 whatsoever in jury deliberations and that there is to be
14 absolutely no prejudice to you because you did not
15 testify.

16 It is left entirely up to you whether you decide to
17 testify or not to testify. You may talk with your
18 attorney, your family members, friends or others, but
19 ultimately the decision is yours. Do you understand your
20 rights as I have just explained them to you?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And have you discussed with your lawyer
23 whether you should or should not testify?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you need to speak with him any

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1 further at this time?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: And do you wish to testify?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Ready?

6 MR. MAYER: And Judge, I just would -- we have
7 Doctor Bennett who will be up next. He's an expert
8 toxicologist, forensic toxicologist. As such I would ask
9 that because he is an expert that he be allowed to be in
10 the courtroom for Shana's testimony.

11 THE COURT: Any exception from the State?

12 MR. WEST: Nothing from the State.

13 THE COURT: Okay. Ready?

14 MR. MAYER: Yes, Judge.

15 THE COURT: The State ready?

16 MR. WEST: Yes, Your Honor.

17 THE COURT: Please bring in the jury. Did your
18 other witnesses appear; that being Mr. Holmes and Mr.
19 Bucknor?

20 MR. MAYER: My paralegal is trying to keep track of
21 that, Judge, but I have not heard from any of them.

22 THE COURT: Okay. I just wanted to double check.

23 [Whereupon, the jury enters at 2:18 p.m.]

24 THE COURT: I hope that you all had a pleasant
25 lunch and a nice break and we will now resume testimony.

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1 I would ask that you give the attorneys your attention.

2 MR. MAYER: Judge?

3 THE COURT: You may proceed.

4 MR. MAYER: Thank you, Judge. The defense will
5 call Shana Robinson, the defendant, to the stand.

6 THE COURT: Ms. Robinson, if you will come to the
7 stand and be sworn.

8 [Whereupon, Ms. Robinson comes forward]

9 [Whereupon, the witness is duly sworn by the Clerk
10 of Court]

11 CLERK OF COURT: Please be seated. State your full
12 name and spell your last name for the record.

13 THE WITNESS: My name is Shana Ceciel Robinson,
14 R-O-B-I-N-S-O-N.

15 THE COURT: You may proceed.

16 MR. MAYER: Thank you, Judge.

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1 SHANA ROBINSON,
2 Having been first duly sworn,
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MAYER:

6 Q. Shana, please tell the jury a little bit about your
7 educational background.

8 A. Okay. I grew up here in Moncks Corner and went to
9 Berkeley High School. After completing high school at
10 Berkeley I went to Trident Technical College where I
11 studied Dental Assisting.

12 After that when I graduated from that program I went
13 to the Medical University and specialized in Oral and
14 Maxillofacial surgery with emphasis in emergency
15 training.

16 I'm also ACLF certified, which is Advanced Cardiac
17 Life Support certified, and have had several classes if
18 you will in sedation and techniques in anesthesia.

19 Q. Shana, at some point in your life did you have a
20 chance to put all that education to use?

21 A. Absolutely.

22 Q. Please describe a little bit of your work history to
23 the jury.

24 A. Well, I worked for four oral surgeons and a plastic
25 surgeon in Greensboro, North Carolina for several years.

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1 And after that I worked for an independent surgeon, and
2 this is all head and neck trauma surgery; that kind of
3 thing, in Charleston.

4 After that employment I became a nurse staffing
5 supervisor where I staffed the prisons and hospitals in
6 the State of South Carolina as well as around the
7 country.

8 Q. Okay. At some point in your life you became
9 disabled, is that right?

10 A. Correct.

11 Q. When did that occur?

12 A. March 14th, 2008.

13 Q. What -- please describe to the jury the nature of
14 that disability?

15 A. I have what is called Stevens Johnson syndrome.
16 It's a very rare disease. And it is an allergy -- I'm
17 sorry.

18 Q. Let me pause you there. How did you get that?

19 A. Originally it was from taking an antibiotic, a
20 sulfur based antibiotic.

21 Q. Okay. And how has it manifested itself on you?

22 A. Okay. Originally what happens is it affects your
23 mucosal membranes or the inside of the mouth, the skin,
24 lady parts; every part of the skin it will affect so
25 inside and out. Usually whatever it is doing on the

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1 outside its way worse on the inside so.

2 Q. Your face right now is red. Is that from your
3 disease?

4 A. Yes.

5 Q. Okay. When you got that disease did you continue
6 working outside the home?

7 A. Yes.

8 Q. Okay. And at some point did you stop working
9 outside the home?

10 A. Yes.

11 Q. What type of work were you doing in November of
12 2011?

13 A. I actually worked for R.S. Medical, which is a
14 medical supply company doing insurance verifications,
15 pre-authorizations everything on the medical side as far
16 as getting procedures approved and different things like
17 that for the doctors and the equipment that they were
18 going to use.

19 Q. And were you doing that from home?

20 A. Absolutely.

21 Q. And you were able to do that from home?

22 A. Correct.

23 Q. Okay. Before November 10, 2011 did you have any
24 memory problems?

25 A. Absolutely not.

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- 1 Q. How about after November 10, 2011 did you have any
2 memory problems?
- 3 A. Other than the night of -- well, yes to some extent.
- 4 Q. Okay. Please describe for the jury if you had a
5 diagnosis or what your memory problems were.
- 6 A. Due to the accident I was diagnosed with traumatic
7 brain injury, which caused a concussion and there are
8 just spats of time that I don't remember.
- 9 Q. Initially what you didn't remember was larger and
10 slowly you've had bits come back, is that true?
- 11 A. Absolutely.
- 12 Q. Okay. But you still don't remember the whole
13 evening, correct?
- 14 A. No, I do not.
- 15 Q. Now at the time of this accident November 10, 2011
16 where were you living?
- 17 A. I was living at [REDACTED], which is almost
18 to the beach.
- 19 Q. And is that your house?
- 20 A. That's my Mother and Father's house.
- 21 Q. But you own the condo, right?
- 22 A. I do own a condo, yes.
- 23 Q. Why weren't you living in your condo on that date?
- 24 A. My step-father had recently passed away and I went
25 to be with my Mother to help her with probate and get

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- 1 things in order and everything else.
- 2 Q. So you kind of moved back in with your Mom?
- 3 A. Yes, I did.
- 4 Q. To kind of keep her spirits up and that sort of
- 5 thing?
- 6 A. I did my best.
- 7 Q. Okay. You testified that you lived at [REDACTED]
- 8 [REDACTED]. Is that where you grew up at?
- 9 A. Yes, it is.
- 10 Q. Okay. How do you get to [REDACTED]?
- 11 A. If you know where the Scotchman is you turn -- this
- 12 is Broughton Road out right in front of us [indicates]
- 13 right in front of the courthouse. You go almost all the
- 14 way to the end around the curve almost to the end and it
- 15 is right down there by the beach.
- 16 Q. Is there any other way to get there by car?
- 17 A. No.
- 18 Q. Okay. That's the only road to the end of the beach
- 19 down there.
- 20 A. Yes.
- 21 Q. Okay. In your life how many times have you driven
- 22 back and forth that road?
- 23 A. Thousands. That's where I learned how to drive.
- 24 Q. Okay. Tell me about how you typically would drive
- 25 that curve?

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1 A. I would just -- I don't know exactly what you are
2 asking; I'm sorry.

3 Q. So when you grew up driving that curve what was the
4 speed limit on that curve?

5 A. Oh, the speed limit on that curve forever was 45
6 miles per hour.

7 Q. Okay. And if you're coming from town here to go
8 back up to your house is it 45 all the way? Is it a 45
9 zone all the way from here to your house?

10 A. From here?

11 Q. Yes.

12 A. No.

13 Q. Okay. Please describe if you know the speed limits
14 along the way there.

15 A. Okay. Just as you're going towards Kitfield
16 [phonetic], I don't know if you know where that's at but
17 towards the beach right around that area that -- prior to
18 that area this is all 35 miles per hour.

19 When you get past that it goes into a 55 miles per
20 hour speed zone. Right towards the Lois circle area that
21 some of the other ---

22 Q. --- did you say Lois Circle?

23 A. Lois Circle, yes.

24 Q. That's the road that comes and joins into Broughton
25 Road?

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1 A. Yes. That some of the other witnesses had testified
2 that they lived on. That turns into a 45 and then it
3 just around the curve there is a suggested speed of 35
4 miles per hour.

5 Q. Okay. And when did that come up? Was that always
6 there since you grew up?

7 A. No.

8 Q. Okay. Now when you grew up was the curve on that
9 road the same as it is today?

10 A. Absolutely.

11 Q. And it was the same way on November 10, 2011.

12 A. Yes.

13 Q. Okay. When did those signs recommending 35 miles
14 per hour around that curve go up?

15 A. They actually went up when they changed the entrance
16 to the ball field. There is a youth field out there and
17 right at the curve there is a road that juts off to the
18 right.

19 And that's -- when you have people entering or
20 exiting the ball field there I guess that is why they
21 changed it. They paved that road and made that road an
22 access road so.

23 Q. But they didn't change Broughton Road ---

24 A. --- no ---

25 Q. --- they just added a road coming off it?

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1 A. Correct.

2 Q. What medicines were you taking in the days leading
3 up to November 10, 2011?

4 A. Okay. I am prescribed Trazadone, which is for
5 sleep. I take Benadryl as needed for outbreaks, and I
6 was also taking Zoloft, which is an anti-depressant. I
7 think that's it at that time.

8 Q. Was there something called Clonazepam?

9 A. Oh, I'm sorry; I totally forgot that, Klonopin, yes.
10 Clonazepam is also known as Klonopin. That is an anti-
11 anxiety medication and I also take that at bedtime.

12 Q. Okay. And during the days leading up to November
13 10, 2011 you mentioned Klonopin at bedtime. Please tell
14 the jury when you would take those medicines and what
15 each one was for?

16 A. Okay. The Trazadone I only take at bedtime. It
17 helps me sleep. The Klonopin is also a relaxant so it
18 also helps me sleep. And the Benadryl is for my severe
19 condition so I take that as needed, but usually more in
20 the evening, and then the Zoloft.

21 I mean I try to keep them all grouped together so I
22 don't have to worry about taking all these meds at
23 different times so I just generally take everything at
24 bedtime.

25 Q. Okay. Do you remember whether or not you were

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- 1 having a Stevens Johnson outbreak in the days before
2 November 10, 2011?
- 3 A. I know I was under a lot of stress at that point.
- 4 Q. Because of the death of your step-dad?
- 5 A. Because of the death of my step-dad and the death of
6 my grandmother two weeks prior to the accident.
- 7 Q. Okay. And why does stress matter?
- 8 A. Stress matters because it clearly affects -- it
9 causes inflammation and things like that so there are
10 several things that I can't take like ---
- 11 Q. --- let me just ask it this way ---
- 12 A. --- I'm sorry.
- 13 Q. Are your outbreaks in any way caused by stress?
- 14 A. Yes.
- 15 Q. Or they can be.
- 16 A. Absolutely.
- 17 Q. Okay. Now with the warning that your --
18 understanding that your memory isn't perfect because of
19 your concussion from the accident ---
- 20 A. --- right ---
- 21 Q. --- I'd like you to describe what you did on the day
22 of the accident.
- 23 A. Okay.
- 24 Q. I want you to only describe the parts that you have
25 a memory of.

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- 1 A. Okay.
- 2 Q. So please start at about 4 o'clock in the afternoon.
- 3 A. At about 4:00?
- 4 Q. Yes.
- 5 A. Okay. Brittany Hartley had come over to the house
- 6 and said that at the time that her boyfriend would not
- 7 let her use the car to turn in a test that she needed to
- 8 take to school. She ---
- 9 Q. --- she lived near you in your neighborhood?
- 10 A. She lived actually right beside me.
- 11 Q. Okay. Go ahead.
- 12 A. At that point I told her that I would be happy to
- 13 take her to turn in her test. And so she said she had to
- 14 be there I'm assuming around 4:45, 5 o'clock. We got
- 15 there at 4:45. I think she had to have it turned in by
- 16 5:00 so we got there at 4:45.
- 17 Then from there she and I just wanted to catch up
- 18 because she obviously wasn't getting along with her
- 19 boyfriend; he wouldn't let her use the car. So we went
- 20 to Applebee's to talk.
- 21 Q. Okay. And what did you do at Applebee's?
- 22 A. We sat around and just kind of chit chatting and
- 23 talking and ---
- 24 Q. --- did you order drinks?
- 25 A. Yes, ordered drinks.

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1 Q. Okay. And how were you at Applebee's for?

2 A. We got there I would say just before 5 o'clock
3 because she was at the Trident campus, the Berkeley
4 Trident campus here in Moncks Corner.

5 So however long it takes to get from there to
6 Applebee's that's how long it took us to get there. And
7 then from that point ---

8 Q. --- so you got in and you got a seat and you ordered
9 a drink?

10 A. I ordered a drink, yes.

11 Q. What did you order?

12 A. I ordered a cranberry vodka.

13 Q. Okay. A double or single?

14 A. A single.

15 Q. Okay. And do you remember what Brittany drank?

16 A. She drank the same.

17 Q. Okay. And so how long did it take you to drink
18 that drink?

19 A. I was sipping on it so it was probably an hour it
20 took me for one drink. We were more talking than
21 anything.

22 Q. Okay. And then what did y'all do?

23 A. After that drink was over the bartender asked us if
24 we would like another and we said yes. And we sat there
25 for another hour, we continued to talk, and again over

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- 1 that hour period of time had another drink.
- 2 Q. And was that another vodka cranberry?
- 3 A. Yes.
- 4 Q. Okay. And do you still have a clear memory of
- 5 Applebee's?
- 6 A. Yes.
- 7 Q. Have you always had a clear memory of Applebee's?
- 8 A. Yes.
- 9 Q. Okay. Please tell the jury what happened next.
- 10 A. We stayed there -- actually Brittany ordered a third
- 11 drink and I think drank half of it or something like that
- 12 and then we ended up leaving.
- 13 Q. Do you remember walking out of Applebee's?
- 14 A. No.
- 15 Q. Do you remember driving away from Applebee's?
- 16 A. No.
- 17 Q. What is your last memory in relation to Applebee's?
- 18 A. Talking to a friend of mine Kerri [phonetic].
- 19 Q. When you were talking to your friend Kerri
- 20 [phonetic] were you buzzed?
- 21 A. Not at all.
- 22 Q. Were you drunk?
- 23 A. Not at all.
- 24 Q. Were you in any way impaired?
- 25 A. Absolutely not.

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1 Q. What happened -- what's your next memory after that?

2 A. The next memory that I have was actually we were
3 starting to head home and on the way, which would be off
4 of 52 we stopped by Geronimo's Bar and Grill. And I
5 remember talking to Mickie [phonetic] Metts -- Michelle
6 Metts which you heard from yesterday.

7 Q. Do you remember ordering a drink from the bartender,
8 Rob who we heard from?

9 A. Yes.

10 Q. Okay. What did you order?

11 A. Also a cranberry vodka.

12 Q. Okay. Do you remember what time you got over
13 there?

14 A. It was probably 7:15 maybe.

15 Q. And so you ordered a drink, talked to Mickie
16 [phonetic]. What else did you do there?

17 A. I have no recollection.

18 Q. Were you sitting in the court earlier in the week
19 when we heard Jeff Forinash testify?

20 A. Correct.

21 Q. The former Air Force retired ---

22 A. --- right.

23 Q. You don't remember talking to him?

24 A. I do not remember talking to Jeff.

25 Q. Okay. Do you attribute that to being impaired?

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- 1 A. Not at all.
- 2 Q. Were you impaired at that time?
- 3 A. Not at all.
- 4 Q. Were you impaired when you were talking to Mickie?
- 5 A. Not at all. She had all of her little kids with
- 6 her. I mean she had a baby that was 18 months who was
- 7 crawling around ---
- 8 Q. --- to what do you attribute your inability to
- 9 remember that?
- 10 A. Just the concussion.
- 11 Q. Okay.
- 12 A. The loss of consciousness.
- 13 Q. Okay. Do you remember talking to Janet Jurosko?
- 14 A. No, I do not.
- 15 Q. She remembers talking to you though didn't she?
- 16 A. Absolutely.
- 17 Q. Okay. Where were -- do you remember where you and
- 18 Mickie were talking? Was it in Geronimo's?
- 19 A. It was not in Geronimo's.
- 20 Q. Where was it?
- 21 A. It was next door to Geronimo's. They had made it
- 22 into a gym area where they had a place like the big blue
- 23 mats that you would wrestle on or whatever else like
- 24 that. They have those and her son was doing actually I
- 25 think it was wrestling practice with her coach -- I'm

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- 1 sorry, with his coach.
- 2 Q. Okay. Do you know how long you hung out that area
- 3 of Geronimo's and the place next door to it?
- 4 A. I actually remember getting in the car so we had to
- 5 leave -- we left there probably 20 after 8:00.
- 6 Q. Okay. So you stayed at Geronimo's ---
- 7 A. --- maybe 8:30.
- 8 Q. You stayed at Geronimo's for an hour plus, is that
- 9 right?
- 10 A. Correct.
- 11 Q. Okay. But you don't remember that whole time.
- 12 A. No.
- 13 Q. But you remember getting in the car from Geronimo's?
- 14 A. Yes.
- 15 Q. Okay. When you got in the car were you impaired in
- 16 any way?
- 17 A. Not at all. I wouldn't have driven.
- 18 Q. Did you have more than one drink at Geronimo's?
- 19 A. No.
- 20 Q. You got in the car do you remember driving?
- 21 A. No.
- 22 Q. What did ---
- 23 A. --- I -- I'm sorry. I was just going to say the
- 24 next thing I remember is pulling up to the Scotchman.
- 25 Q. That's what I was going to ask you. What's your

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- 1 next memory?
- 2 A. Pulling up to the Scotchman.
- 3 Q. What is the Scotchman?
- 4 A. The Scotchman is right here at the head of the road.
- 5 We stopped there because -- I don't know if you want me
- 6 to elaborate but...
- 7 Q. Go ahead and tell them why you stopped there.
- 8 A. Okay. We stopped there because my Mom, myself,
- 9 Brittany, and a friend of mine Jason were all going to go
- 10 back to the house and watch a football game and play a
- 11 board game. So I kind of stopped to get beer for
- 12 everybody. I didn't go in and get it Brittany did. So
- 13 we stopped to get beer.
- 14 Q. Okay.
- 15 A. And cigarettes I think.
- 16 Q. Okay. What is your next memory after stopping to
- 17 get beer? Before I ask you that if I showed that beer
- 18 would you have a memory of what Brittany bought?
- 19 A. Yes.
- 20 Q. You would?
- 21 A. Yes.
- 22 Q. Okay. Do you know what kind of beer she bought?
- 23 A. Absolutely. Bud Lite.
- 24 Q. How do you know that?
- 25 A. That would be the only kind I would drink.

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1 Q. Oh, okay. So is that a memory or is that -- that is
2 not a memory?

3 A. I physically remember her going into the Scotchman,
4 my friend Jason pulling up to us, beside the Scotchman
5 right at the Scotchman as well.

6 And he was saying to Brittany, because she had
7 gotten out and opened her door, and he said to her hey,
8 what's going on? I'll meet y'all at the house is what I
9 heard him say to her. And she said, okay we'll see you
10 there. She went in, purchased the beer, came back ---

11 Q. --- do you remember seeing her come back with the
12 beer?

13 A. No.

14 Q. Okay. But you remember talking to Jason?

15 A. I remember Jason talking to Brittany.

16 Q. Oh, you remember overhearing it?

17 A. Overhearing it. The door was open.

18 Q. Do you remember while you were sitting there in the
19 car were you impaired in any way?

20 A. Absolutely not. I was actually trying to make a
21 phone call to call my Mother to tell her that we were on
22 our way there.

23 Q. Okay. Were you buzzed?

24 A. Not at all.

25 Q. Were you drunk?

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- 1 A. Not at all. It had been three and half hours.
- 2 Q. Was your mental state anything but sober?
- 3 A. No.
- 4 Q. Okay. When you say it had been three and half
- 5 hours what are you talking about?
- 6 A. From the time I started having a drink, the first
- 7 drink, three drinks later I mean...
- 8 Q. You had about a drink an hour maybe hour and half?
- 9 A. Right.
- 10 Q. Okay. Not enough drinking to cause you to be
- 11 impaired you're saying?
- 12 A. I wouldn't say so. It wasn't like I was slamming
- 13 them or anything. It was just a sipping and you know,
- 14 just a sipping.
- 15 Q. All right. That being said what's your next memory
- 16 of the evening?
- 17 A. I do not -- I remember leaving the Scotchman. The
- 18 next thing that I remember is entering the curve and
- 19 seeing headlights in my lane.
- 20 Q. What did you do?
- 21 A. I have no idea.
- 22 Q. You don't remember?
- 23 A. I don't remember.
- 24 Q. What is your next memory?
- 25 A. My next memory would be when the ambulance got on

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1 the scene and the paramedics asking me if I hurt
2 anywhere, asking me what day of the week it was, who the
3 President of the United States was, if I was allergic to
4 anything.

5 Q. Do you remember if you were able to answer those
6 questions?

7 A. When she asked me what day of the week it was I told
8 her it was Thursday, who the President of the United
9 States was I said Barak Obama.

10 What allergies I had, and I of course I'm severely
11 allergic to several things having Stevens Johnson
12 syndrome. So it was imperative that I let her know that
13 I had Stevens Johnson syndrome and that I couldn't just
14 have anything so.

15 Q. Okay. What -- when you were talking to the EMT
16 people there were you impaired?

17 A. No. I mean I remember all that as clear as day.

18 Q. Were you buzzed?

19 A. Not at all.

20 Q. Was your mental state in any way, outside from the
21 stress of the accident, was your mental state in any way
22 influenced by drugs or alcohol at that time?

23 A. No.

24 Q. Okay. What is the next thing that you remember?

25 A. Actually let's see, the next thing that I remember

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1 would be waking up on Friday talking to you and my Mom.

2 Q. Okay.

3 A. And then right after that ---

4 Q. --- you don't remember talking to or having any
5 officers around before that?

6 A. Not at all.

7 Q. Okay. What is the next thing you remember after
8 that Friday?

9 A. Then Saturday morning evidently I woke up or
10 sometime Saturday, I don't know if it was the morning,
11 but I woke up and I called my Mom and I said what the
12 heck am I doing in the hospital and why do I have rods
13 sticking out of my leg.

14 So there was -- I guess at that point I hadn't even
15 remembered talking to you guys. You know what I'm
16 saying? It didn't register.

17 Q. Okay. Now in the immediate aftermath of this
18 accident is it fair to say that your memory was messed
19 up?

20 A. Yes.

21 Q. Since that time as the weeks and months and now
22 years have gone by since the accident have you done
23 anything to try and remember what happened?

24 A. I countless times have tried to remember. It just
25 doesn't make sense to me. I go to counseling. I do

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1 meditation, -- hypnosis, just different things like that
2 just trying to understand because I knew I wasn't
3 impaired.

4 Q. Isn't it true in the weeks or months right after the
5 accident you actually thought you had been ruffied and
6 that's why you didn't have a memory?

7 A. Yes. I mean I had no clue. I knew something had to
8 happen but I didn't know what.

9 Q. Because you knew you weren't impaired.

10 A. Right.

11 Q. And you knew you had no memory.

12 A. Right.

13 Q. When did you learn that you had not been ruffied?

14 A. When I guess when I got the toxicology back, the
15 toxicology report.

16 Q. It didn't show any Ruffilan, right?

17 A. No.

18 Q. Okay.

19 A. It showed a bunch of sedatives and everything else.

20 Q. Do you know where those sedatives came from?

21 A. I was given 27, 28 several different medicines
22 from...

23 Q. From the hospital?

24 A. From the hospital and the Meduflight.

25 Q. Okay. And it's your understanding that the blood

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1 that was drawn from you was drawn after you had major
2 surgery at MUSC, right?

3 A. Oh absolutely. I had ---

4 Q. --- that's the only reason there would be anything
5 like Ketamine or Hydrocodone, or this other stuff ---

6 A. --- Hydromorphone anything like that, Dilaudid,
7 Versed, any of the sedative medications like that.

8 Q. You wouldn't have taken anything like that yourself,
9 correct?

10 A. No.

11 Q. And you didn't take anything like that yourself?

12 A. Absolutely not.

13 Q. Okay. As time passed were you able to remember any
14 more as you tried? Were you able to remember anymore of
15 the night?

16 A. You know even through this trial hearing some of the
17 testimony from the witnesses like Jeff yesterday once he
18 said that we were talking about his son renting my condo,
19 he had mentioned that, I remembered that.

20 Q. But you never remembered it before that?

21 A. I didn't remember it before that, no.

22 Q. I guess he never rented your condo?

23 A. No.

24 Q. So all the way up until yesterday you still were
25 having memories of bits and pieces coming back to you.

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1 from this accident?

2 A. Yes. I'm still learning.

3 Q. Okay.

4 MR. MAYER: Court's indulgence.

5 [Whereupon, Mr. Mayer reviews documents]

6 Q. [Mr. Mayer] How has this accident made you feel?

7 A. There is not a day that goes by that I don't think
8 about it ---

9 MR. WEST: --- objection. Relevance.

10 THE COURT: Please approach.

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: You may proceed. Sustained. Rephrase.

14 Q. [Mr. Mayer] Shana, you know you didn't have to
15 testify today, right?

16 A. Absolutely.

17 Q. Why did you choose to testify?

18 A. The night of November 10, 2011 has forever changed
19 lives, several lives. Every day I go home I have to pass
20 that curve and know somebody passed away.

21 It breaks my heart every day. That's something that
22 I have to live with is the fact that there was an
23 accident that somebody did die in, but it was an
24 accident. I just -- constant counseling...

25 Q. Shana, is there any doubt in your mind that you were

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1 sober when you were driving the curve that night?

2 A. There is absolutely no doubt in my mind.

3 Q. Thank you. Please answer any questions the
4 prosecutor has.

5 THE COURT: You may proceed.

6 MR. WEST: Thank you, Judge.

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1 CROSS-EXAMINATION

2 BY MR. WEST:

3 Q. Good afternoon, Ms. Robinson.

4 A. Good afternoon.

5 Q. You testified that your memory is missing and bits
6 come back, correct?

7 A. Bits and pieces yes.

8 Q. Now your testimony is that you remember going to
9 Applebee's, right?

10 A. Yes.

11 Q. You don't remember exactly when and how you arrived
12 at Geronimo's, is that right?

13 A. I remember leaving, I mean getting in the car to
14 leave so I knew I had driven there.

15 Q. Okay. So you drove to Geronimo's but you just
16 testified you don't remember exactly what happened in
17 Geronimo's, right?

18 A. I remember bits and pieces of what happened at
19 Geronimo's.

20 Q. Okay. You didn't remember how many drinks or what
21 happened in Geronimo's until yesterday when the bartender
22 came up that was your testimony?

23 A. Not at all.

24 Q. Okay.

25 A. That's not my testimony. I have a receipt that I

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- 1 know I only had one drink.
- 2 Q. Right. So you remember this receipt?
- 3 A. No, I had the receipt. I mean I knew ---
- 4 Q. --- you have had it or you do have it?
- 5 A. I don't currently have it. But yes, the receipt was
- 6 there.
- 7 Q. Do you remember what you did with the receipt?
- 8 A. I didn't even realize what the receipt was until
- 9 days later.
- 10 Q. Okay.
- 11 A. So, no.
- 12 Q. Do you remember giving that to law enforcement?
- 13 A. No.
- 14 Q. Okay. You didn't give that to law enforcement did
- 15 you?
- 16 A. No.
- 17 Q. Okay.
- 18 A. I would have given it to Aaron.
- 19 Q. Did you give it to Aaron?
- 20 A. I was in the hospital for two weeks.
- 21 Q. Okay. Now from Geronimo's you went to the
- 22 Scotchman.
- 23 A. Correct.
- 24 Q. And there are parts of that drive that you don't
- 25 remember?

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1 A. Correct.

2 Q. Okay. So you don't know whether you came up Main
3 Street or you came down 17-A to get from Geronimo's to
4 the Scotchman?

5 A. I know how I would typically drive that.

6 Q. Well, that's not really the question.

7 A. Okay.

8 Q. Do you remember how you drove it that night? Did
9 you go down Main Street or did you go down 17-A?

10 A. I would have went straight across to the road ---

11 Q. --- would have gone or did you go.

12 A. I'm sorry?

13 Q. Did you go? Which way did you go? That's all I'm
14 trying to get at.

15 A. Right, okay.

16 Q. It's not really a trick question or anything. I'm
17 just trying ---

18 A. --- no. When I pulled out of Geronimo's I went
19 across on the little side street, which is the way I
20 would always go by the car lot and then turn down 17 I
21 assume that is.

22 Q. Right by McDonalds?

23 A. Yes.

24 Q. That little curved road near the middle school.

25 A. Yes.

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1 Q. Okay. And then you got on 17-A and from 17-A you
2 take that past the Piggly Wiggly, you take a right on
3 Main Street and that would take you to the Scotchman.

4 A. That's what I would assume ---

5 MR. MAYER: --- Judge, I object.

6 THE COURT: Basis?

7 MR. MAYER: She already said she didn't remember
8 that drive.

9 THE COURT: That is actually not accurate. It's an
10 appropriate question and you can follow-up to clarify her
11 answer. She said that was what she would normally do.

12 MR. MAYER: Okay.

13 THE COURT: Overruled. You may answer the
14 question, ma'am.

15 THE WITNESS: I'm sorry?

16 THE COURT: Do you remember the question or do you
17 need him to repeat?

18 THE WITNESS: If he can repeat.

19 THE COURT: Please repeat the question ---

20 Q. [Mr. West] --- I'm just trying to get an idea of how
21 you got from Geronimo's to the Scotchman. I mean I'm not
22 trying to trick you or anything.

23 A. No, no. I mean...

24 Q. I understand how to get there myself so I'm just
25 trying to walk you through and try to figure out how you

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1 go.

2 A. It would never have been -- I never think it's
3 feasible to take Main Street so that wouldn't have been
4 something I would have done.

5 Q. Okay.

6 A. But I can't honestly testify exactly which way I
7 went. I can't because I don't ---

8 Q. --- it's just because you don't remember.

9 A. Correct.

10 Q. Okay. So you don't remember how you got from
11 Geronimo's to the Scotchman. Now, you said you
12 remembered getting to Scotchman and Brittany went in and
13 she bought the beer, right?

14 A. Correct.

15 Q. Okay. Now when Brittany went in and she bought the
16 beer and you remember your friend Jason.

17 A. Jason pulled up about the same time that we pulled
18 up, yes.

19 Q. Who is Jason?

20 A. Jason Wiggins.

21 Q. Jason Wiggins?

22 A. Uh Huh.

23 Q. Now Jason Wiggins told you he was going to meet you
24 at your house after you went to the Scotchman, right?

25 A. No. Jason and I had been speaking on and off

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- 1 through text ---
- 2 Q. --- wasn't your testimony earlier that he was going
3 to meet you to watch football?
- 4 A. Yes, but we had already made that plan earlier.
- 5 Q. Okay. So when he was talking to Brittany at the
6 Scotchman ---
- 7 A. --- it wasn't just like hey, I'm coming over. I
8 mean we already had made that plan that the game was
9 coming on and we were going to play a board game.
- 10 Q. Okay. Again, I'm just trying to establish who is
11 where, when, and how people are getting where they are
12 going.
- 13 A. Yes, sir.
- 14 Q. So you, Brittany, Jason, and your Mom are scheduled
15 to watch a football game off of Broughton Road and to get
16 to that same place that you are going to watch the
17 football game you would have to go around this curve?
- 18 A. Correct.
- 19 Q. Okay. So you're driving your BMW.
- 20 A. Correct.
- 21 Q. Okay. So you're driving your BMW from the
22 Scotchman down the straight away of Broughton Road. This
23 is the part where you don't remember.
- 24 A. Correct.
- 25 Q. Okay. So your testimony earlier ---

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1 A. --- I mean I would have to have done that but yes I
2 don't --

3 Q. But your testimony earlier was you talked about
4 speed limits and the speed limits signs and where they
5 were and everything ---

6 A. --- that's because I ---

7 Q. --- you don't remember passing those speed limit
8 signs?

9 A. I have no physical memory. I just know because I
10 grew up here and it's where I've always lived.

11 Q. Okay. So you don't remember passing an F-250 that
12 was going at least 65 miles per hour?

13 A. I don't think that's what he said at all. I think
14 he said 60.

15 Q. Okay. Well in order to pass somebody going 60
16 wouldn't it be fair to say that the person passing the 60
17 miles per hour car would have to go faster than 60?

18 A. Yes, sir. That would make sense.

19 Q. Okay. 60 is greater than 47, right?

20 A. Yes, sir.

21 Q. Okay.

22 A. But that would have been in the 55 mile per hour
23 speed zone.

24 Q. I understand. I understand. So, you said -- I want
25 to back it up a little bit. We didn't start at

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1 Applebee's really. Before you got to Applebee's you had
2 taken some of these prescription pills that you've
3 already said, right?

4 A. No.

5 Q. But you've heard the testimony that these
6 prescription pills that you own were in fact in our
7 blood.

8 A. Yes. Those prescription pills also stay in your
9 system for days.

10 Q. Okay. So you are at Applebee's and you're ordering
11 drinks. Who orders the drinks?

12 A. I ordered my drink and Brittany ordered her drink?

13 Q. Did you pay for your drink?

14 A. Brittany paid for all the drinks there.

15 Q. Okay. What did you eat?

16 A. I didn't.

17 Q. You didn't eat anything. An empty stomach while you
18 are drinking.

19 A. I didn't eat anything at Applebee's.

20 Q. Okay. So you didn't eat anything at Applebee's.

21 You drank at least two vodka cranberry drinks. You go to
22 another bar and you drink another vodka cranberry drink
23 and that's at least three drinks that we know of that you
24 remember.

25 A. Correct.

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1 Q. And then you get in your car. You don't remember
2 the trip to the Scotchman.

3 A. Right.

4 Q. You don't remember the trip from the Scotchman.

5 A. No.

6 Q. So you don't remember whether you went 79 miles per
7 hour or not.

8 A. No.

9 Q. Okay. Now, how long did you say you've been living
10 on Broughton Road down at your parents or down Broughton
11 Road?

12 A. My family owns Atkins landing right by Lyons Beach
13 area they own that so I've grown up there all my life.

14 Q. How long have those ball fields been there that
15 you've been talking about?

16 A. They've been there for a long time.

17 Q. Okay.

18 A. But the entrance used to be different.

19 Q. Okay.

20 A. They didn't have that access road. That was only
21 for ---

22 THE COURT REPORTER: --- I'm sorry. What was the
23 last part of your answer?

24 A. That was only for Santee Cooper that access road
25 that I was talking about.

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1 Q. [Mr. West] So the entrance road wasn't ---

2 A. --- it's always been there as a rock road that
3 nobody ever entered or exited other than Santee Cooper
4 employees.

5 Q. How do people get to the ball fields?

6 A. Through either by Lois Circle or Lois Lane or -- I
7 can't remember the one closest to the curve that road.
8 That would be how you would have gotten to the ball
9 field.

10 Q. When did this change between ball field roads and
11 Lois Circle roads change in order that people could get
12 to the ball field? Was it before November 10, 2011?

13 A. Yes.

14 Q. Okay. So you were aware of that access road long
15 before this accident?

16 A. Yes.

17 Q. Okay. Now your testimony is you don't remember
18 whether you were going 79 or not. And then you do
19 remember seeing headlights.

20 A. Yes.

21 Q. Okay.

22 A. In my lane.

23 Q. In your lane?

24 A. Yes.

25 Q. You remember seeing headlights in your lane.

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1 A. Yes.

2 Q. Okay. I'm going to show the witness what has been
3 marked as State's exhibit number 1.

4 [Whereupon, the photograph is shown]

5 Q. All right. Is it fair to say this is a picture of
6 that curve?

7 A. Yes.

8 Q. Okay. I'm going to give you this pointer. It's
9 got a red button on it. You got one? Let's point
10 together.

11 A. Okay.

12 Q. Show me where in your lane Candy Zoll was when you
13 first saw her headlights?

14 A. Where was I or where was she?

15 Q. Where was she?

16 [Whereupon, the witness indicates on photograph]

17 Q. She was right there [indicates].

18 A. Right around in this area [indicates].

19 Q. Okay.

20 A. Maybe here [indicates] or maybe a little further
21 back.

22 Q. Okay.

23 A. I don't know. Right around in that area I would
24 say.

25 Q. And your testimony is that from here [indicates] you

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1 would have seen her here [indicates].

2 A. Yes.

3 Q. Okay. But we know the collision happened here
4 [indicates]. So you're saying you saw her in her lane or
5 in your lane going from here [indicates] swerving into
6 your lane here [indicates] where you hit her here
7 [indicates].

8 And the evidence shows you drove her back here
9 [indicates], her car ending up here [indicates] and then
10 your car ending up over here [indicates].

11 A. Okay.

12 Q. That's your testimony?

13 A. I have no memory other than seeing headlights in my
14 lane. I can't -- I don't -- I can't tell you how far
15 away she was. I can't tell you -- I mean I'm guessing at
16 this point so ---

17 Q. --- oh, you're guessing as to ---

18 A. --- no, I'm not ---

19 Q. --- what you are testifying to?

20 A. No, I'm not guessing as to what I'm testifying to.
21 I'm guessing as to where she was.

22 Q. Let me see if I can get this right.

23 A. Okay.

24 Q. So it was your testimony that the only thing you
25 remember is seeing headlights, right?

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1 A. No.

2 Q. No? So you remember where you were when you were
3 driving what?

4 A. I remember coming around the curve and seeing
5 headlights in my lane. That's all I remember.

6 Q. Okay. So when you supposedly saw headlights in
7 your lane you went into her lane?

8 A. I have no idea.

9 Q. Okay. So your testimony is that if you saw
10 somebody's headlights in your lane you would have stayed
11 in your lane?

12 MR. MAYER: Objection?

13 THE COURT: Basis?

14 MR. MAYER: She doesn't know. She's already said
15 she doesn't know. It's cumulative.

16 THE COURT: Overruled. Ma'am, you may answer the
17 question yes or no and then you may explain your answer.

18 A. I have no idea.

19 Q. [Mr. West] Okay. I'm just not getting a very good
20 picture of what your testimony actually is as to what you
21 remember and what you don't remember because ---

22 A. --- I'm sorry, sir. I've got the same problem
23 because of a concussion.

24 Q. Okay.

25 A. But the facts that I have stated I do remember.

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1 Q. Okay. Well, you've seen the evidence in this case?

2 A. Yes.

3 Q. We know that people you put up and the people that
4 I've put up or the State has put up put both cars in this
5 lane [indicates] of travel, right?

6 A. Yes, sir.

7 Q. Okay. That's not the lane of travel that you were
8 supposed to be in, right?

9 A. Correct.

10 Q. Okay. So you crossed that center line, right?

11 A. I would assume so.

12 Q. Okay.

13 A. But I can't tell you why.

14 Q. I want to go back a little bit to the prescription
15 drugs that you are prescribed.

16 Are you familiar with the warnings with Clonazepam
17 that say the side effects are drowsiness, interference
18 with cognitive and motor performance, impaired motor
19 function, impaired coordination, impaired balance, and
20 dizziness?

21 A. Yes, sir. But that would have had nothing to do
22 with that night because I wouldn't have taken it.

23 Q. You know it was in your blood, right?

24 A. Absolutely, but it can stay in your blood for up to
25 two to four days.

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1 Q. Well, if it's still in your blood then it is still
2 mixing with the alcohol that was in your blood, right?

3 A. It depends on what ---

4 MR. MAYER: --- objection.

5 THE COURT: Basis?

6 MR. MAYER: Assume -- can we approach?

7 THE COURT: Uh Huh.

8 [Whereupon, an off the record bench conference is
9 held]

10 THE COURT: Overruled. Ma'am, do you need the
11 question repeated?

12 THE WITNESS: Please.

13 THE COURT: Please repeat the question.

14 Q. [Mr. West] Sure. So you know you had taken
15 Clonazepam at some point, right?

16 A. Probably the night before.

17 Q. Okay. And you know that Clonazepam can stay in
18 your body over a day. That's what you testified to,
19 right?

20 A. It would stay in there up to four days.

21 Q. Okay. So if it's still in your blood then it's
22 going to mix with the things that you are drinking at
23 that time right?

24 A. Not necessarily.

25 Q. Oh, so the blood stream is different?

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- 1 A. No sir, because if you were to do testing for
2 marijuana that would stay in your system 30 days plus.
3 And that wouldn't affect you. It would just be stored in
4 your fat cells. It has nothing to do with that.
5 Q. Did they test your fat cells in this case?
6 A. I have no idea.
7 Q. They tested your blood, didn't they?
8 A. They did.
9 Q. The Clonazepam was found in your blood, wasn't it?
10 A. Right.
11 Q. Okay. So the Clonazepam ---
12 A. --- marijuana would also be found in your blood for
13 thirty days or more.
14 Q. Okay. You're getting a little bit off topic here.
15 I'm asking about Clonazepam and alcohol and how they mix
16 and where it was found, okay?
17 A. Okay.
18 Q. So the Clonazepam and the alcohol were found in your
19 blood, correct, because you drank three vodka drinks
20 after you had taken Clonazepam, right?
21 A. At least I would say twelve hours before or more.
22 Q. Okay. But you admit taking it.
23 A. For bedtime.
24 Q. Okay. For bedtime...
25 A. Not the day of, no.

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1 Q. Now you took Clonazepam and Trazadone for bedtime,
2 right?

3 A. I'm prescribed that.

4 Q. Well, just because you're prescribed something
5 doesn't mean you can't drink alcohol and use a
6 prescription at the same time, right?

7 A. I'm not doing that.

8 Q. Oh. So the Trazadone and the Clonazepam that were
9 found in your blood stream which you admit taking mixed
10 with the alcohol that was in your blood stream that you
11 admit drinking ---

12 A. --- correct ---

13 Q. --- but that's not what you are saying.

14 A. I don't understand. I'm sorry.

15 Q. That's all right.

16 A. I don't understand what you're asking.

17 Q. I'll move on. I'll move on. Are you aware that the
18 warnings for Trazadone say do not drive a car or operate
19 machinery until you know how this medication affects you?

20 A. Yes, sir. I've been on that since 2008. I'm very
21 well aware of how it affects me.

22 Q. So even though you know this warning is there and
23 you know how this affects you, you took Trazadone in
24 combination with Clonazepam and then drank at least three
25 vodka drinks.

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1 A. Not the same day, no sir.
2 Q. Okay. Not the same day, even if it is not the same
3 day ---
4 A. --- but I guess what I'm trying to say is if what
5 you're going is those warning labels that would mean I
6 could never drive a car ever because I've taken this
7 medication? No, not at all. I mean, I'm prescribed
8 that and monitored -- I mean, no.
9 Q. Okay. Trazadone and Clonazepam and then you took
10 Benadryl as well, right?
11 A. I take Benadryl as needed for my Stevens Johnson
12 syndrome.
13 Q. Okay. You take Benadryl, Clonazepam, Trazadone and
14 you drink alcohol as needed?
15 A. Alcohol as needed?
16 Q. Yes, I'm just wondering when do you ---
17 A. --- I just had a drink that -- I mean I drank that
18 night. I mean, no...
19 Q. Do you drink alcohol to go to bed?
20 MR. MAYER: Objection.
21 THE COURT: Basis?
22 MR. MAYER: Can we approach?
23 THE COURT: Uh Huh.
24 [Whereupon, an off the record bench conference is
25 held]

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1 THE COURT: The objection is withdrawn. Ma'am, do
2 you need the question repeated?

3 THE WITNESS: Please.

4 THE COURT: Please repeat the question.

5 Q. [Mr. West] I'm just trying to figure out when you
6 take all of these things in combination you, of course,
7 are prescribed them so you have reasons for them.

8 A. Yes, sir.

9 Q. But at the same time I'm trying to figure out when
10 you took the Trazadone, the Clonazepam, the Benadryl, and
11 the alcohol they were all in your blood.

12 So I'm just trying to figure out when you would have
13 taken these. And you say that they could have lasted
14 days but we know they were in your blood stream at some
15 point ---

16 A. --- and they would remain in your bloodstream for a
17 while, any of those medications.

18 Q. And again, one of the things that is just unclear to
19 me is it your testimony that even though you took things
20 the day before -- that because you took them the day
21 before even though they are in your blood stream on the
22 day in question just because you took them the day before
23 that's means they are not going to intermingle with the
24 alcohol that you drank?

25 A. I wouldn't think so, no.

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1 Q. Okay. So it's your testimony that the Trazadone,
2 the Benadryl, and the Clonazepam were eliminated from
3 your bloodstream before you took or you drank alcohol.

4 A. Sir, that's not possible.

5 Q. What's not possible?

6 A. It's not possible for it to be eliminated because
7 they stay in your system so long.

8 Q. Okay.

9 A. But -- go back to the -- if I was talking about
10 something like marijuana stays in your system for 30 days
11 that doesn't mean that I'm high for 30 days.

12 Q. Okay. Is your testimony today that you know that
13 they last in your system as long as they do?

14 A. Yes, sir.

15 Q. Then wouldn't it be a fair statement to say that you
16 knew in 2011 on November 10th that these drugs could have
17 stayed in your bloodstream as long as they did.

18 A. Sure.

19 Q. Yet, you still went to at least two bars and
20 conveniently remember three drinks and still drank the
21 alcohol in combination with those drugs.

22 A. They would have had no interaction with each other
23 at that point.

24 Q. Okay.

25 A. If you can't give me levels as to what it would have

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1 been when I took it, it could have been on its sixth half
2 life.

3 Q. Okay.

4 A. I'm saying if you tested my blood when I originally
5 took them -- if you tested my blood when I originally
6 took them I mean, it breaks down so much. And you're
7 going to have 50 percent then from that you're going to
8 have 50 percent left you know, from the 50 percent.

9 And then from that 50 percent you're going to have
10 50 percent. So it's going to go down exponentially. It
11 just depends on what medication it is. So I may have, I
12 mean, even though there is a trace of anything it
13 wouldn't...

14 Q. Are you familiar with the fact that alcohol levels
15 go down over time as well?

16 A. Alcohol evaporates a lot differently. Your body
17 usually metabolizes a drink an hour.

18 Q. So your testimony is that if you have a certain
19 level of alcohol at one point in time that that alcohol
20 would have been higher earlier.

21 MR. MAYER: Objection.

22 THE COURT: Basis?

23 MR. MAYER: That's not what she said.

24 THE COURT: Overruled. She made a comment
25 regarding the drug or alcohol being metabolized. It's an

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1 appropriate follow up question based on the answer.

2 Overruled.

3 Q. [Mr. West] Now, you don't remember driving down
4 Broughton Road but you remember telling one of the EMT's
5 that it was Thursday, you knew the President.

6 A. Yes, sir. I remember telling her my leg hurt, my
7 arm hurt.

8 Q. You sat through this entire trial, right?

9 A. Yes, sir.

10 Q. You've heard everything the other witnesses had to
11 say, right?

12 A. Yes, sir.

13 [Whereupon, Mr. West and Mr. Alfaro confer]

14 Q. Now, just to be clear you said you remember leaving
15 the Scotchman but you don't remember how fast you were
16 going, correct?

17 A. I remember pulling up to the Scotchman and seeing my
18 friend Jason, Brittany getting out of the car, Jason
19 speaking, and that's it. I don't remember leaving the
20 Scotchman.

21 Q. Okay.

22 A. I don't remember...

23 Q. Okay. So the answer to the question is no, you
24 don't remember how fast you were going down Broughton
25 Road, right?

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1 A. No sir, I don't.

2 Q. Okay. And you don't remember whether you went 79
3 miles per hour, right?

4 A. Based on what my expert's testimony ---

5 Q. --- but that's not what you remember.

6 A. No, that's not what I remember ---

7 Q. --- okay ---

8 A. --- but it would make sense.

9 Q. To you. Thank you ---

10 A. --- to anyone else ---

11 Q. --- no further questions.

12 THE COURT: Any redirect?

13 MR. MAYER: Just very briefly.

14 THE COURT: You may proceed.

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1 REDIRECT EXAMINATION

2 BY MR. MAYER:

3 Q. Shana, Mr. West asked you about driving down
4 Broughton Road and the speed limit change that takes
5 place there with the fields.

6 I know you don't remember this particular night in
7 question driving down there. Please describe to the jury
8 what your habit would have been how to drive that road
9 from the Scotchman down home.

10 A. Driving from the Scotchman my typical habits would
11 be I would drive down the road 35ish and then once it
12 gets into a 55 mile per hour zone speed up to that.

13 Q. If there were a truck in front of you, a big pickup
14 truck not going as fast as you would like it is it
15 conceivable that you would have passed it?

16 A. Absolutely.

17 Q. Okay. Was your car kind of a sporty car?

18 A. It was kind of sporty. It was a stick shift so to
19 speak.

20 Q. A five speed?

21 A. Yes.

22 Q. Okay. Would you typically drive Broughton Road
23 faster on the straightway than you would drive on the
24 curve?

25 A. Yes.

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1 Q. Okay. And so you would slow down somewhere between
2 the straightway and the big curve?

3 A. You would have to.

4 Q. Okay. And would you slow down by hitting the
5 brakes?

6 A. Well, in a stick shift I mean I would probably down
7 shift.

8 Q. So you would downshift or if you needed to hit the
9 brakes?

10 A. Potentially, yes.

11 Q. Okay. Is that how you would typically drive that
12 road?

13 A. Yes.

14 Q. Okay. There was a lot of testimony about your
15 pills and when you took them. Did you take your pills
16 before you went to bed typically?

17 A. Generally yes.

18 Q. Okay. And if you are out having drinks that would
19 be before you go to bed.

20 A. Yes.

21 Q. So that would have been before you took your pills
22 on this particular day?

23 A. Absolutely.

24 Q. Okay. Thank you.

25 THE COURT: Ma'am, you may step down.

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1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Would counsel approach for me please?

4 [Whereupon, an off the record bench conference is
5 held]

6 THE COURT: Proceed. Is everyone comfortable?
7 Does anyone need to go to the restroom? Is everybody
8 good?

9 [No response]

10 MR. MAYER: Judge, the defense would call Doctor
11 Robert Bennett to the stand.

12 [Whereupon, Doctor Bennett comes forward]

13 [Whereupon, the witness is duly sworn by the Clerk
14 of Court]

15 CLERK OF COURT: Please be seated. State your full
16 name and spell your last name for the record.

17 THE WITNESS: My name is Doctor Robert Bennett. My
18 last name is spelled B-E-N-N-E-T-T.

19 THE COURT: You may proceed.
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1 ROBERT BENNETT,
2 Having been first duly sworn,
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MAYER:

6 Q. Doctor Bennett, please describe to the jury a little
7 bit about your background, education, and training.

8 A. Sure. I received a Pharmacy degree from the Medical
9 University of South Carolina in 1980. I practiced as a
10 pharmacist for a while as a drug expert.

11 I went back to school to the Medical University of
12 South Carolina and got a graduate degree, a Ph.D. degree
13 in Pharmaceutical Sciences, drug sciences including
14 toxicology.

15 Q. Okay. What kind of work do you do these days?

16 A. I'm a full time practicing forensic toxicologist.

17 Q. All right. Have you been qualified as an expert in
18 other cases?

19 A. Yes.

20 Q. Do you know approximately how many?

21 A. Many, many other cases. I don't have an exact
22 count.

23 Q. Okay. Have you published any scientific articles
24 in the field of toxicology?

25 A. Not recently.

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1 Q. And before recently?

2 A. Mainly publications on research that I did when I
3 was working for a major pharmaceutical company.

4 Q. Okay. Have you had occasion to review evidence
5 related to this case?

6 A. I have.

7 Q. All right. Please describe for the jury a little
8 bit about the types of analyses that you do on a daily
9 basis.

10 A. It varies depending on the case. It's all
11 forensically related. It can vary from drug and alcohol
12 testing in work places, other court situations, Family
13 Court, workers compensation cases involving drug or
14 alcohol; quite a variety of cases mainly involving drug
15 and alcohol issues.

16 Q. And in each case are you called in to analyze the
17 forensic toxicology at issue?

18 A. Most every case, yes.

19 Q. Okay. Are you familiar with the common practices
20 and the industry accepted practices for forensic
21 toxicologists to use?

22 A. Yes.

23 Q. Are those indeed the standards that you employ?

24 A. Yes.

25 Q. Okay.

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1 MR. MAYER: Judge, we offer Doctor Bennett as an
2 expert in forensic toxicology.

3 THE COURT: Any objections or questions?

4 MR. WEST: Brief Voir Dire, Your Honor.

5 THE COURT: You may proceed.
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1 VOIR DIRE

2 BY MR. WEST:

3 Q. Mr. Bennett, what sort of training have you had in

4 forensic toxicology?

5 A. Both in pharmacy school as well as in graduate

6 school. It's a major component of my education.

7 Q. Okay. Anything following the graduate school?

8 A. Just continued reading of toxicology and scientific

9 journals as a regular part of my practice. Since I

10 practice it full time I am constantly doing research in

11 the field. For every case that I work on requires

12 research, which is an educational process in and of

13 itself.

14 Q. All right. So have you attended any classes since

15 you graduated?

16 A. No, sir.

17 Q. Okay. None?

18 A. None.

19 Q. When did you graduate?

20 A. 1991.

21 Q. Okay. So from 1991 until now no continuing

22 educational classes in toxicology?

23 A. That's correct.

24 Q. Where have you been able to keep up with your

25 expertise?

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1 A. I do it on a daily basis.

2 Q. On the Internet?

3 A. The entire Library of Congress is published on the
4 Internet, yes, and you can research every scientific
5 journal that exists through the Internet now, yes.

6 Q. Okay. Have you ever been peer reviewed?

7 A. What do you mean by that?

8 Q. Your tests or results they go through a peer review
9 process before they are submitted in court or for
10 whatever reason you are conducting those tests.

11 A. Well then the answer would be yes. Every time I've
12 provided testimony and the counsel that is involved has
13 investigated my background. So is that what you mean by
14 peer review?

15 Q. I'm just trying to kind of get an evaluation as to
16 how you evaluate something. Like for example SLED. When
17 somebody at SLED tests something there is at least three
18 other people that check his work before a report is
19 produced. Is that something that is done in your
20 practice?

21 A. No, it is not because I don't have three other
22 toxicologists working in my business.

23 Q. Okay. Do you know any other toxicologists?

24 A. On what level?

25 Q. I mean somebody you know, a pal down the road that

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1 could maybe ---

2 A. --- well, I know other toxicologists around the
3 country professionally but not pals down the road.

4 Q. I'm just trying to get an idea of how other than
5 what you are saying is accurate you have been backed up
6 by somebody else in your scientific community.

7 A. Any type of work that I provide that work is
8 available for anyone to examine it, peer review it, ask
9 me questions about it, criticize it. All the work that I
10 do is available for that. And my work is not done in a
11 vacuum.

12 Q. Did you produce any reports for this case?

13 A. I did not.

14 Q. Okay. So nobody was peer reviewed or looked at
15 anything you're able to tell us?

16 A. Correct.

17 Q. Okay. Now your training do you ever give any
18 seminars or lectures or anything like that?

19 A. Regularly, yes.

20 Q. Okay. And what are those seminars and lectures
21 entail?

22 A. I've been invited by national organizations to
23 provide seminars on drug and alcohol testing in drug and
24 alcohol issues at national conferences. Probably the
25 most common seminar that I provide in my field of

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1 expertise is to lawyers. I provide continuing legal
2 education to attorneys.

3 Q. Okay. And most of this is in the area of forensic
4 toxicology?

5 A. Well, all of it is in the field of the work that I
6 provide. It includes forensic toxicology but it also
7 includes D-N-A testing.

8 Q. Okay. D-N-A and forensic toxicology?

9 A. Correct.

10 MR. WEST: Okay. That's all the questions the
11 State has.

12 THE COURT: Any objection to the witness being
13 qualified as an expert in the area of forensic
14 toxicology?

15 MR. WEST: No objections, Your Honor.

16 THE COURT: Admitted without objection. You may
17 proceed, Mr. Mayer.

18 MR. MAYER: Thank you, Judge.
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1 DIRECT EXAMINATION (RESUMES)
2 BY MR. MAYER:
3 Q. Mr. Bennett, were you sitting in court a few minutes
4 ago when Shana testified?
5 A. I was.
6 Q. Did you hear what she testified to about the number
7 of drinks she had?
8 A. I did.
9 Q. Okay. From your training and experience and
10 everything else based on her testimony would you be able
11 to come up with a level of blood -- a level of alcohol in
12 her blood at a particular time?
13 A. I can give a rough approximation, yes.
14 Q. Okay.
15 A. I could also do a very specific calculation but the
16 specific calculation would be near the rough
17 approximation.
18 Q. Okay. Did I previous to today provide you with
19 information that very similar to what Shana testified to
20 with regard to how much she had to drink that night?
21 A. Yes.
22 Q. And did you in fact do the specific calculation
23 based on that information?
24 A. I did not do specific calculation. That does take
25 some time to do. I only provided an investigation in my

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1 research to do a rough approximation.

2 Q. Okay. Please describe to the jury how you did that
3 approximation.

4 A. Well, there are tables that are available that you
5 can look at the number of drinks consumed and those
6 tables will provide you with an approximate blood alcohol
7 concentration. Those tables are based on very specific
8 calculations but there are variables that can influence
9 that.

10 Q. So those tables what types of factors do those
11 tables take into account?

12 A. The time period in which the alcohol was consumed,
13 the age, sex, weight of the person consuming the alcohol,
14 the health status of the individual. There are a number
15 of variables that can influence the actual blood alcohol
16 concentration.

17 But there is what we call a norm. In other words
18 for most people there are published tables of what an
19 average blood alcohol concentration would be with the
20 caveat that there are variables that could influence that
21 in either direction.

22 Q. What is your understanding of the drinks and the
23 period of time over which Shana had those drinks on
24 November the 10th?

25 A. Based on what she testified and the information you

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1 provided me the claim is that she had one drink
2 approximately 5 o'clock, another drink approximately 7:00
3 or 7:30, and a third drink approximately 7:30 to 8:30.

4 Q. I actually thought she had testified she had a drink
5 at 5:00, a drink at 6:00, and a drink 7:30.

6 A. Well, the information that you had provided me and
7 the testimony I heard was that she had had a drink at
8 5:00, but drank that over an hour period.

9 Q. Okay.

10 A. And then had another drink after that.

11 Q. At 6:00.

12 A. Okay at 6:00 and then drank that over an hour
13 period.

14 Q. Okay.

15 A. And then another drink at 7:00 or 7:30 and then
16 drank that over an hour period completing the alcohol
17 consumption by 8:30.

18 Q. Okay. Based on that do you have an opinion to a
19 reasonable degree of forensic toxicological certainty as
20 to what Shana's blood alcohol level would have been at
21 8:42 that night?

22 A. The rule of thumb and the metabolism of alcohol in a
23 normal human being is that alcohol will metabolize and be
24 eliminated at approximately one drink per hour. And
25 we're calling a drink a standard drink whether that be a

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1 standard mixed drink, a standard glass of wine, or a
2 standard twelve ounce beer. And that is an approximation
3 that is fairly accurate one drink per hour based on the
4 information that we just discussed of her alcohol
5 consumption of that night.

6 After her first drink around 5 o'clock that drink
7 would have been metabolized and gone within an hour after
8 completing that drink. And then the second drink an hour
9 after that, that drink would be gone.

10 And then the third drink an hour after that, that
11 drink would be gone. So based on the 5:00 and 6 o'clock
12 drink by the time 8:45 arrived those two drinks would
13 have already been metabolized out of her body. And the
14 last drink she had that was finished at 8:30 the tail end
15 of that drink would be completing metabolism by 8:45.

16 In other words if she started the drink at 7:30 as
17 soon as that first sip occurred metabolizing starts so
18 that the sips that she had at 7:30 by 8:30 were gone,
19 however over that time period there is alcohol input
20 during that time period because that drink was not fully
21 consumed at 7:30.

22 There was still some consumption up until 8:30. So
23 by the time 8:45 came then the only alcohol to be
24 remaining would be what minimal alcohol she finished
25 within the hour prior to that. So it would be a very

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1 minimal amount of alcohol remaining in her body by the
2 time 8:45 arrived.

3 Q. Okay. And how much is minimal in terms of like a
4 blood reading?

5 A. My ---

6 Q. --- is it zero?

7 A. My estimate would be anywhere between zero and .01,
8 .015; a very minimal amount remaining at that time.

9 Q. How would that amount of alcohol operate on an
10 individual?

11 A. It would make them impaired to a slight degree. Any
12 amount of alcohol is going to cause some amount of
13 impairment. The more alcohol present the more impairment
14 would be present. So it's a quantitative evaluation.

15 Q. Okay. Please describe what you mean when you say a
16 little bit of impairment.

17 A. Impairment can be judged on a scale. We can use for
18 example an impairment scale of zero to 100 percent. If
19 someone has zero impairment they are fully functional at
20 their full capacity as far as being awake, alert, have
21 their mental and physical capabilities about them.

22 They would be able to respond. They will be able to
23 react. At zero impairment they are fully capable to be
24 -- to have what is called cognitive abilities. If they
25 are 100 percent impaired then they are comatose or near

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1 death in which they have no ability to function mentally
2 because they are 100 percent impaired. So getting back
3 to your original question trying to quantify that level
4 of impairment a blood alcohol concentration of .01 is
5 going to have an impairment rating on the lower end of
6 the scale.

7 It would be a scientific estimation as to what that
8 would be five, ten percent impairment rate level at that
9 amount of alcohol.

10 Q. Would it be such a low impairment that the person
11 may not even feel impaired at all?

12 A. That's correct. Their self-perception of impairment
13 would be that they feel not impaired because the level of
14 impairment is not that high.

15 Q. Okay. At that .01 level that you are talking about
16 would there be -- can you quantify that somehow for the
17 jury her motor skills or this sort of stuff because I
18 feel like maybe you are using impairment in a technical
19 sense. Are you using it the way every day people do?

20 A. And that's a good question because the level of
21 impairment can affect different people in different ways.
22 For example if a -- I'm trying to think of specific
23 examples that would clarify it. If a person was impaired
24 and all they were doing were watching T.V. and they were
25 significantly impaired their ability to watch T.V. would

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1 have little impact on their life. However, if the person
2 impaired even at a small amount was a jet fighter pilot
3 in combat action then that level of impairment could make
4 a difference.

5 So it depends on what functioning you're doing;
6 driving a car, maybe in between watching T.V. and being a
7 jet fighter pilot.

8 Q. Okay. In your opinion then would Shana have been
9 at this level .0 to .015 would she have been capable of
10 safely driving a vehicle?

11 A. The level of impairment affects people differently
12 so I wouldn't be able to answer conclusively based on her
13 specific physiology.

14 But for most people a blood alcohol level of .01 the
15 person would feel very little to no impairment and most
16 likely be able to function in the capacity of driving a
17 vehicle.

18 Therefore that's why the laws allow a .01 to not be
19 considered too impaired to operate a motor vehicle if the
20 level is .08.

21 Q. Okay. Now you as far as your review for this case
22 did you take a look at Shana's medical records?

23 A. I did.

24 Q. Did you take a look at the SLED blood test results
25 that came back?

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1 A. I did.

2 Q. You understand that the SLED test results are
3 different than yours.

4 A. They are different than my rough approximation, yes.

5 Q. Right.

6 A. Based on her claim, yes.

7 Q. And so what would explain that?

8 A. There could be factors that could affect the level
9 either on what she claims, how the specimen was
10 collected, how SLED performed the analysis. All of those
11 are areas that there could be -- that could account for a
12 discrepancy.

13 Q. Okay. In reviewing her medical records did you
14 notice anything that would affect the way that reading
15 would come out?

16 A. There were a couple of potential areas that may have
17 had an effect. For example, I noticed in the medical
18 records that she has a cyst on her liver. I don't know
19 how a cyst on the liver would affect a person's ability
20 to metabolize alcohol.

21 I don't know the extent of the cyst or how in depth
22 that cyst is. But it does raise a question as to whether
23 or not it did affect her ability to metabolize alcohol.

24 Q. How about the way that the sample was taken from
25 Shana? Would that have possibly affected or accounted

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1 for the disparity ---

2 MR. WEST: --- objection, Your Honor.

3 THE COURT: Basis?

4 MR. WEST: May we approach?

5 THE COURT: Yes.

6 [Whereupon, an off the record bench conference is
7 held]

8 THE COURT: Rephrase the question.

9 Q. [Mr. Mayer] Doctor Bennett, in drawing a subject's
10 blood for testing is it important to use a non-alcohol
11 swab to swab the area?

12 A. It is because the test is measuring ethanol a form
13 of alcohol, a type of alcohol. If alcohol is used as a
14 swab to clean the area and ethanol swabs are available
15 for that purpose.

16 If an ethanol swab is used to clean the area and
17 then a hollow needle is used to puncture the skin it's
18 going to absorb alcohol through that puncture directly
19 into the vial as the blood rushes in creating ethanol in
20 the blood vial itself.

21 Q. How much ethanol might that create in the blood vial
22 itself in terms of the reading?

23 A. Because only a small volume of blood is being taken,
24 just a few milliliters, even a small amount of ethanol
25 from an ethanol wipe could dramatically influence the

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1 reading in the blood vial itself because we're looking at
2 blood alcohol concentrations of .08, .09 percent. That's
3 less than .1 percent.

4 It's a very small amount of alcohol we're measuring,
5 therefore only a very small amount of alcohol on a swab
6 could have a dramatic impact on the blood alcohol reading
7 upon analysis.

8 Q. Okay. So hypothetically if it is an ethanol swab
9 that is used to clean the area before drawing blood how
10 high could that hypothetically make the blood alcohol
11 reading in that vial then assuming the person had zero
12 alcohol that they drink?

13 A. Okay. I believe I've looked at studies where a
14 level of .25 could be obtained for example ---

15 Q. --- point two five?

16 A. Yes.

17 Q. Okay. Now going back to Shana's case she had some
18 transfusions didn't she?

19 A. According to the records, yes.

20 Q. Okay. And in a hypothetically in a blood
21 transfusion could somebody's blood who was taking --
22 donating blood have alcohol in it?

23 A. It could.

24 Q. Okay. And if that occurred would that alcohol then
25 be passed on to the recipient of the blood?

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1 A. It would.

2 Q. Okay. And if the recipient of the blood then were
3 tested, a blood alcohol test let's say, and that
4 recipient hadn't drank any alcohol themselves could blood
5 alcohol -- could alcohol still show up in that person's
6 blood?

7 A. It could.

8 Q. Okay. What if they were getting a transfusion of
9 blood at the same time that their blood was being drawn
10 for a blood alcohol test?

11 A. Well, the blood is circulating through the body
12 because the heart is beating and pumping blood throughout
13 the body so if a blood alcohol is drawn at the same time
14 it would depend if the transfused blood had reached the
15 point of the needle where the blood alcohol test was
16 being performed. So it could happen.

17 Q. Okay. Now are you familiar with something called
18 Candida?

19 A. Yes. That's a yeast infection or a yeast organism
20 that causes infections.

21 Q. Do you know about that in your field of forensic
22 toxicology?

23 A. Well, yeast including Candida can use glucose or
24 sugars from any source and through the process of
25 colonization, which is a term of fermentation, you use

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1 that glucose to produce alcohol, ethanol.

2 Q. Okay. What precautions should be taken into
3 account when drawing and testing blood for the purpose of
4 blood alcohol test to prevent Candida from increasing the
5 blood alcohol reading?

6 A. Well, you want to prevent ---

7 MR. WEST: --- objection, Your Honor ---

8 A. --- the Candida organism from growing ---

9 THE COURT: --- basis? Basis of the objection?

10 MR. WEST: The same reason we previously
11 approached.

12 THE COURT: I need a basis for the objection.

13 MR. WEST: Relevance.

14 THE COURT: Please approach.

15 [Whereupon, an off the record bench conference is
16 held]

17 THE COURT: Rephrase.

18 Q. [Mr. Mayer] Have you had experience in drawing
19 blood?

20 A. I draw blood practically daily in my office.

21 Q. Have you had experience in testing blood for
22 alcohol?

23 A. It's a regular process for me.

24 Q. Please describe to the jury how you do that.

25 A. As far as the specific activity of drawing the blood

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1 I position the patient in a comfortable reclined position
2 usually in a chair ---

3 Q. --- well, let me stop you there. I think I asked
4 too broad a question. Sorry. What is -- do you know the
5 proper way to preserve blood for testing?

6 A. For alcohol?

7 Q. Yes.

8 A. Yes.

9 Q. Why do you know the proper way?

10 A. Because I do blood alcohol testing regularly.

11 Q. As part of your practice as a forensic toxicologist?

12 A. Correct.

13 Q. Please describe for the jury the proper way to
14 preserve that blood.

15 A. It has to be drawn aseptically meaning that the area
16 where the blood is being drawn from the skin, mainly in
17 the arm where the elbow area is has to be cleaned
18 thoroughly to prevent infection and to allow the blood to
19 be drawn through the vein in the arm.

20 That cleaning is usually done with an alcohol pad to
21 kill the germs and sanitize the area except if I'm doing
22 a blood alcohol I would use an alternative type cleaning
23 like a Betadine or some other non-alcoholic type pad.
24 But I've even used 70 percent isopropyl as a cleaning
25 agent but you have to let it thoroughly dry before you

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1 draw the blood. I have time to do that because I'm not
2 in an emergency situation. But once the blood is drawn
3 it is drawn in a very specific tube and these tubes are
4 color coated to allow the phlebotomist who is drawing the
5 blood to make sure they use the right tube.

6 Normally I use a tube that is preserved with sodium
7 fluoride, which is what is called an antiglycolytic
8 agent. It's a compound that prevents any yeast such as
9 Candida or any other component in the blood to ferment
10 the sugar in the blood into alcohol giving a false
11 reading.

12 Q. And that sodium -- you said sodium fluoride?

13 A. Right.

14 Q. That you mentioned -- should that be in a specific
15 amount for a certain quantity of blood?

16 A. It is. The tubes that are prepared and sold
17 commercially to draw blood specifically for ethanol is
18 recommended to use what is called a grey top tube, which
19 contains sodium fluoride because the amount of sodium
20 fluoride that is in there is intended to prevent
21 fermentation to occur.

22 However it's based on people not having any type of
23 yeast in their blood because most people don't. And if a
24 person doesn't have any Candida or any other yeast in
25 their blood then the amount of sodium fluoride present

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1 will probably suffice. But if someone does have an
2 infection or any trace amounts of Candida or any other
3 yeast in their blood then I've read studies that the
4 amount of sodium fluoride that is present is not enough
5 to prevent fermentation from occurring.

6 Q. What would happen if fermentation occurred inside
7 the vial?

8 A. Then the fermentation process results in the
9 production of alcohol. Therefore the alcohol reading,
10 the ethanol reading in that tube will be based on what
11 was produced from the fermentation rather than consumed
12 by the person that is being tested.

13 Q. Okay. What else do you do to preserve the blood --
14 do you have to make sure that is mixed or something to
15 preserve that?

16 A. Yes.

17 Q. How do you do that?

18 A. You tilt it back and forth multiple times to make
19 sure it is thoroughly mixed. There is even equipment
20 that can -- that is mechanical that you can put the tube
21 on to mix it as well.

22 Q. Are you allowed to shake it?

23 A. No. Shaking producing bubbles and foaming. It's
24 preferred to have it tilted gently back and forth a dozen
25 times to make sure the sodium chloride is mixed well with

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1 the blood.

2 Q. What would happen if the sodium fluoride were not
3 mixed well?

4 A. Then you may not get full protection of the
5 fermentation process and that could start to occur in
6 different parts of the blood.

7 Q. Does refrigeration play a factor?

8 A. Very much so. The process of fermentation is heat
9 dependent. The higher the heat the faster the
10 fermentation so placing the tube in a refrigerated
11 situation will dramatically reduce the fermentation
12 process.

13 Q. And how cold should that refrigerator be?

14 A. As cold as possible; as near freezing as you can
15 get.

16 Q. Now also as a part of this case were you asked to
17 review the medicines that were found in Shana's blood
18 from the SLED blood draw?

19 A. Yes, I was.

20 Q. Okay. Did you have an opportunity to evaluate
21 whether those levels of medicine in her blood would have
22 caused any impairment?

23 A. Yes.

24 Q. Okay. And did you reach a conclusion to a
25 reasonable degree of forensic toxicology as to whether

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1 they would or not?

2 A. To answer that question I'd have to go over each one
3 individually with you.

4 Q. Okay. Please proceed.

5 [Whereupon, the witness reviews documents]

6 A. Eliminating the drugs that were given after the
7 accident during her medical treatment and surgery there
8 was the presence of a metabolite of the drug called
9 Clonazepam.

10 Her reported dose is two milligrams a night and a
11 dose of two milligrams of Clonazepam will give a blood
12 level of .01 to .08 milligrams per liter.

13 And her level found on the SLED essay was .01. So
14 it is at the very bottom end of that therapeutic range.
15 Therapeutic meaning taking the correct dosage as
16 prescribed.

17 Q. So that would be consistent with the dosage being
18 taken approximately 20 hours prior?

19 A. It would, yes.

20 Q. Okay. What's the next one on your list?

21 A. Trazadone. The levels found in the blood were
22 therapeutic doses i.e. doses given to treat medical
23 conditions is .8 to 1.6 and her level is .08; so a very
24 low amount.

25 Q. Okay. So again the same question. If that had

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1 been taken approximately 20 hours earlier would the
2 levels in the SLED report be what you would expect to
3 see?

4 A. Yes, twenty hours or greater.

5 Q. Okay. So possibly taken even earlier than 20
6 hours, right ---

7 A. --- correct.

8 Q. And would that level that was remaining in her blood
9 in anyway impair her?

10 A. Again, that's an individualistic situation. It may
11 impair others and it may not at that low level. But the
12 likelihood of impairment is relatively low because it's
13 on the very low end of the therapeutic level on the
14 Clonazepam and far below the therapeutic level on the
15 Trazadone.

16 Q. Okay. What's the next medicine on your list?

17 A. Diphenhydramine commonly sold under the trade name
18 of Benadryl was detected at a level of .06.

19 Q. Okay. What was your opinion about that?

20 A. The level of a 50 milligram dose of Benadryl, which
21 is a standard dose of Benadryl, will give a level of .066
22 and her level was .06 so it was consistent with a single
23 dose of Benadryl.

24 Q. And when would that dose potentially have been
25 taken?

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1 A. If one dose was taken it would have been taken a few
2 hours prior to when this blood was drawn. And it varies
3 from individual to individual. Or the possibility of two
4 doses even further back in time; maybe twelve hours prior
5 to that having two doses of Benadryl. Not necessarily at
6 the same time but several hours apart.

7 Q. Okay. So if someone were having an allergic
8 reaction of some sort and were taking Benadryl each
9 evening let's say and hadn't taken it since the evening
10 prior would you expect that result to be consistent with
11 what was found in here?

12 A. No. My opinion would be that the level detected at
13 .06 would most likely be due to either one dose of
14 Benadryl taken that day or two doses taken the day
15 before.

16 Q. Okay.

17 MR. MAYER: Judge, may we approach?

18 THE COURT: Uh Huh.

19 [Whereupon, an off the record bench conference is
20 held]

21 THE COURT: Mr. Foreman, ladies and gentlemen we're
22 going to take a brief recess to give you all a restroom
23 break. During the break please do not discuss the case
24 and please leave your notepads in your seats. If you
25 will go with the bailiff please.

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1 [Whereupon, the jury exits at 3:55 p.m.]

2 THE COURT: You may ask the questions that you
3 needed to ask.

4 MR. MAYER: Sorry, Judge?

5 THE COURT: You may ask the questions that you
6 wanted to ask this witness.

7 MR. MAYER: Okay.

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State v Shana Robinson
Robert Bennett-Proffer-Direct Examination by Mr. Mayer
June 5, 2014

1 PROFFER-DIRECT EXAMINATION
2 BY MR. MAYER:
3 Q. Mr. Bennett, were you also asked to -- were you also
4 asked to analyze blood results from another person in
5 this case?
6 A. Yes; I was.
7 Q. Okay. Do you have those results before you to
8 discuss?
9 A. I do.
10 Q. Who are those results from?
11 A. The SLED report indicates the results are from Candy
12 Zoll.
13 Q. Okay. And what is the result of the test? What
14 type of test was done and what was the result of the test
15 done on that blood?
16 A. There was a toxicology test on the blood looking for
17 standard components that SLED performed in situations
18 like this looking at ethanol and various other alcohols,
19 looking at some specific controlled substances including
20 illegal drugs and including Tetrahydrocannabinol, which
21 is the active ingredient in marijuana as well as its
22 metabolite.
23 Q. Were those test results positive for anything?
24 A. The test results were positive for
25 tetrahydrocannabinol and positive for 11-carboxy

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1 tetrahydrocannabinol, which is the metabolite of
2 tetrahydrocannabinol.

3 Q. Okay. Does it quantify the results beyond
4 positive?

5 A. It does. The level of tetrahydrocannabinol is
6 reported by SLED as 7.1.

7 Q. Okay. And what does that indicate to you as a
8 forensic toxicologist?

9 A. That's a level that the scientific literature has
10 reported as being a level that causes impairment.

11 Q. What is the threshold for impairment in the
12 scientific literature?

13 A. There have been reports of a level of five to ten or
14 greater is considered impairment.

15 Q. Okay. In lower levels too or no?

16 A. The low five in their reports that impairment is
17 difficult to --

18 THE COURT REPORTER: I'm sorry. What was the last
19 part of your answer?

20 A. Below five is -- impairment is difficult to measure.

21 Q. [Mr. Mayer] Do you know how the level of impairment
22 indicated in this blood sample would have affected a
23 person?

24 A. Any level of impairment is going to affect a person
25 regardless of what the impaired substance is. The degree

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1 of impairment is going to be very difficult to quantify.

2 Q. Okay. What are some of the effects of being high
3 on THC?

4 A. Some of the effects of being impaired by
5 tetrahydrocannabinol is a reduced cognitive function,
6 reduced ability to respond to stimuli, reduced reactive
7 time, reduced ability to be aware of your surroundings
8 and react to those surroundings.

9 Q. Does it affect someone's ability to say multi-task?

10 A. Yes, it does.

11 Q. How so?

12 A. The functions of the brain require cognitive
13 abilities to process stimuli and function on multiple
14 things in a task requiring multi tasking.

15 And because tetrahydrocannabinol reduces the
16 cognitive functioning capability of the human brain it
17 reduces the ability to multi task.

18 Q. Okay.

19 MR. MAYER: Court's indulgence.

20 [Whereupon, Mr. Mayer confers with his client]

21 Q. [Mr. Mayer] You mentioned that there is another
22 measurement for a metabolite in there?

23 A. Correct.

24 Q. Would that have a bearing on the individual whose
25 blood this came from -- I'm sorry, let me rephrase?

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1 Would that other level indicate any sort of impairment?

2 A. Not in my opinion. The substance that is the active
3 compound that produces the impairment is the
4 tetrahydrocannabinol.

5 The metabolite present is just analyzed as an
6 indicator of the presence of the tetrahydrocannabinol.
7 The metabolite in and of itself is not under
8 consideration as far as being a contributor to
9 impairment.

10 MR. MAYER: Okay. That's all I have.

11 THE COURT: Any questions for the witness on this
12 issue, not on your full ---

13 MR. WEST: --- I understand, Your Honor..
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State v Shana Robinson
Robert Bennett-Proffer-Cross-Examination by Mr. West
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1 PROFFER-CROSS-EXAMINATION

2 BY MR. WEST:

3 Q. You didn't perform that test did you?

4 A. I did not.

5 Q. That's not your report?

6 A. That is not my report.

7 MR. WEST: Nothing from the State.

8 THE COURT: Is there any objection to the
9 admissibility of this line of testimony from the State?

10 MR. WEST: Yes, Your Honor. The State feels that
11 this testimony is certainly is more prejudicial than
12 probative as to the value in this case. There is ample
13 case law to support the exclusion of the victim's blood
14 in a case under Rule 403. What it amounts to is a
15 character attack on the victim in violation of Rule 404
16 (b).

17 And Your Honor, one of the most important things is
18 it is just misleading as to the issues in the case. One
19 of the cruxes of a felony D-U-I case is the proximate
20 cause issue. The bottom line is just because this
21 defendant was a proximate cause and whether the victim
22 was a proximate cause or not I think the testimony has
23 been sufficient that everything was in the victim's lane
24 of travel. If hypothetically the victim did have some
25 proximate cause that does not relieve the defendant from

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1 liability under the law because as you know in the
2 proximate cause charge and the case law that supports the
3 issues of proximate cause a defendant cannot be relieved
4 from liability just because she was not the sole
5 proximate cause of the accident.

6 THE COURT: Would you like to respond, Mr. Mayer?

7 MR. MAYER: Judge, if I did I would just be
8 restating stuff I think I've already argued extensively.
9 I feel what we've heard since I last argued was we heard
10 the defendant's testimony who is the only bit of real
11 time observation from the five senses as to what happened
12 on that curve that night. What she testified to was that
13 somewhere on that curve she saw headlights coming at her
14 in her lane.

15 And so I would argue that it seems possible that the
16 decedent was at some point that car that was in Shana's
17 lane. And as a result of that it would draw into
18 question why she was over there, what was going on over
19 there. And Judge, honesty at this point I feel like we
20 need this evidence to almost to corroborate Shana's
21 memory of what happened on the curve that night. So I
22 just would plead with the court to allow us to get it in
23 very narrowly and unemotionally, Judge.

24 THE COURT: Anything further?

25 MR. WEST: Nothing from the State, Your Honor.

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1 THE COURT: Okay. Doctor Bennett, we're going to
2 take a break. Please do not discuss your testimony with
3 anyone during that break. You may go to the restroom if
4 you need to. We will be ease for a few moments.

5 [Whereupon, court is in recess from 4:05 p.m. to
6 4:15 p.m.]

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State v Shana Robinson
Robert Bennett-Ruling on Proffer testimony
June 5, 2014

1 THE COURT: All right. I have considered the
2 arguments on both sides of the issue regarding the
3 testimony of Doctor Bennett on the toxicology report of
4 Ms. Zoll. Prior to this there was no testimony regarding
5 any comparative fault in this accident or this collision
6 attributable to Ms. Zoll; however Ms. Robinson has now
7 testified that she saw lights in her lane.

8 As the parties are well aware the court is not the
9 fact finder. It's not for me to weigh testimony or the
10 veracity of it. And it is certainly for the State to
11 then to argue whether the statement is truthful or not,
12 whether it is supported by other evidence in the case.
13 But with that testimony I think it does make whether or
14 not Ms. Zoll was impaired relevant.

15 However, I would caution both parties and while it
16 is not the court's responsibility to object to testimony
17 because I figure if y'all let it in there must be some
18 reason. But I would caution you very clearly that expert
19 witnesses are not to testify specifically as to any
20 particular party. Y'all have been kind of letting it
21 slide and I let you let it slide.

22 But he cannot testify what it would do in Ms. Zoll's
23 body. He can only say generally what happens. And the
24 same thing for Ms. Robinson but they let it slide so it's
25 not my job to object. But I would strictly instruct you

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1 to keep the testimony within the appropriate -- within
2 the Rules of Evidence. All right. Are you ready to
3 proceed?

4 MR. MAYER: Yes, Judge.

5 THE COURT: If the witness would retake the stand.
6 I'll remind you, you are still under oath.

7 [Whereupon, Doctor Bennett retakes the witness
8 stand]

9 THE COURT: All right. Are we ready?

10 MR. MAYER: Yes, Judge.

11 THE COURT: Please bring in the jury.

12 [Whereupon, the jury enters at 4:18 p.m.]

13 THE COURT: Ladies and gentlemen, we will now
14 resume testimony. You may proceed.

15 MR. MAYER: Thank you, Judge.

16 [Whereupon, defendant's exhibit number 43 is marked
17 by the court reporter]

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State v Shana Robinson
Robert Bennett-Direct Examination by Mr. Mayer (resumes)
June 5, 2014

1 DIRECT EXAMINATION (RESUMES)
2 BY MR. MAYER:
3 Q. Doctor Bennett, I'm handing you what has been
4 previously marked for identification purposes only as
5 defendant's exhibit 43.
6 [Whereupon, the witness reviews documents]
7 Q. Do you recognize that?
8 A. I do.
9 Q. Have you seen that before?
10 A. I have.
11 Q. What is that?
12 A. This is a report from SLED on the toxicology
13 analysis performed on the blood of a person by the name
14 of Candy Zoll.
15 Q. Okay. Do you know from that report who did that
16 blood analysis?
17 A. The report is signed by Tracy McKinnon.
18 Q. Okay.
19 A. So I'm assuming this person either did the testing
20 or approved the testing.
21 Q. Okay.
22 MR. MAYER: Judge, we would offer defendant exhibit
23 43 into evidence?
24 THE COURT: Any objection?
25 MR. WEST: Subject to the previous objection, Your

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1 Honor.

2 THE COURT: It will be marked for I.D. only at this
3 time. You may proceed.

4 Q. [Mr. Mayer] Doctor Bennett, what does that blood
5 analysis -- what does that say? What does that look for
6 the blood analysis?

7 A. The analysis was on various substances to include
8 ethanol and other ethanol type components. It's an
9 analysis of various drugs commonly known as controlled
10 substances including some illegal drugs such as cocaine
11 and tetrahydrocannabinol commonly known as marijuana.

12 Q. Okay. The blood test results that you hold in your
13 hand are they positive for anything?

14 A. They are positive for two things. The results show
15 positive for tetrahydrocannabinol or THC ---

16 THE COURT: --- let me interrupt you for one quick
17 second. I need the attorneys to approach.

18 [Whereupon, an off the record bench conference is
19 held]

20 THE COURT: You may continue with the court's
21 instructions.

22 Q. [Mr. Mayer] Do you remember the question, Doctor
23 Bennett?

24 A. Yes. The second substance ---

25 THE COURT: --- no.

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1 MR. MAYER: I'm sorry. I didn't remember the
2 question. Let me re-ask it.

3 THE COURT: Actually we'll deal with it this way.
4 Mr. Foreman and Ladies and gentlemen I have a brief
5 matter of law I need to take up with the attorneys.
6 Please step out in the hallway with the bailiffs and do
7 not discuss the case. Just step out in the hallway for a
8 second. Please leave your notepads in your seats.

9 [Whereupon, the jury exits at 4:22 p.m.]

10 THE COURT: Doctor, you cannot testify as to any
11 metabolites in her system only the active THC; and if I
12 have used the wrong terms I apologize. Long term use is
13 irrelevant. It raises the issue of character. It's not
14 relevant to any issue in this case. The only issue that
15 is relevant is what was actively found in her system. Do
16 you understand the court's instructions?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: So there should be no other reference.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Okay. You ready from the State?

21 MR. WEST: Yes, Your Honor.

22 THE COURT: From the defense?

23 MR. MAYER: Yes, Judge.

24 THE COURT: Any exception from the State as to the
25 court's instructions?

State v Shana Robinson
Robert Bennett-Direct Examination by Mr. Mayer (resumes)
June 5, 2014

1 MR. WEST: No, Your Honor. I am worried about what
2 we approached the bench about.

3 THE COURT: What's that?

4 MR. WEST: The admission into evidence.

5 THE COURT: I told y'all I would deal with that.
6 When I say I have it marked for I.D. only it means I'm
7 thinking about it. When I'm done thinking about it I'll
8 let you know.

9 MR. WEST: Thank you.

10 MR. MAYER: Judge, may I be heard briefly on that
11 score?

12 THE COURT: No, because I'm thinking.

13 MR. MAYER: Okay.

14 THE COURT: When I'm done thinking then I will let
15 you know and then I'll hear arguments if I need it.

16 MR. MAYER: ok

17 THE COURT: Bring the jury in please.

18 [Whereupon, the jury enters at 4:24 p.m.]

19 THE COURT: Ladies and gentlemen, I appreciate your
20 patience. You may resume questioning the witness.

21 MR. MAYER: Thank you, Judge.

22 DIRECT EXAMINATION (RESUMES)

23 BY MR. MAYER:

24 Q. Doctor Bennett, what was Ms. Zoll's blood test
25 positive for?

State v Shana Robinson
Robert Bennett-Direct Examination by Mr. Mayer (resumes)
June 5, 2014

- 1 A. Specifically positive for marijuana.
- 2 Q. Okay. And was it just for positive result or was
- 3 there a quantitative measurement of ---
- 4 A. --- there was a quantitative measurement.
- 5 Q. And what was that result?
- 6 A. The report shows the quantitative measurement of 7.1
- 7 micrograms per liter.
- 8 Q. Okay. Not talking about Ms. Zoll specifically but
- 9 just hypothetically is that level of THC in someone's
- 10 blood sufficient to cause impairment?
- 11 A. Research has shown that it can be, yes. A level of
- 12 five to ten is associated with impairment and hers was a
- 13 7.1.
- 14 Q. Okay. What types of manifestations would that
- 15 impairment have on an individual?
- 16 A. It could affect someone's ability to respond to
- 17 stimuli around them. It could affect their reaction
- 18 time. It could affect their judgment. It could affect
- 19 their skill level. It could affect their cognitive
- 20 function, their mental functioning.
- 21 Q. Could it affect their ability to say multi task?
- 22 A. Yes, it could.
- 23 Q. Okay.
- 24 MR. MAYER: Court's indulgence.
- 25 [Whereupon, Mr. Mayer reviews documents]

State v Shana Robinson
Robert Bennett-Direct Examination by Mr. Mayer (resumes)
June 5, 2014

1 MR. MAYER: Please answer any questions the State
2 may have.

3 THE COURT: Any questions from the State?

4 MR. WEST: Yes, Your Honor.

5 THE COURT: You may proceed when you are ready.
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State v Shana Robinson
Robert Bennett-Cross-Examination by Mr. West
June 5, 2014

1 CROSS-EXAMINATION

2 BY MR. WEST:

3 Q. Mr. Bennett, you testified that you didn't make any
4 reports in this case, right?

5 A. That's correct.

6 Q. Why not?

7 A. I was not asked to.

8 Q. Okay. Is that routine?

9 A. Yes.

10 Q. So when you do a study you don't ever make a report?

11 A. I didn't say that. Sometimes I do make a report if
12 requested by the party hiring me.

13 Q. How much did Mr. Mayer pay you to come here today?

14 A. He hasn't paid me anything yet that I recall. I've
15 still yet to produce a bill.

16 Q. What is that bill going to be?

17 A. My rate is 300 dollars an hour.

18 Q. How long have you been here today?

19 A. I arrived at approximately 11:30.

20 Q. And its 4:30 so just for today it's about 1,500
21 dollars wouldn't you say?

22 A. Approximately.

23 Q. Okay. Now you based your estimations of alcohol
24 levels on the defendant's testimony.

25 A. Correct.

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Robert Bennett-Cross-Examination by Mr. West
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1 Q. So if there was an incorrect assumption in that
2 there were three drinks would your testimony have been
3 the same?

4 A. If understand your question is it that ---

5 Q. --- in other words you heard from about 5 o'clock on
6 but that number wouldn't have been right if drinks were
7 had prior to 5 o'clock, right?

8 A. You're correct. All the statements I made were
9 based solely on the claims of the defendant.

10 Q. Okay. Now isn't it also your testimony that vodka
11 will show up in the blood stream as ethanol?

12 A. Correct.

13 Q. On the subject of retrograde extrapolation ---

14 A. --- correct.

15 Q. Are you familiar with that subject?

16 A. Yes.

17 Q. Okay. Wouldn't it be your testimony that the
18 elimination rate of alcohol through the body over hours
19 is somewhere between the levels of .015 and .02 per hour?

20 A. Yes.

21 Q. Okay. So that's a correct number?

22 A. Yes, I would agree with that.

23 Q. Okay. You testified about levels of impairment.

24 If I were to give you a scenario where somebody had a .15
25 blood alcohol level what would that indicate to you as to

State v Shana Robinson
Robert Bennett-Cross-Examination by Mr. West
June 5, 2014

- 1 that person's level of impairment?
- 2 A. That person would most likely be significantly
3 impaired.
- 4 Q. Significantly impaired?
- 5 A. Correct.
- 6 Q. When you make your calculations what you called
7 yourself rough estimates, rough approximations did you
8 take into consideration the size of the drinks?
- 9 A. What do you mean the size of the drink?
- 10 Q. You're just told three drinks.
- 11 A. Correct.
- 12 Q. Does the amount of vodka in the cup affect your
13 calculations as to what your self-professed rough
14 estimation would have been?
- 15 A. The quantity would affect it dramatically.
- 16 Q. Okay. If there were more than three drinks your
17 calculations would have been wrong, is that not right?
- 18 A. You are correct.
- 19 Q. Can you describe for the jury how alcohol would
20 affect an individual if that individual were to have
21 Trazadone, Clonazepam, and Benadryl in the bloodstream?
- 22 A. Yes.
- 23 Q. Please do that for the jury.
- 24 A. Alcohol is a central nervous system depressant. It
25 depresses brain functioning and causes a variety of

State v Shana Robinson
Robert Bennett-Cross-Examination by Mr. West
June 5, 2014

1 depressant activities such as reduced reaction time,
2 reduced ability to respond, reduced ability to respond to
3 stimuli around them; a host of factors that depresses a
4 person's mental capacity if you will.

5 Not only does alcohol do that but so does
6 Clonazepam, so does Trazadone, so does Diphenhydramine
7 sold as Benadryl. All of those depress a person's
8 central nervous system and creates an end result of what
9 we've been referring to today as impairment.

10 Q. Isn't it also true that in prior testimony in other
11 court's you've referred to SLED's method of testing as a
12 superior method?

13 A. It is a superior method. I'll have to phrase that
14 it is the standard of testing as far as the most accurate
15 testing available. I define superior as the ---

16 Q. --- the most accurate testing available.

17 A. Correct.

18 Q. Okay. How would a Betadine --

19 A. Correct.

20 Q. How would a Betadine wipe affect a person's blood
21 alcohol level if that wipe was to be used at the
22 intravenous site?

23 A. It would not affect it at all in my opinion.

24 Q. Are you aware that in the SLED prep kits they use
25 Betadine?

State v Shana Robinson
Robert Bennett-Cross-Examination by Mr. West
June 5, 2014

1 A. Yes.

2 Q. Isn't it fair to say that the SLED tests represented
3 in the reports that you've referenced are actual
4 scientific tests whereas the test and calculations that
5 you ran were rough approximations based solely on the
6 testimony of someone else?

7 A. Correct.

8 Q. Wouldn't you agree with me that education is
9 important? Is education important in scientific fields?

10 A. Education is important in all fields.

11 Q. Would you agree that in order to be a lawyer
12 somebody has to go to law school?

13 A. Correct.

14 Q. Okay. You're not a lawyer, are you?

15 A. No, sir.

16 Q. Okay. Have you ever been to the South Carolina
17 Criminal Justice Academy?

18 A. No, sir.

19 Q. Have you in any way ever worked in law enforcement
20 field or as a police officer?

21 A. No, sir.

22 Q. Is it a true statement that on your curriculum vitae
23 provided to me by defendant counsel you state that you
24 are -- have expertise in crime scene analysis,
25 fingerprinting, and gunshot residue?

State v Shana Robinson
Robert Bennett-Cross-Examination by Mr. West
June 5, 2014

- 1 A. Yes.
- 2 Q. But you've never been to the Criminal Justice
3 Academy and you've never worked in law enforcement?
- 4 A. Correct.
- 5 Q. Now you took an oath before you took the stand,
6 right?
- 7 A. Yes.
- 8 Q. And the oath was you promise to tell the truth, the
9 whole truth, and nothing but the truth so help you God?
- 10 A. Correct.
- 11 Q. Now the whole truth isn't to stretch the truth or a
12 little bit of lie, right?
- 13 A. Correct.
- 14 Q. Okay. So wouldn't you agree with me if I told you
15 that telling the whole truth is paramount during your
16 testimony?
- 17 A. Yes.
- 18 Q. And would that be paramount during any testimony
19 you've ever given in court while under oath?
- 20 A. Yes.
- 21 Q. Okay. Isn't it true that in the case of Boyd v
22 Examone World Wide [phonetic] you submitted a document
23 stating that you were still a registered pharmacist in
24 1999?
- 25 A. Correct.

State v Shana Robinson
Robert Bennett-Cross-Examination by Mr. West
June 5, 2014

1 Q. But your license expired in 1999 and that case was
2 in 2009.

3 A. Correct.

4 Q. That's nearly ten years you represented yourself as
5 a registered pharmacist under oath even though you knew
6 your license had been expired, correct?

7 A. Correct.

8 Q. And isn't it true that the South Carolina Board of
9 Pharmacy has even issued you a cease and desist order to
10 stop calling yourself a registered pharmacist?

11 A. Correct, although I'm still registered as a
12 pharmacist with the South Carolina Board of Pharmacy.

13 Q. But your license is not active presently, is that
14 correct?

15 A. It's not active to fill prescriptions at a pharmacy
16 and that's the only reason I would need an active
17 license.

18 Q. Now isn't it true that you have previously attempted
19 to testify as an expert in a court when in fact a Judge
20 has ruled you not qualified to test on a certain area of
21 expertise?

22 A. There is one instance, yes.

23 Q. Okay. Are you familiar with an article from the
24 Post and Courier that says Bennett's credentials,
25 methods, and the reliability of his findings are suspect

State v Shana Robinson
Robert Bennett-Cross-Examination by Mr. West
June 5, 2014

1 or controversial?

2 A. Sure. I'm familiar with that article.

3 Q. Okay. Are you familiar that in this article it
4 says that your training in other fields are mostly self-
5 taught from reading journals and books?

6 A. That is one method of gaining an education, yes.

7 Q. Okay. Are you familiar with a case involving Karen
8 Ferguson [phonetic] who temporarily lost custody of her
9 two children because you conducted a test saying that she
10 was as drunk when later a physician concluded that
11 Ferguson's anemia had been throwing off the results?

12 A. That's an incorrect statement.

13 Q. Could you read for the jury what I'm showing this
14 witness as a Post and Courier article?

15 [Whereupon, the witness is shown document]

16 MR. MAYER: Objection, Judge.

17 THE COURT: Basis?

18 MR. MAYER: It's improper impeachment.

19 THE COURT: Approach please.

20 [Whereupon, an off the record bench conference is
21 held]

22 THE COURT: You may proceed.

23 Q. [Mr. West] Again referencing the same article are
24 you familiar with the fact that the heading, the title of
25 that article is that questions surround methods and

State v Shana Robinson
Robert Bennett-Cross-Examination by Mr. West
June 5, 2014

1 credentials of a drug screen?

2 A. Yes. There are constantly questions about the
3 practice that I have. Questions do not implicate a wrong
4 doing; it's just questions.

5 Q. All right. Then are you familiar with the first
6 sentence in that article saying that his words can ruin
7 reputations, rest children from their parents, and cost
8 people their jobs?

9 A. I can also do the opposite as well. You've got to
10 understand that is a newspaper article. Their job is to
11 sell newspapers.

12 Q. Thank you. No further questions.

13 THE COURT: Any redirect of the witness?

14 MR. MAYER: Just briefly, Judge.

15 THE COURT: You may proceed.
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State v Shana Robinson
Robert Bennett-Redirect Examination by Mr. Mayer
June 5, 2014

REDIRECT EXAMINATION

BY MR. MAYER:

Q. Doctor Bennett did you do any testing in this case?

A. None.

Q. And the tests that you reviewed were both done by who?

A. SLED.

Q. Okay. And that's true for Shana's test, right?

A. Correct.

Q. And that's also true for Ms. Zoll's test, right?

A. Correct.

Q. And in your statements as to SLED testing being the most accurate were you talking about the mass spectrometry analysis?

A. Yes.

Q. Please explain how that may vary -- please explain why that is your opinion.

A. There are a variety of analytical methods to use to analyze substances. They vary from rough approximations to very sensitive measurements.

And the current technology of analyzing chemical substance the most accurate method that we have is gas chromatography as well as mass spectrometry. And for ethanol determination it's my opinion that gas chromatography is the most accurate testing that is

State v Shana Robinson
Robert Bennett-Redirect Examination by Mr. Mayer
June 5, 2014

1 commercially available.

2 Q. Is that an aspect of a SLED testing that you would
3 have been referring to when you said that it is the most
4 accurate testing?

5 A. Yes.

6 Q. Okay. You weren't referring to the way that SLED
7 testing draws blood?

8 A. Not at all.

9 Q. Okay. You were referring simply to their lab
10 capabilities?

11 A. Correct.

12 Q. Okay. And SLED is South Carolina Law Enforcement
13 Division.

14 A. Correct.

15 Q. It's a State agency?

16 A. Correct.

17 Q. Relatively better off than maybe your firm or mine?

18 A. I do not have a million dollar lab, correct.

19 Q. Okay. And speaking of money I'm sorry to have to
20 clear this up but I've got you on a flat fee is what we
21 talked about at the beginning. You may recall that's the
22 reason I didn't ask you to do a report.

23 A. Correct.

24 Q. Okay. Very good. So with your license issue as a
25 registered pharmacist had that just lapsed?

State v Shana Robinson
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June 5, 2014

1 A. Well the -- keeping up with the licensure is
2 necessary if you fill prescriptions at a pharmacy and
3 that's all.

4 Q. Okay.

5 A. And I haven't filled prescriptions at a pharmacy in
6 decades. So there is no reason to keep that license
7 active because I'm never going to fill prescriptions at a
8 pharmacy again.

9 Q. But you're still a registered pharmacist.

10 A. I am registered with the South Carolina Board of
11 Pharmacy as a pharmacist. The term registered pharmacist
12 is from my understanding are you registered with the
13 South Carolina Board of Pharmacy? I am. I have an
14 active license in good standing with the South Carolina
15 Board of Pharmacy; no disciplinary actions.

16 Q. Okay. And then in addition to your training as a
17 pharmacist you had gone on since then to get a Ph.D.

18 A. Correct.

19 Q. And would you remind the jury what the Ph.D. is in?

20 A. It's a doctorate degree in pharmaceutical drug
21 sciences, which includes toxicology and pharmacology.

22 Q. Thank you very much.

23 THE COURT: Any objection to the witness being
24 excused from the State?

25 MR. WEST: Nothing from the State, Your Honor.

State v Shana Robinson
Robert Bennett-Redirect Examination by Mr. Mayer
June 5, 2014

1 THE COURT: From the defense?
2 MR. MAYER: Judge, may we approach?
3 [Whereupon, an off the record bench conference is
4 held]
5 MR. MAYER: The defense has nothing further of this
6 witness.
7 THE COURT: Doctor, you're excused.
8 [Whereupon, the witness is excused and exits the
9 witness stand]
10 THE COURT: You may proceed, Mr. Mayer.
11 MR. MAYER: Judge, let me check and see if we've
12 got any witnesses outside. I don't know that we have any
13 here right now.
14 THE COURT: You need to get the bailiff and do that
15 then.
16 MR. MAYER: That may wrap up our case.
17 [Off the record momentarily]
18 MR. MAYER: Judge, I'm waiting on two witnesses but
19 I don't see them out there.
20 THE COURT: So what's the answer to the court's
21 question?
22 MR. MAYER: I don't have any more witnesses to
23 call, Judge.
24 THE COURT: So what are you doing? Are you
25 resting?

State v Shana Robinson
Robert Bennett-Redirect Examination by Mr. Mayer
June 5, 2014

1 MR. MAYER: I would like to see if we could get
2 these two witnesses to show up first thing in the
3 morning. But if the court is not amenable to that then
4 we can rest.

5 THE COURT: Mr. Foreman, ladies and gentlemen I
6 have a brief scheduling matter to discuss with the
7 lawyers. During this break please do not discuss the
8 case among yourselves. Please leave your notepads in
9 your seats.

10 [Whereupon, the jury exits at 4:47 p.m.]
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State v Shana Robinson
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1 THE COURT: I'm a little concerned about that
2 diatribe you just went into in the presence of the jury
3 when I gave strict instructions that there were not to be
4 any comments made in their presence. You have now left
5 them with the impression that somehow your client will be
6 prejudiced if we don't wait for these two witnesses that
7 you have been unable to locate as far as I can discern
8 for over a month.

9 And the court has been very flexible in terms of
10 allowing or making concessions for their appearance. I'm
11 certain you've probably made attempts to serve them with
12 subpoenas but now you've left the jury with the
13 impression that you are waiting on two people somehow
14 that you have properly served and have failed to appear
15 and somehow we're going to steam roll over in the
16 proceedings and you're not going to be able to do what
17 you need to do, and I'm a little concerned about that.

18 MR. MAYER: Judge, I am so sorry ---

19 THE COURT: --- now I've got to figure out how I'm
20 going to fix this.

21 MR. MAYER: I had no such intent. I'm so sorry.

22 THE COURT: That's okay. But I mean it's my
23 understanding you've been trying to locate them for a
24 while haven't you? And we're referring to Mr. Holmes and
25 Mr. Bucknor?

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1 MR. MAYER: That is correct, Judge.

2 THE COURT: And they have failed to appear and
3 you've been trying to serve them with subpoenas along
4 with Ms. Malphrus and a few other folk and you've been
5 unable to locate them?

6 MR. MAYER: I have, Judge. But the difference for
7 those two is that they know my client and she informed me
8 just this afternoon that had I come to her and asked her
9 to help facilitate service it could have gotten done
10 whereas they are ignoring my paralegal who you met
11 earlier.

12 THE COURT: I'm guess I'm still a little confounded
13 because if that is in fact the case then she should have
14 I guess set out the clarion call and they would have come
15 without needing to be served, correct?

16 MR. MAYER: I don't know how good of friends they
17 are, Judge.

18 THE COURT: People are strange. They tell you one
19 thing, they tell somebody something else, and when it
20 comes to law enforcement they make themselves
21 unavailable. I suspect that if they wanted to be served
22 they would have served by now. I also suspect that if
23 they were in fact as close to your client as they portend
24 to be that they would have been here without a subpoena.

25 MR. MAYER: I would think so too.

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1 THE COURT: And that's the nature of friendships
2 and acquaintances for lack of a better way of drawing
3 that distinction. Why don't you get on the horn with
4 your paralegal and see what sort of efforts you need to
5 make to locate them and make a decision as to whether in
6 fact they are amenable to appearing if they can be
7 located because while I am very flexible and very liberal
8 because I feel people only have one opportunity to be
9 heard and the court should bend over backwards to assist.
10 I cannot however have some unlimited delay in these
11 proceedings. We have a jury we told them they would be
12 here a week and they do have lives.

13 MR. MAYER: Absolutely, Judge.

14 THE COURT: All right. Why don't you do that and
15 then we'll go from there.

16 MR. MAYER: Thank you, Judge.

17 [Off the record momentarily]

18 THE COURT: All right. Mr. Mayer, what's going on?

19 MR. MAYER: Judge, my client was able to speak with
20 both of these potential witnesses. I did get new
21 information. I got an address on one so I think I can
22 get him served a subpoena tonight and I believe Shana is
23 getting the address on the other and so I would be able
24 to serve both of them with a subpoena.

25 THE COURT: I guess I'm trying to figure out why

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1 wasn't that done before now? We're now at the 11th hour.
2 Why can't you get them here today?

3 MR. MAYER: Judge, I'm really frustrated about
4 this. I asked my paralegal to do this three weeks ago.
5 I've got no excuse, Judge. I've got no reason -- I'm
6 very dissatisfied about that.

7 THE COURT: How long of witnesses are they going to
8 be and what are they supposed to testify to?

9 MR. MAYER: Sobriety witnesses Judge just the same
10 as those four we had yesterday.

11 THE COURT: Going to take a few minutes?

12 MR. MAYER: Yes, Judge.

13 THE COURT: Is the State going to have any rebuttal
14 testimony?

15 MR. WEST: No, Your Honor.

16 THE COURT: All right. What we will do then is
17 out of an abundance of caution I'm going to give Mr.
18 Mayer time to present his witnesses. However, we're
19 going to rest. I'm going to let him -- we're going to do
20 motions and then if they show up I'll let him reopen his
21 case to call them. If they don't show up, no harm no
22 foul. But we're going to do charge conference tonight
23 because we are going to close and charge in the morning.
24 Any exception from the State?

25 MR. WEST: No, Your Honor.

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1 THE COURT: From the defense?

2 MR. MAYER: No, Judge.

3 THE COURT: All right. Please get the jury. You
4 all can take your seats. We've got a juror in the
5 restroom. Matter of fact while we're doing that why
6 don't you go ahead and rest so I can hear the motion, Mr.
7 Mayer.

8 THE BAILIFF: Judge, they are ready now.

9 THE COURT: All right. Bring them on in.

10 [Whereupon, the jury enters at 5:08 p.m.]

11 THE COURT: The defense may proceed.

12 MR. MAYER: Judge, the defense rests.

13 THE COURT: Mr. Foreman, ladies and gentlemen both
14 the State and the defense have rested their cases. The
15 next part of the process is closing arguments and the
16 court's instruction. We still have some matters of law
17 that we need to resolve and deal with before we leave
18 this evening. So we're going to go ahead and work and I
19 am going to let you all go home. Then in the morning at
20 9:30 we will have closing argument and instruction.

21 While you have heard all the testimony in this case
22 you have not heard closing arguments or the court's
23 instructions on the law. So it is absolutely essential
24 that you maintain an open mind and that you have no
25 discussion about this case among yourselves or with

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1 anyone else. I know it might seem simple to have a
2 conversation about what you've heard but to do that
3 requires you to process what you've heard and to draw
4 conclusions based upon it. And that by its very nature
5 is deliberation so I would ask that you strictly guard
6 against any such type conversations, and if you need to
7 make me the heavy that's fine. You can say the Judge
8 said I can't talk about it, okay.

9 Please do not watch, read, or listen to any media
10 accounts about this case. I'm not aware of anything
11 being in the newspaper, on the radio, television, or
12 Internet. But if there are please strictly guard
13 yourselves against reading it. Again, as the fact
14 finders you are bound to decide this case according to
15 the testimony that you have heard from the witnesses and
16 the other evidence that has been introduced.

17 Also, I know it is very tempting to go on the
18 Internet since everything is available on the Internet.
19 And we tend to believe everything on the Internet is true
20 until it's proven that it is not true, which is like such
21 a strange phenomenon to me. But in any event please as
22 tempting as it could be looking at Google maps or looking
23 at any sort of medical sites or otherwise is strictly
24 prohibited as well. Again, as the fact finders cases are
25 tried a particular way for a particular reason and that's

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1 why you are bound to decide the case according to the
2 evidence you've heard from the sworn witnesses and the
3 other evidence that has been introduced. So please don't
4 do any independent research on the Internet as tempting
5 as that could be. Again, when you return to the
6 courthouse please don't have any contact with anyone you
7 do not recognize to be a fellow juror.

8 During litigation people tend to be a little
9 paranoid. They tend to have a little heightened anxiety
10 and they tend to assume the worse of human nature; in
11 other words to sort of cut to the chase they would
12 probably assume you're discussing the case instead of
13 having an innocent conversation. So please refrain from
14 any conversations that you -- with anyone other than one
15 of your fellow jurors. Again, we would hate at this late
16 juncture for a conversation to be observed by a third
17 party and misinterpreted.

18 You all have been incredibly patient with us and we
19 truly appreciate it. We will see you in the morning at
20 9:30 and at that time I will probably have the Clerk take
21 your order for lunch because we will probably bring lunch
22 in. I anticipate that by the time we do closing argument
23 and instruction if it's not lunch time it will be close
24 to lunchtime at which you will be allowed to eat lunch
25 and deliberate. If you will leave your notepads in your

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1 seats and go with the bailiff we appreciate it and have a
2 great evening.

3 [Whereupon, the jury exits at 5:15 p.m.]

4 THE COURT: The defense has rested. Are there any
5 motions?

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State v Shana Robinson
Motion for Directed Verdict-Remarks by Mr. Mayer
June 5, 2014

1 MR. MAYER: Judge, we would renew our motion for a
2 directed verdict and to dismiss the case. I would also
3 ask for a ruling on whether the ---

4 THE COURT: --- I haven't forgotten. I'm going to
5 give a ruling.

6 MR. MAYER: Okay.

7 THE COURT: I've got a memory like a trap. If I
8 said I take it under advisement believe me I'm thinking
9 about it.

10 MR. MAYER: I don't though, Judge. I'm sorry.

11 THE COURT: See, that's the only thing I have to
12 concentrate on. You've got a whole lot of other things
13 to concentrate on. My list is smaller than yours. Are
14 there any other motions from the defense?

15 MR. MAYER: No, Judge.

16 THE COURT: Okay. Now, would the State like to
17 respond?

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State v Shana Robinson
Motion for Directed Verdict-Remarks by Mr. West
June 5, 2014

1 MR. WEST: Your Honor, again I would reiterate that
2 we spoke of previously at the directed verdict motion.
3 The State has certainly met its burden of establishing
4 some evidence to give to the jury in this case.

5 In a light most favorable to the State as you know,
6 Your Honor, again the trial court is only concerned with
7 the existence or non-existence of evidence. There has
8 been plenty of evidence given through testimony, physical
9 and direct evidence, circumstantial and direct evidence.
10 As a result the State feels this case should go to the
11 jury, Your Honor.

12 THE COURT: Anything further from the defense?

13 MR. MAYER: No, Judge.
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State v Shana Robinson
Motion for Directed Verdict-Ruling by the Court
June 5, 2014

1 THE COURT: Even taking in the light if these other
2 two witnesses appear I don't think it really factually
3 changes to some extent the testimony becomes cumulative
4 if they are going to testify along the lines of what you
5 have articulated for the record.

6 Considering the evidence in the light most favorable
7 to the State the court is concerned with the existence or
8 non-existence of evidence and not its weight. There is
9 certainly direct as well as substantial circumstantial
10 evidence reasonably tending to prove the defendant's
11 guilt of the elements of felony D-U-I with death without
12 and I incorporate my previous findings which were far
13 more specific than this ruling as I've already gone
14 through all the elements of the offense. What the State
15 is required to prove and the testimony that has been
16 presented in their case in chief with it being their
17 burden of proof regarding the elements of felony D-U-I
18 involving death.

19 As such the court finds that there is direct and
20 well as substantial circumstantial evidence reasonably
21 intending to prove the defendant's guilt and the motion
22 for directed verdict is denied.

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1 THE COURT: Now were there any other -- Madame
2 Court Reporter, hand me those exhibits right quick
3 please.

4 [Whereupon, the court reviews exhibits]

5 THE COURT: First I'm a little concerned. I have
6 two -- you actually have the same report marked twice Mr.
7 Mayer as defendant's 30 and 43.

8 MR. MAYER: That hasn't been admitted.

9 THE COURT: No, neither one of them have but I
10 thought I was seeing double. A lot of these things have
11 not been admitted, correct?

12 MR. MAYER: Most of mine have not, Judge.

13 THE COURT: To make things less confusing why don't
14 you take back the things that you weren't seeking to
15 introduce because half of these things weren't even
16 marked for I.D. and there was no testimony elicited about
17 it correct?

18 MR. MAYER: I may have left a pile of notes up
19 there.

20 THE COURT: I think maybe that will ---

21 MR. MAYER: --- Mr. West pointed that out
22 yesterday ---

23 THE COURT: --- make things a little simpler.

24 [Whereupon, the court reviews the exhibits with the
25 court reporter]

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1 THE COURT: Which one did you try to move in Mr.
2 Mayer was it 30 or 43?

3 MR. MAYER: It was 43, Judge.

4 THE COURT: Then we can eliminate 30 then, correct
5 since it's a duplicate of 43?

6 MR. MAYER: No objection.

7 THE COURT: What is the State's opposition to the
8 admission of defendant's 43, which is the SLED report for
9 Ms. Zoll?

10 MR. WEST: Your Honor, I believe the proper witness
11 in order to introduce any report would have to have been
12 Tracy McKinnon.

13 THE COURT: You're absolutely correct. Did you
14 make any attempts to offer the report through Mr.
15 McKinnon?

16 MR. MAYER: Judge, I tempted to broach the subject
17 of him testing another individuals blood at which time
18 Mr. West objected and that objection was sustained.

19 THE COURT: But you didn't plan to elicit that
20 testimony through him anyway. You always planned to have
21 it through your toxicologist.

22 MR. MAYER: No, Judge. Actually if I had been able
23 to get this in earlier I was going to talk to Mr.
24 McKinnon about it because it was his test. But the chain
25 of custody ---

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1 THE COURT: --- there was nothing that precluded
2 you from recalling Mr. McKinnon if that was in fact your
3 strategy.

4 MR. MAYER: Well, if I were to recall him Judge he
5 would testify I would expect very similar to how Doctor
6 Bennett testified and he would have to drive from
7 Columbia to do so.

8 THE COURT: My concern, however, is the metabolites
9 would have to come off it.

10 MR. MAYER: I'm happy to redact that, Judge.

11 THE COURT: I'm trying to find out what's the
12 State's real exception to the admissibility of the
13 document because presumably he would recall Mr. McKinnon
14 who would lay the foundation that is in fact -- I mean is
15 there some real question about the authenticity of the
16 test or the results or that this is the actual test
17 result?

18 MR. WEST: Your Honor, the metabolites is the main
19 issue but I believe everything is already been testified
20 to as to the amounts. So the only real purpose of having
21 it introduced would be so they would have that piece of
22 paper back there in evidence. If they wanted to re-hear
23 the testimony ---

24 THE COURT: --- yes, but how is that any different
25 from Ms. Robinson's testimony? It's all cumulative.

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1 It's all been testified to.

2 MR. WEST: I understand, Your Honor.

3 THE COURT: I'm going to let it in but I need
4 number 30 back again because we're going to have to
5 redact one. I don't see how it prejudices the State. It
6 shows that everything was negative with the exception of
7 THC and the amount.

8 MR. WEST: Your Honor, the only concern I would
9 have with the redaction is that I would ask that the
10 redaction be made such that it does not appear on the
11 evidence ---

12 THE COURT: --- that it was redacted ---

13 MR. WEST: --- that it was redacted.

14 THE COURT: I think you can do that with -- I think
15 we can accomplish that. I want 30 marked as a court's
16 exhibit so that you know exactly what it looked like
17 before the redaction. So change that from defendant's
18 exhibit 30 to a court's exhibit and then we will replace
19 43 with a redacted copy, which removes the metabolites
20 because it's not relevant and I've already ruled that it
21 rises to the level of character evidence.

22 [Whereupon, defendant's exhibit number 30 is
23 remarked as court's exhibit number 3]

24 THE COURT: Are there any other evidentiary issues
25 we need to deal with before we do a charge conference

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1 from the State that we haven't already taken up that I
2 took under advisement? As I recall that's the only thing
3 that I had under advisement.

4 MR. WEST: Your Honor, I just need some
5 clarification as to whether the stipulation is going to
6 be read as a piece of evidence or a court exhibit. It's
7 my understanding ---

8 THE COURT: --- it's up to y'all. It's done
9 several ways. You can read a stipulation or you can mark
10 it as a joint exhibit and it goes back to the jury ---

11 MR. WEST: --- I'd like it to go back to the jury,
12 Your Honor.

13 THE COURT: Then it will be marked as a joint
14 exhibit.

15 MR. WEST: Okay.

16 THE COURT: Any exception Mr. Mayer?

17 MR. MAYER: I mean I don't see why it would have to
18 go that way. It seems like it could just be read in.

19 THE COURT: What difference does it make? It's
20 your agreement.

21 MR. MAYER: I mean it's got my signature on it.

22 THE COURT: It has their signature on it too.

23 MR. MAYER: I just would prefer it to be read in,
24 Judge.

25 THE COURT: If counsel could approach for me please

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1 so that you can see the redacted version. I only
2 redacted page 2 because that's the only one that had a
3 reference to THC metabolites.

4 [Whereupon, Mr. West, Mr. Alfaro, and Mr. Mayer
5 review document with the court]

6 THE COURT: All right. Any exception to the
7 redaction from the State?

8 MR. WEST: None from the State, Your Honor.

9 THE COURT: From the defense?

10 MR. MAYER: No, Judge.

11 THE COURT: All right. That will be marked and
12 admitted as defendant's 43 subject to the State's
13 objection with the redacted page.

14 [Whereupon, defendant's exhibit number 43 with
15 redacted page is entered into evidence by the court]

16 THE COURT: Is there any need for me to keep the
17 page that I actually redacted or can I discard this?

18 MR. MAYER: Not from the defense.

19 MR. WEST: Nothing from the State.

20 THE COURT: All right. I'm going to think about
21 how we are going to deal with the stipulation but I've
22 seen it done both ways. There really is no mystery to it
23 and usually parties are able to agree on how it's
24 handled. I've seen it -- in most civil cases it's just
25 put in the record as a piece of evidence because it's an

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1 agreement. I'm going to instruct the jury that a
2 stipulation is an agreement and it requires no further
3 proof. So I don't know that it really makes a difference
4 one way or the other. I think it's really a sort of
5 waste of time to read it. Well, actually I've seen it
6 done both ways, read and placed in the record because you
7 do need to put it in. I guess either way you're putting
8 it into evidence and then you are publishing it. Did the
9 State have any intention of publishing the stipulation or
10 the defense have any intention of publishing the
11 stipulation?

12 MR. WEST: My only intention was I intend to
13 include that stipulation and the wording in the
14 stipulation as part of my closing argument.

15 MR. MAYER: Judge, I didn't have any expectation
16 about that actually being given to the jury. It just was
17 -- doing that again to accommodate the SLED people for
18 not having to come here from Columbia, twenty of them,
19 for the chain of custody. That's all.

20 THE COURT: Well a stipulation serves a greater
21 purpose than that and its black letter precedent what a
22 stipulation is and that you're bound by it. It has
23 evidentiary value.

24 MR. MAYER: I understand.

25 THE COURT: I'll think about how we'll handle it.

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1 Either I'm going to have the State publish it or I --
2 it's already in the record or I'll just make it a part of
3 the evidence. But it's already -- whether it's actually
4 admitted as -- it's already an exhibit. Whether it's
5 published or whether it actually goes back with the jury
6 I don't know that it makes a difference because I'm going
7 to instruct them that it is an agreement and it requires
8 no further proof.

9 And it is going to limit the way you make your
10 argument because once you've agreed to something you
11 can't then sort of double back on that agreement and say
12 that wasn't what you meant because the writing is the
13 greatest proof for me of what you've agreed to. It says
14 what it says on its face and you're both bound by it. It
15 cuts both way. Is there anything else we need to deal
16 with before charge conference from the State?

17 MR. WEST: Nothing from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. MAYER: No, Judge.

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Charge Conference
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CHARGE CONFERENCE

THE COURT: I'll give the jury a general instruction regarding their responsibility and my responsibility, how they are to judge witness creditability and believability. I'll give them a general instruction regarding expert witness testimony. I'll give them a general instruction on direct and circumstantial evidence from State v Grippon [phonetic]. I'll give them a general instruction that the arrest, the charge, and the indictment are not evidence as well as on the presumption of innocence. I'll charge Victor v Nebraska [phonetic] on reasonable doubt.

I'll then instruct the elements of felony driving under the influence, which is 56-5-2945 which the elements are that the State must prove beyond a reasonable doubt that the defendant drove a vehicle while under the influence of alcohol and or drugs.

It defines what driving a motor vehicle means, the movement of the vehicle as well as the fact that the State must prove beyond a reasonable doubt that the defendant was sufficiently under the influence to impair his ability to drive with reasonable care and with due regard for others and himself or as a reasonably prudent person would drive. As I've already explained that it is not necessary to show that the defendant was in a

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1 helpless condition, passed out, or even intoxicated. On
2 the other hand the fact that the defendant at some time
3 prior to the incident drank an alcoholic beverage or took
4 a drug does not prove that the defendant was driving
5 under the influence.

6 I will then instruct that the State must next prove
7 beyond a reasonable doubt that while driving the
8 defendant did an act forbidden by law or neglected a duty
9 imposed by law. And in that regard I will instruct the
10 following statutes: 56-5-3230, which is the duty to
11 maintain due care -- bear with me just one second.

12 [Off the record momentarily]

13 THE COURT: I will instruct the common law duties,
14 which is proper look out, duty to maintain due care and
15 duty to keep your car under control as well as 56-5-3230,
16 which is duty to maintain due care, 56-5-2920, which is
17 reckless driving.

18 Any person who drives any vehicle in such a manner
19 as to indicate either a willful or wanton disregard for
20 the safety of persons or property is guilty of reckless
21 driving, as well as 56-5-1900, which is driving on
22 roadways lane for traffic whenever any roadway has been
23 divided into two or more clearly marked lanes for
24 traffic. The following rules in addition to all others
25 consistent herewith shall apply. A vehicle shall be

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1 driven as nearly as practicable entirely within a single
2 lane and shall not be moved from the lane until the
3 driver has first ascertained that just movement can be
4 made with safety.

5 And 56-5-1520, which is the statute on speed which I
6 believe all of these subsections would apply, which is
7 (a) you should not drive a vehicle at a speed greater
8 than is reasonable and prudent under the conditions
9 taking into account hazards that are present, that
10 subsection (b) that you are not supposed to drive your
11 car at any greater speed than is authorized by maximum
12 speed limits posted.

13 Subsection (3) is inapplicable. And subsection (f)
14 which is the driver of the vehicle shall drive consistent
15 with the requirements of subsection (a) and an
16 appropriate reduced speed when approaching and crossing
17 an intersection or railway grade crossing, when
18 approaching and going around a curve, approaching a hill
19 crest, when traveling upon any narrow bridge, narrow or
20 winding roadway, and when special hazards exist with
21 respect to pedestrians or other traffic or by reason of
22 weather or highway conditions.

23 I'll then instruct the Berkeley County ordinance,
24 which is 3831 which is it is unlawful for any person to
25 operate any vehicle without care and caution without full

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1 regard to the safety of persons or property when the
2 vehicle or it's appliances are not in proper or safe
3 condition. I'll then instruct 56-5-2930, which is
4 operating a motor vehicle while under the influence of
5 drugs or alcohol. I will instruct subsections (1), (2),
6 and (3).

7 I will then instruct 56-5-2950 (b), which is the
8 presumption or the inference, the amount of alcohol in
9 the defendant's blood at the time of the alleged
10 violation as shown by chemical analysis of the
11 defendant's breath or other bodily fluids may be
12 considered by you in deciding whether the defendant was
13 under the influence.

14 If the alcohol concentration was .08 one hundredth
15 of one percent or more it may be inferred that the
16 defendant was under the influence. However, this
17 inference is simply an evidentiary fact to be considered
18 by you along with the other evidence in the case and for
19 you to give it the weight, value, and effect you decide
20 it should receive.

21 I will then also instruct the final element, which
22 is finally that the State must prove beyond a reasonable
23 doubt that the act or neglect of the defendant
24 proximately caused the death to another person -- caused
25 great bodily injury or death to another person. I will

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1 then define proximate cause pursuant to case law, which
2 includes concurring causes. I will then instruct on the
3 form of the verdict. Are there any exceptions from the
4 State?

5 MR. WEST: Your Honor, I would ask that you take
6 into consideration the posted speed limit ---

7 THE COURT: --- I can barely hear you.

8 MR. WEST: I'm sorry. I would ask ---

9 THE COURT: --- I'm going to instruct speed limits.

10 MR. WEST: The speed limit at the zone I think ---

11 THE COURT: --- I can't comment on what the speed
12 limit was at the zone. I can give the statute that says
13 you must abide by posted speed limits, which is 56-5-
14 1520. That would be an impermissible comment by the
15 court on a fact. You can argue to the jury the posted
16 speed limit and what it was and that the State law
17 provides that posted speed limits have to be observed and
18 that in this case it was not.

19 But I can't make any comment as to what the speed
20 was because ultimately the jury is going to have to
21 decide what the speed these vehicles were going at the
22 time of the collision or before the collision. If there
23 is another statute that deals with speed limits I will be
24 glad to consider it but I'm only aware of 56-5-1520.

25 MR. WEST: Your Honor, I take no exception to that.

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1 I was just under the impression that speed limits could
2 be something that were taken by judicial notice because
3 they are ---

4 THE COURT: --- You got pictures of the scene and
5 you got pictures of what the speed limit was. That's a
6 factual issue for you to argue. She says she wasn't
7 exceeding it and that the speed limit was advisory. You
8 certainly can argue a different position than that.

9 MR. WEST: Nothing else from the State, Your Honor.

10 THE COURT: Any exceptions from the defense?

11 MR. MAYER: Judge, I just have two concerns and a
12 question. I'm not as familiar with Victor v Nebraska
13 [phonetic] on reasonable doubt. Is that the firmly
14 convinced...

15 THE COURT: Yes.

16 MR. MAYER: Okay, great. Then no exception on
17 that. And I didn't -- I wasn't following along with
18 everything the court said. Is there going to be an
19 instruction to indicate that the defendant's alleged
20 intoxication must be the proximate cause of the accident?

21 THE COURT: I am going to instruct on proximate
22 cause.

23 MR. MAYER: Pardon?

24 THE COURT: I'm going to instruct on proximate
25 cause.

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1 MR. MAYER: On that link of proximate cause, right?

2 THE COURT: I'm going to instruct what proximate
3 cause is from the case law, which is the direct cause or
4 it can be one of the concurring causes.

5 MR. MAYER: All right.

6 THE COURT: It doesn't have to be the exact cause.

7 MR. MAYER: Perfect. That's adequate for the
8 defense, Judge. And the last concern we had was the
9 court it looks like is going to charge on a lot of
10 driving law and ---

11 THE COURT: --- it's required. That's one of the
12 elements the State has to prove, which is that -- well,
13 they don't have to but in this case there is evidence
14 that there are violations of statutes and ordinances and
15 that is one of their elements. In other words that the
16 defendant did an act forbidden by law or neglected a duty
17 imposed by law and when you are on a highway you have
18 duties that are imposed on you.

19 MR. MAYER: I can just imagine a question coming
20 back from the jury as to whether if Ms. Robinson was
21 changing lanes to avoid an accident does that still
22 qualify as violating a statute. I'm afraid it may go
23 unexpressed ---

24 THE COURT: --- whether you are changing a lane or
25 not the law still imposes on you a duty to make sure you

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1 can do that safely. You can't leave your lane of travel
2 until you know you can do it without hurting somebody.
3 And the statute says that exactly.

4 MR. MAYER: I guess let me give the example of ---

5 THE COURT: --- there is no evidence she was
6 changing lanes.

7 MR. MAYER: What I mean is it was two lanes of
8 travel going opposite directions. And there is evidence
9 to ---

10 THE COURT: --- that's not changing lanes.
11 Changing lanes is when you're coming upon a vehicle
12 you're going into another lane to overcome that vehicle
13 and come back into that lane.

14 MR. MAYER: Then I'm not articulating myself well,
15 which is common Judge. Sorry about that.

16 THE COURT: That's okay. The only other statute
17 you're talking about deals with that situation and it
18 would not be factually applicable in this case.

19 MR. MAYER: So my only concern then with the
20 instructions would remain if we -- if the jury comes to
21 the conclusion that Ms. Zoll was in Ms. Robinson's lane
22 and Ms. Robinson swerved to avoid her thereby crossing a
23 double yellow I would hate for them to interpret that
24 action as ---

25 THE COURT: --- you'd have to argue that that's not

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1 a violation of the statute, which certainly you're free
2 to argue under your theory of the facts. But it doesn't
3 change what the current and prevailing law is which is
4 that when a roadway is divided into two or more clearly
5 marked lanes for traffic that a vehicle shall be driven
6 as nearly as practicable entirely within a single lane
7 and shall not be moved from the lane until the driver has
8 first ascertained that such movement can be made with
9 safety.

10 Now there are other statutes that I am instructing
11 that you can say that she was driving her car with due
12 care with regard to the safety of others and that she had
13 no other choice but to -- I mean you can argue -- all
14 those things are factual. Those are not for the court to
15 make a comment on. Y'all have different positions
16 regarding what you say the facts are. But I can't make a
17 comment on the facts.

18 MR. MAYER: Then there are no exceptions from the
19 defense, Judge.

20 THE COURT: Yes sir, Mr. West, you're standing.

21 MR. WEST: Your Honor, Mr. Mayer brought to your
22 attention something that I think needs to be of note to
23 the court. In his opening statement and his just
24 expression of what the proximate cause issue was I
25 believe what he was reaching was in his opening statement

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1 he said that the impairment was the proximate cause of
2 the death.

3 THE COURT: I don't understand what you mean.

4 MR. WEST: Well, what I particularly take exception
5 to is that's not what the statute says. The statute says
6 that the act committed by the defendant, such as the
7 speeding or the crossing of the center line, that is the
8 act that is the proximate cause of the death; not the
9 impairment or the alcohol or the drugs or anything. What
10 we must prove is kind of a separate step ---

11 THE COURT: --- you have to prove she had some
12 impairment in her system ---

13 MR. WEST: --- right. And that goes to ---

14 THE COURT: --- and that's one of your elements.
15 That's the only reason I'm instructing that other statute
16 because you can't kind of -- there are several things
17 that the facts support that are violations of law and you
18 can't just sort of leave those out there unaddressed so
19 they have to be addressed. The .08 has to be addressed.

20 MR. WEST: I understand ---

21 THE COURT: --- well, the .9 -- .09.

22 MR. WEST: I understand. What I'm getting at is I
23 think he's making -- let's say there are three elements,
24 the impairment, the act, and the proximate cause of the
25 death. He's connecting one and three rather than two and

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1 three.

2 MR. MAYER: No, I'm trying to connect one and two
3 just to clarify.

4 THE COURT: Okay. I need you to be more specific
5 and tell me exactly what that means.

6 MR. WEST: Okay.

7 THE COURT: I mean Mr. Mayer. I need to understand
8 exactly what he is saying he is trying to connect one and
9 two.

10 MR. MAYER: Judge, it's not a strict liability
11 statute and so there needs to be a connection between her
12 impairment causing the accident.

13 THE COURT: I don't think that's the way the
14 statute is written. They have three elements they have
15 to prove and none of them have to be connected to one
16 another. They have to prove three things. They have to
17 prove she was in a vehicle driving, she was impaired, and
18 that her actions were the proximate cause of this crash
19 and this death.

20 MR. MAYER: That her actions were the proximate
21 cause of this crash? Okay. I'm with you on that.
22 That's fine with the defendant.

23 THE COURT: And I will -- and so there is clarity
24 on that issue...

25 [Whereupon, the court reviews documents]

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1 THE COURT: Proximate cause is the direct cause.
2 It is the immediate cause. It is the efficient cause.
3 It is that cause without which the death of the victim
4 would not have resulted. There must be a chain of
5 causation from the time of the injury inflicted by the
6 defendant until the time of the victim's death.

7 Proximate cause does not necessarily mean that it
8 occurred immediately prior to death. There may be more
9 than one proximate cause. The act of two or more persons
10 may combine together to be a proximate cause of the death
11 of a person. The defendant's act may be regarded as the
12 proximate cause if it is a contributing cause of the
13 death of the victim.

14 The fact that other causes also contribute to the
15 death of the victim does not relieve the defendant from
16 the responsibility. The defendant's act need not be the
17 sole cause of the death but must be a proximate cause
18 contributing to the death of the victim. Does that give
19 everybody clarity?

20 MR. WEST: Judge, I think we're on the same page.

21 MR. MAYER: Judge, I don't know if we are.

22 THE COURT: Well, that's what the case law says and
23 that's what I am going to instruct.

24 MR. MAYER: Okay.

25 THE COURT: So I gave it to you in advance so you

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1 won't be blindsided by what I am going to say.

2 MR. MAYER: May we approach?

3 THE COURT: Sure.

4 [Whereupon, an off the record bench conference is
5 held]

6 THE COURT: I told you all that -- my instruction
7 is current and prevailing statement on proximate cause
8 within -- it actually basically just restates what the
9 statute says.

10 MR. MAYER: There are no exceptions from the
11 defense, Judge.

12 THE COURT: Any exceptions from the State?

13 MR. WEST: Nothing further from the State, Your
14 Honor.

15 MR. ALFARO: Your Honor, I did have one question as
16 far as the stipulation goes. Is there a jury charge
17 related to the stipulation?

18 THE COURT: I'm just going to instruct them at the
19 beginning that they are -- that they are to consider only
20 the competent evidence before them. They are to
21 disregard and disabuse from their mind any testimony I've
22 ordered stricken from the record. And that they are only
23 to consider the testimony which has been presented from
24 the witness stand together with any exhibits which have
25 been made as part of the record and any stipulations of

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1 counsel. And I will instruct them that a stipulation is
2 an agreement between the parties and it requires no
3 further proof.

4 MR. ALFARO: Thank you, Your Honor.

5 THE COURT: Anything else before we break for the
6 evening from the State?

7 MR. WEST: Nothing, Your Honor.

8 THE COURT: From the defense?

9 MR. MAYER: No, Judge.

10 THE COURT: And we'll just do -- I'll let you all
11 see the verdict form in the morning. When we travel we
12 are a little limited with our technology. I don't have a
13 portable printer so we'll have to print it in the
14 morning. But it will simply say guilty of felony D-U-I
15 or not guilty. But if you all want to come up and look
16 at it on the computer you're welcome to.

17 [Whereupon, all counsel approach the bench]

18 THE COURT: All right. Are there any exceptions
19 to the form of the verdict from the State? We're still
20 in session. Are there any exceptions to the form of the
21 verdict from the State?

22 MR. WEST: Nothing from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. MAYER: Nothing, Judge.

25 THE COURT: All right guys, have a good evening.

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1 See you in the morning at 9:30.

2 MR. WEST: Thank you, Your Honor.

3 THE COURT: Y'all might want to make arrangements
4 for lunch to be brought in to you because the jury is
5 having lunch brought in and generally it takes them about
6 maybe fifteen minutes to eat. If we have smokers to take
7 a smoke break, and then if we have any questions that's
8 usually when we have them.

9 So I would prepare to have lunch brought in so that
10 you won't have to leave the courthouse and then have to
11 rush back if there is a question, okay. In the morning
12 if y'all could when you come in just double check and
13 make sure the court reporter has all the exhibits.

14 [Whereupon, court is adjourned at 5:55 p.m.]

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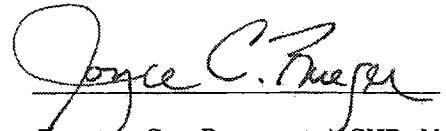
State v Shana Robinson
Certificate of the Court Reporter
June 5, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Berkeley County, South
Carolina on the 5th day of June, 2014.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

September 12, 2014


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2014-GS-08-0313
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	
	)	
SHANA CECIEL ROBINSON	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 6, 2014
Moncks Corner, S. Carolina

VOLUME 5 (OF 5)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

MASON WEST, ESQ.
BRYAN ALFARO, ESQ.
Attorneys for the State

AARON C. MAYER, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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PROCEEDINGS

1
2 THE COURT: Mr. Mayer, were you able to locate your
3 witnesses?

4 MR. MAYER: Yes, Judge.

5 THE COURT: Are they here?

6 MR. MAYER: Both were here earlier this morning and
7 one was wearing shorts and I sent him home to change and
8 put appropriate attire on and the other is here.

9 THE COURT: I'm going to allow the State to publish
10 the stipulation. A stipulation is an agreement and it
11 requires no further proof, however it is the same as
12 testimony and testimony would not go back to the jury.
13 The court would not want it to be unduly emphasized any
14 more than any other testimony. However, if the jury
15 wishes to hear it again, they certainly would be able to
16 based on their request just like any other testimony.

17 So at the appropriate time if the State desires to
18 they can publish the stipulation to the jury. And I will
19 instruct the jury that a stipulation is an agreement and
20 it requires no further proof. Originally it was marked
21 as court's exhibit 1 and then subsequently it was marked
22 as State's exhibit 68. So it will remain as court's
23 exhibit 1 -- well, it could be State's exhibit 68 as
24 well. I don't know if it really makes a difference. So
25 Mr. West when you are ready you can publish the

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1 stipulation. And then I need you both to approach and
2 review the verdict form for me.

3 [Whereupon, counsel approach the bench to review
4 document]

5 THE COURT: Is there any exception to the form of
6 the verdict from the State?

7 MR. WEST: No, Your Honor.

8 THE COURT: From the defense?

9 MR. MAYER: No, Judge.

10 THE COURT: And I will staple that to the
11 indictment and it will go back to the jury.

12 MR. WEST: Your Honor, I would just ask for some
13 clarification. Do we still read it or does it just go
14 back ---

15 THE COURT: --- it's up to you. If you want to
16 publish it you can. Mr. Mayer has withdrawn his
17 objection so it will be marked and admitted as State's
18 exhibit 68 and then this court I am going to take off
19 it.

20 [Whereupon, State's exhibit number 68 is entered
21 into evidence by the court]

22 MR. MAYER: I don't mind it being read either.

23 THE COURT: Mr. Mayer has indicated he has no
24 objection to it being published either. Is the State
25 going to open and close?

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1 MR. WEST: Yes, Your Honor.

2 THE COURT: And how long do you anticipate both of
3 those -- the total of those to be?

4 MR. WEST: Between the two closes, Your Honor,
5 probably Mr. Alfaro's maybe fifteen minutes. I hate to
6 low-ball mine ---

7 THE COURT: --- just give me a -- I'm trying to
8 figure out when I am ordering lunch. I'm not trying to
9 restrict you. I just need a realistic idea.

10 MR. WEST: Probably an hour.

11 THE COURT: And Mr. Mayer, how long will your
12 closing argument be?

13 MR. MAYER: Probably comparable, Judge.

14 [Off the record momentarily]

15 THE COURT: Is the State ready to proceed?

16 MR. WEST: Yes, Your Honor.

17 THE COURT: Is the defense ready to proceed?

18 MR. MAYER: Yes, Judge.

19 THE COURT: Please bring in the jury. The State
20 will proceed with publishing -- I assume you want to
21 publish the stipulation?

22 MR. WEST: Your Honor, I'll just publish it during
23 my close.

24 THE COURT: You want to do what now?

25 MR. WEST: I'll just publish it during my close.

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1 THE COURT: As part of your closing argument?

2 MR. WEST: Yes, ma'am.

3 THE COURT: And do you have your witnesses, Mr.
4 Mayer?

5 MR. MAYER: I have at least one, Judge. I can
6 check to see if he has come back yet ---

7 THE COURT: --- could you double check for me
8 before I bring the jury in?

9 [Whereupon, Mr. Mayer complies]

10 MR. MAYER: Judge, one is here. The other has not
11 returned yet. I'm happy to proceed forward with this
12 one.

13 THE COURT: You need to go ahead and bring him in
14 the courtroom. I don't want to be waiting.

15 [Whereupon, the jury enters at 9:48 a.m.]

16 THE COURT: Good morning ladies and gentlemen. I
17 hope that you all had a pleasant and restful evening. We
18 are now going to resume the trial. We have some
19 additional testimony that we are going to take after
20 which we will have closing argument and instruction. I
21 would ask that you give the attorneys your attention.
22 Mr. Mayer, you may proceed.

23 MR. MAYER: Thank you, Judge. The defense will
24 call Mr. Chuck Holmes to the stand.

25 [Whereupon, Mr. Holmes comes forward]

State v Shana Robinson
Proceedings
June 6, 2014

1 [Whereupon, the witness is duly sworn by the Clerk
2 of Court]

3 CLERK OF COURT: Please be seated. State your full
4 name and spell your last name for the record.

5 THE WITNESS: Charles A. Holmes, H-O-L-M-E-S.

6 THE COURT: Sir, please state your full name again.

7 THE WITNESS: Charles Holmes, H-O-L-M-E-S.

8 THE COURT: Thank you. You may proceed.
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State v Shana Robinson
Charles Holmes-Direct Examination by Mr. Mayer
June 6, 2014

1 CHARLES HOLMES,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MAYER:
6 Q. Mr. Holmes, please tell the jury what you do for a
7 living?
8 A. I bartend.
9 Q. Okay. And where have you been working this week?
10 A. Myrtle Beach, South Carolina.
11 Q. I appreciate you coming in today. Do you remember
12 the night of November 10, 2011?
13 A. Yes, I do.
14 Q. What were you doing that night?
15 A. I was sitting at Geronimo's Bar and Grill.
16 Q. Now were you working there?
17 A. No, I was not.
18 Q. Okay, you were a patron?
19 A. Right. I was just sitting there.
20 Q. Okay. Did you have occasion that night to see
21 Shana?
22 A. Yes, I did.
23 Q. Okay. Please describe her demeanor that night.
24 A. It was normal. She was calm and we were just
25 talking about football and just normal chit chat.

State v Shana Robinson
Charles Holmes-Direct Examination by Mr. Mayer
June 6, 2014

- 1 Q. Was she drinking?
- 2 A. She had a drink.
- 3 Q. Okay. Did you see her drinking it?
- 4 A. Uh Huh.
- 5 Q. Was she drinking it fast?
- 6 A. No, she was just sipping on it. We were just
- 7 sitting there talking.
- 8 Q. Okay. Did it seem like she was trying to get
- 9 impaired?
- 10 A. No, not at all.
- 11 Q. Did it seem like she was already impaired?
- 12 A. No.
- 13 Q. Was she intoxicated?
- 14 A. No.
- 15 Q. Was she sober?
- 16 A. Yes.
- 17 Q. Okay. About how long if you know do you know about
- 18 how long she was there?
- 19 A. I would say she was in the Bar and Grill for about
- 20 an hour and then she walked next door because they were
- 21 doing wrestling practice next door and talked to one of
- 22 our friends over there. But she didn't carry nothing
- 23 with her over there. She was over there just talking.
- 24 Q. Okay. And you're sure she wasn't drunk?
- 25 A. Right. I'm a bartender. I can pretty much tell.

State v Shana Robinson
Charles Holmes-Direct Examination by Mr. Mayer
June 6, 2014

1 Q. Okay. And did you hear about there being an
2 accident later after that?

3 A. Later on.

4 Q. Okay. When did you hear about that, the same night
5 or later?

6 A. The same night.

7 Q. Okay. Do you know how long it was after Shana left
8 Geronimo's Bar and Grill that that accident occurred?

9 A. It was hours that I know of like maybe -- that I
10 found out because I live down that road.

11 Q. Okay.

12 A. So it was later on that I found out.

13 Q. Okay. Please answer any questions the State may
14 have for you.

15 THE COURT: You may proceed.

16 MR. ALFARO: Thank you.

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State v Shana Robinson
Charles Holmes-Cross-Examination by Mr. Alfaro
June 6, 2014

CROSS-EXAMINATION

BY MR. ALFARO:

Q. Mr. Holmes, how long have you known Shana Robinson?

A. Well I've known her and her family all my life because I live right down the road. Her Dad owns a tackle shop and actually I knew her granddaddy and I knew her.

Q. When did you -- how often this week have you talked to either Shana or her lawyer about your testimony today?

A. Today? I talked to her yesterday and that was it. I just met her attorney this morning.

Q. So you talked ---

A. --- I told him hello.

Q. You talked to Shana yesterday?

A. Yes.

Q. And you said you were with her at Geronimo's. Were you there when she ordered both of the drinks, both of the vodka cranberries?

A. I was there when she ordered one. Well, I seen her sipping on it.

Q. No further questions.

THE COURT: Any redirect?

MR. MAYER: Just real briefly, Judge.

State v Shana Robinson
Charles Holmes-Redirect Examination by Mr. Mayer
June 6, 2014

1 REDIRECT EXAMINATION

2 BY MR. MAYER:

3 Q. Have you been in touch with someone from my office

4 named Chris the last couple of weeks?

5 A. Yes.

6 Q. Okay. He's been trying to serve you with a

7 subpoena, right?

8 A. Right, that's correct. I've been in Myrtle Beach

9 and I wasn't sure. And I just actually started a new job

10 there so I wasn't sure if they were going to let me come

11 and actually -- that's why it was all of a sudden think

12 you can get here?

13 Q. So Shana called you yesterday and said get your butt

14 to court, right?

15 A. Right, that's correct.

16 Q. Thank you.

17 THE COURT: Any objection to the witness being

18 excused from the State?

19 MR. ALFARO: No, Your Honor.

20 THE COURT: From the defense?

21 MR. MAYER: No, Judge.

22 THE COURT: Sir, you are excused.

23 [Whereupon, the witness is excused and exits the

24 witness stand]

25 THE COURT: Are you ready to proceed?

State v Shana Robinson
Charles Holmes-Redirect Examination by Mr. Mayer
June 6, 2014

1 MR. MAYER: Yes, Judge.
2 THE COURT: Call your next witness.
3 MR. MAYER: We'd call Mr. Rece Bucknor.
4 [Whereupon, Mr. Bucknor comes forward]
5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]
7 CLERK OF COURT: Please be seated. State your full
8 name and spell your last name for the record.
9 THE WITNESS: Clayton Rece Bucknor, B-U-C-K-N-O-R.
10 THE COURT: You may proceed.
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State v Shana Robinson
Clayton Bucknor-Direct Examination by Mr. Mayer
June 6, 2014

1 CLAYTON BUCKNOR,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MAYER:
6 Q. Good morning, Mr. Bucknor.
7 A. Good morning.
8 Q. Thanks for coming in. Did you hear about a wreck
9 that occurred on November 10, 2011?
10 A. I did.
11 Q. And did you think back to if you knew anybody
12 involved in that wreck?
13 A. I did.
14 Q. Okay. And did you remember seeing anybody who was
15 involved in that wreck earlier that night?
16 A. I did.
17 Q. Okay. Who did you see?
18 A. I saw Shana.
19 Q. Okay. The Shana sitting here, right?
20 A. Right.
21 Q. Okay. And where did you see Shana at earlier that
22 night?
23 A. It was at wrestling practice.
24 Q. Okay. And where is that?
25 A. That's -- the bar -- it's like right next to the

State v Shana Robinson
Clayton Bucknor-Direct Examination by Mr. Mayer
June 6, 2014

- 1 bar.
- 2 Q. Are you saying Geronimo's Bar and Grill?
- 3 A. Right. Geronimo's half of it was where they coached
- 4 wrestling and the other half was the bar. Since then
- 5 they changed it to now all of it is a bar. That's where
- 6 I saw here.
- 7 Q. Okay. Do you remember who you were coaching that
- 8 night?
- 9 A. Douggie [phonetic] Metts..
- 10 Q. Okay. Who else was with y'all?
- 11 A. His Mom was there.
- 12 Q. What's his Mom's name?
- 13 A. Mickie.
- 14 Q. Mickie Metts?
- 15 A. Mickie Metts.
- 16 Q. Would that be short for Michelle maybe?
- 17 A. I don't think so.
- 18 Q. Okay. So please describe -- did you have any
- 19 interactions with Shana?
- 20 A. Initially when she came in I gave her a quick hug
- 21 and went back to coaching Douggie [phonetic].
- 22 Q. Okay.
- 23 A. She ended up talking with Mickie.
- 24 Q. Okay. From what you were able to observe of
- 25 Shana's demeanor did she seem impaired?

State v Shana Robinson
Clayton Bucknor-Direct Examination by Mr. Mayer
June 6, 2014

1 MR. ALFARO: Objection.

2 THE COURT: Basis?

3 MR. ALFARO: Leading.

4 THE COURT: Sustained. Leading. Rephrase.

5 Q. [Mr. Mayer] How would you describe Shana's demeanor?

6 A. The same as the last time I seen her; just Shana.

7 Q. Okay. Was she drunk?

8 A. She didn't smell drunk. She was like -- no, no.

9 Q. Did she look drunk?

10 A. No.

11 MR. ALFARO: Objection.

12 THE COURT: Basis?

13 MR. ALFARO: Leading.

14 THE COURT: Sustained. Leading.

15 Q. [Mr. Mayer] Were you able to make a determination or
16 did it occur to you at the time that she was impaired?

17 MR. ALFARO: Objection.

18 THE COURT: Basis?

19 MR. ALFARO: Leading.

20 THE COURT: Sustained. Rephrase.

21 Q. [Mr. Mayer] Please describe fully Shana's demeanor
22 and everything you observed.

23 A. When she came in I noticed that I knew her, which

24 she said Rece and I gave her a hug. And at that point

25 she didn't stumble towards me. I didn't smell alcohol on

State v Shana Robinson
Clayton Bucknor-Direct Examination by Mr. Mayer
June 6, 2014

1 her breath. I drank so I would be able to tell and I
2 didn't have a drink before I started coaching that day so
3 I think that I would be able to tell.

4 Q. So did you smell alcohol on her?

5 A. Uh Uh.

6 Q. Okay. So from what you were able to tell are you
7 able to say whether she was impaired or not?

8 A. I can say in my opinion she wasn't drinking. When
9 she walked in she hadn't been drinking.

10 Q. She had not been drinking?

11 A. Right.

12 Q. Okay. Thank you very much. Please answer any
13 questions the State may have.

14 THE COURT: You may proceed.

15 MR. ALFARO: Thank you.

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State v Shana Robinson
Clayton Bucknor-Cross-Examination by Mr. Alfaro
June 6, 2014

1 CROSS-EXAMINATION

2 BY MR. ALFARO:

3 Q. Mr. Bucknor, when did you start coaching wrestling?

4 A. It was that year.

5 Q. Did you have any prior experience coaching
6 wrestling?

7 A. No. I actually at the bar it was Doug's bar at the
8 time and he had heard through everyone that frequents the
9 bar all my accolades. And at Berkeley I used to wrestle
10 at Berkeley. I'm a three time free style State champion.
11 I got second in the State and fourth in the State during
12 high school.

13 Q. Okay. Who did you say hired you for that?

14 A. Doug Metts.

15 Q. Doug Metts. Did Mr. Metts know about your 2008
16 conviction for unlawful neglect of a child or helpless
17 person when he hired you?

18 A. I'm not sure.

19 Q. Did he know about your 2011 conviction for
20 possession of a controlled substance?

21 A. I know that everyone that knows me knows that I have
22 a past.

23 Q. And your testimony is that she wasn't drinking at
24 all that night?

25 A. My testimony is that I could not detect and I don't

State v Shana Robinson
Clayton Bucknor-Cross-Examination by Mr. Alfaro
June 6, 2014

1 think that she was drinking because of that.

2 Q. Actually your testimony was that she wasn't
3 drinking.

4 A. Okay.

5 Q. Thank you.

6 THE COURT: Any redirect?

7 MR. MAYER: No, Judge.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MR. ALFARO: No, Your Honor.

11 THE COURT: From the defense?

12 MR. MAYER: No, Judge.

13 THE COURT: Sir, you're excused.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

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State v Shana Robinson
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1 THE COURT: Anything further from the defense?

2 MR. MAYER: The defense rests.

3 THE COURT: Any rebuttal? We've already preserved
4 motions and heard motions. Any rebuttal testimony from
5 the State?

6 MR. WEST: Nothing, Your Honor.

7 THE COURT: Mr. Foreman, ladies and gentlemen both
8 the State and the defense have rested their cases. The
9 next part of the process is closing argument and
10 instruction. We're going to take a very brief break. I
11 would encourage you all to use the restroom if you need
12 to. The next part of this process is probably going to
13 take a couple of hours. I will take breaks as needed but
14 I want to give the attorneys an opportunity to set up for
15 their closing arguments so it will be about five minutes
16 and then we will resume with closing argument and
17 instruction. Your lunch should arrive about 12:30. If
18 you would go with the bailiff please. Please do not
19 discuss the case and please leave your notepads in your
20 seats.

21 [Whereupon, the jury exits at 10:00 a.m.]

22 THE COURT: You may be seated. Just out of an
23 abundance of caution although we heard motions on
24 yesterday the defense had supplemented the record with
25 two additional witnesses. Is there a necessity to hear

State v Shana Robinson
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1 motions again from the State?

2 MR. WEST: Nothing from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. MAYER: No, Judge. I just want to thank you
5 for opening the case for that.

6 THE COURT: No thanks necessary. Y'all get set up
7 for your arguments, about five minutes, and then we will
8 resume.

9 [Whereupon, court is in recess from 10:01 a.m. until
10 10:09 a.m.]

11 THE COURT: Is the State ready to proceed?

12 MR. WEST: Yes, Your Honor.

13 THE COURT: Is the defense ready to proceed?

14 MR. MAYER: Yes, Judge.

15 THE COURT: Please bring in the jury.

16 [Whereupon, the jury enters at 10:12 a.m.]

17 THE COURT: Ladies and gentlemen, both the State
18 and the defense has rested their case. The next part of
19 the process is closing argument and then the court's
20 instruction. You will hear from the State followed by
21 the defense and then again you will hear from the State
22 after which the court will instruct you on the law
23 regarding this case. I would ask that you give the
24 attorneys your undivided attention. The State may
25 proceed.

State v Shana Robinson
Closing Argument by Mr. Alfaro
June 6, 2014

CLOSING ARGUMENT

BY MR. ALFARO:

Good morning ladies and gentlemen. First of all I want to thank you for your attentiveness in the court this week. There have been some lay witnesses that said some easy common sense things and there have been some scientists who have gotten up here and told you a lot of formulas, numbers and ratios that quite honestly I couldn't keep up with but I noticed, and we do watch, I noticed that y'all were taking notes and being very attentive and I want to thank you on behalf of the State for that attentiveness.

We're here this week because the defendant, Shana Robinson, has been charged with felony D-U-I resulting in death for the death of Candy Zoll. In any case the State has the burden of proof, which means that we have to prove every element of this defense beyond a reasonable doubt.

Felony D-U-I with death the elements are that Shana Robinson drove a vehicle while under the influence of alcohol and or drugs sufficient to impair her ability to drive with reasonable care, due regard for others or as a reasonably prudent person would drive. And while driving she did an act forbidden by law or neglected a duty imposed by law; the act or the neglect proximately caused

State v Shana Robinson
Closing Argument by Mr. Alfaro
June 6, 2014

1 death to another person. And what I'm going to do is I'm
2 going to go through these elements a little bit for you.
3 Then Mr. Mayer is going to have an opportunity to speak
4 with you about what he thinks the evidence and the facts
5 show. Then Mr. West is going to have the opportunity to
6 do the same on the State's behalf.

7 Now, the first one, drove a vehicle, it is what it
8 is. It's that simple. Shana Robinson was driving a BMW
9 on Broughton Road on November 10, 2011. The second one,
10 while under the influence of alcohol and or drugs, the
11 evidence and testimony that you've heard she had at least
12 three vodka cranberry drinks at Applebee's and
13 Geronimo's.

14 The evidence as I say at least because by her own
15 admission she doesn't remember parts of the night. And
16 the people that testified from the stand her friends and
17 other people weren't with her the whole time; some saw
18 her parts of the night and some saw at different parts of
19 the night.

20 And the blood alcohol result is .09. Now it says
21 alcohol and or drugs. Being impaired by alcohol at .09
22 that satisfies the statute of felony D-U-I with death,
23 but it also says and or drugs. And in this case in
24 addition to the alcohol in her system she tested positive
25 for Benadryl, Clonazepam and Trazadone; all of which have

State v Shana Robinson
Closing Argument by Mr. Alfaro
June 6, 2014

1 side effects that would impair driving. It impaired her
2 that night and caused her to cause the accident that
3 resulted in the death of Candy Zoll.

4 Now the other one was kind of a longer element to
5 sufficiently impair her ability to drive with reasonable
6 care, ill regard for others or as a reasonably prudent
7 person would drive. All that boils down to is that she
8 crossed the center line into Candy Zoll's lane of travel
9 hit her head-on causing the collision. She did this
10 while she was speeding according to one expert 79 in a 35
11 mile per hour zone, which is the posted speed limit
12 around that curve.

13 Even if you take the other reconstructionist that
14 the defense called he still has her speeding because he
15 has her going 47 in a 35 plus or minus three 44 up to 50.
16 Any of those still speeding at 35. So both of those
17 things her driving, crossing the center line crashing
18 head-on into Candy Zoll speeding the way she was
19 satisfied that element.

20 Now I put that she is not going to make that curve.
21 As I said if two differing experts testified as to what
22 the speed was. What they have both in common is that
23 either way she was speeding. But you also have two lay
24 witnesses that live on Broughton Road, one heard her car
25 coming before he saw her car coming. Both of them said

State v Shana Robinson
Closing Argument by Mr. Alfaro
June 6, 2014

1 she is not going to make that curve. And after they say
2 that she didn't make that curve. Now, that what I just
3 had up is what it all boils down to; she crossed the
4 center line and she was speeding.

5 The Judge is going to charge you that the act not
6 reasonable care while driving did an act forbidden by law
7 neglected a duty imposed by law. There are several
8 statutes in this case and ordinances which Shana Robinson
9 violated that night when she caused the death of Candy
10 Zoll.

11 One is 56-5-1520 it's a State law, that the rules as
12 to speed. That's all the language that is in the statute
13 about speed limits. A person shall not drive a vehicle
14 on a highway at a speed that is greater than is
15 reasonable and prudent under conditions having regard to
16 the actual and potential hazards that exist. This is
17 important as well, speed must be so controlled to avoid
18 colliding with a vehicle on the highway in compliance
19 with legal requirements and duty of a person to use care.

20 The driver of a vehicle shall drive consistent with
21 the requirements of subsection (a) and at an appropriate
22 reduced speed when approaching and going around a curve.
23 She, as the evidence and the arguments will tell you,
24 violated both of those by violating both of those
25 subsections essentially. She has committed the act

State v Shana Robinson
Closing Argument by Mr. Alfaro
June 6, 2014

1 forbidden by law and neglected a duty imposed by law.
2 Another statute the Judge is going to charge you is
3 driving on roads lane for traffic. That's the legalese
4 version of stay in your lane.

5 Whenever a road has been marked or divided as
6 Broughton Road is marked as two lanes a vehicle shall be
7 driven as nearly as practicable entirely within a single
8 lane and should not be moved from the lane until the
9 driver has first ascertained that such movement can be
10 made safely. Again, stay in your lane. Don't drive so
11 fast that you can't stay in your lane.

12 Reckless driving drives in a manner as to indicate a
13 willful and wanton disregard for the safety of persons or
14 property; reckless driving. Again, driving so fast
15 around a curve at night you can't stay in your lane and
16 you run head-on into somebody and kill them that's
17 another statute she has violated.

18 This is the statute that relates to the blood
19 alcohol level. In South Carolina if a person has a blood
20 alcohol level of .08 or more it can be inferred, can be
21 inferred, that the person is under the influence of
22 alcohol. In this case the report number is .09. -- That's
23 the amount at the time of the testing. There was some
24 testimony as to extrapolation, which just says that when
25 they drew it at 45 after midnight it was .09. Go back to

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1 the time of the accident giving their ratios and their
2 calculations it could have been as high as .15. Again,
3 both of which are over the .08.

4 A driver also has a duty to exercise due to avoid
5 colliding with a pedestrian or person propelling a human-
6 powered vehicle. Again, just drive with regard and care
7 for the other people that are on the road at the same
8 time as you.

9 This is a Berkeley County ordinance for careless
10 driving says it shall be unlawful for a person to operate
11 any vehicle without care or caution, without full regard
12 for the safety of persons or property or when the vehicle
13 or appliances are not in proper or safe condition.
14 Again, you're not the only person on the road. Drive
15 with concern and care for other people, don't drive so
16 fast, don't break the speed limit and drive so fast and
17 so carelessly that you cross your lane of travel and you
18 hit somebody head-on and kill them.

19 That as we said that's what she did that day or that
20 night. She was clearly speeding, either 79 or 47 or
21 somewhere between. No one disputes that she crossed the
22 center line. Both experts say that using the same
23 diagram the defendant crossed the center line and hit
24 Candy Zoll's Saturn head-on. Candy died as an immediate
25 and direct result of that. Part of this is that she

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1 would not have died if she had not been hit head-on by
2 the defendant. Clearly that is what caused her death and
3 in this case both sides have stipulated to that, which
4 means they agree. And you'll hear that stipulation a
5 little bit later that the accident caused by Shana
6 Robinson was what was the proximate cause. Well, that
7 accident is what killed Candy Zoll.

8 Now I told you the State has to prove all those
9 elements beyond a reasonable doubt. It's important to
10 remember what reasonable doubt is. Reasonable doubt is
11 doubt that would cause a reasonable person to hesitate.
12 Now equally important is that is not beyond all doubt.
13 It's not an absolute certainty because there are very few
14 things in this world, if anything, that I or anybody else
15 could convince you of beyond any and all doubt. And
16 that's not what our burden is.

17 What our burden is if after hearing the evidence and
18 considering the testimony and considering the evidence
19 that is going to go back with you into your jury room if
20 at the end of that deliberation each of you are firmly
21 convinced that Shana Robinson is guilty then you must
22 find her guilty. Again, it's not all doubt so things
23 that you would consider that had been brought up by the
24 defense that may or may not be supported by physical
25 evidence; deer, radio waves, uneven roads, things like

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1 that you should consider those. You should think about
2 it but then when you move past it because all the other
3 physical evidence and all the other testimony tells you
4 that that doesn't make any sense and you're firmly
5 convinced after that that she is guilty of felony D-U-I
6 with death then she is guilty. Again, it's not all doubt
7 it's beyond a reasonable doubt; firmly convinced.

8 Now there is two types of evidence that has been
9 presented in this case, direct evidence and
10 circumstantial evidence. Direct evidence is testimony of
11 a person who claims to have actual knowledge such as an
12 eyewitness. You heard direct evidence testimony from
13 Joshua Witty, Allen Myers, Tommy [sic] Sasnett what they
14 heard, what they saw, what they estimated her speed at
15 when she flew past them on Broughton Road just before the
16 accident.

17 You heard also the police officers that were at the
18 scene that took the measurements, that collected
19 evidence, painted the road that made calculations,
20 reconstructionists after the fact that did that, medical
21 personnel; that's direct evidence. Circumstantial
22 evidence is proof of a chain of facts and circumstances
23 indicating that something happened. You didn't see it
24 but because you know this happened and this happened that
25 means that's circumstantial evidence that something

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1 resulted from that. And the law makes no distinction
2 between the value or the weight to be given to direct or
3 circumstantial. There is no greater certainty required
4 for circumstantial than of direct and you should weigh
5 all the evidence in the case.

6 Now, how do we get to determining what is right,
7 what is true, who to believe, what really happened. At
8 the beginning I think of this you heard probably from
9 more than one person about common sense being what you
10 use. You've been instructed on what the law it. Part of
11 your duties as the fact finders in this case is to
12 determine the creditability of the witnesses, the people
13 that came in and sat on that stand.

14 Creditability is basically just believability. You
15 have the right to consider whether a person has any bias,
16 any prejudice, any other motive in this case to not tell
17 the truth or to remember some things and forget some
18 things or whether they have a reason to do that. That's
19 your job in analyzing what you heard in this courtroom
20 this week. And all of that also boils down to common
21 sense. Does it make any sense? Does it make sense that
22 somebody will tell you that they remember a four hour --
23 or out of a four hour block they remember one or two or
24 three things all of which help their story but they don't
25 remember other pieces that hurt their story. You do that

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1 for the creditability of the defendant when she
2 testified. You do that for the other witnesses that got
3 up on that stand; for example, Mr. Witty, Mr. Sasnett,
4 and Mr. Myers. Did they have a motive? You have to
5 decide for yourself did they have a motive? Did they
6 have a bias? Did they have a reason to come in and say
7 we knew she wasn't going to make that curve when she blew
8 past us on Broughton?

9 Would they have a reason to come in and one say 70,
10 one say 80. The gentleman that was driving on Broughton
11 Road when she flew up behind him so fast that he thought
12 he was getting pulled over by the police. He's going 60
13 in a 55 before they get to the posted 35 section and he's
14 going 55 -- he's going 60 in a 55 and she blows past him.
15 Do they have a motive to come in and make up those
16 numbers and make up those estimates?

17 And also it's not just for the lay witnesses, it's
18 not just for them, it's not just for the defendant, it's
19 not just for the police officers and the medics, it's for
20 the experts, the reconstructionists, and the two people
21 that testified about the toxicology. Do they have a
22 bias? Do they have a motive? Are they believable?

23 Ladies and gentlemen, that's the law in this case
24 you have to consider after you hear the rest of the
25 argument and you go back in that jury room to deliberate.

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1 Again, if at the end of all that you are firmly convinced
2 that she is guilty of felony D-U-I with death and that
3 she was driving that night under the influence of drugs
4 and or alcohol, crossed the center line while speeding,
5 and collided head-on into Candy Zoll and as a result of
6 that Candy Zoll died then she is guilty beyond a
7 reasonable doubt of felony D-U-I with death.

8 THE COURT: Mr. Mayer?

9 MR. MAYER: May it please the court?

10 THE COURT: Yes, sir. You may proceed.

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1 CLOSING ARGUMENT

2 BY MR. MAYER:

3 Y'all, the State's case is half-baked, okay. They
4 started an investigation based on insufficient evidence,
5 a bunch of assumptions and that took them entirely in the
6 wrong direction, okay. Wherever there is doubt in this
7 case that doubt has to be resolved in favor of Shana,
8 okay. This is an extremely serious charge. Mr. West in
9 his opening described it as a killing. There was a death
10 involved here. This is not your run of the mill D-U-I.
11 This is an extremely serious charge and there is a lot at
12 stake for Shana, okay.

13 Now there are two big discrepancies in this case
14 that I want you guys to focus on, okay. The first is was
15 she drunk or she not drunk, okay. You've heard from six
16 witnesses from Geronimo's Bar and Grill, okay who are not
17 in any sort of conspiracy who all say to a tee they are
18 all consistent; they saw Shana, they interacted with
19 Shana, and she was not impaired 15 to 30 minutes before
20 the accident guys.

21 This is where the common sense stuff comes in.
22 Okay, let's say that was a conspiracy, okay. That's what
23 they are suggesting. I think it ludicrous but for
24 argument sake let's say that. How about Doctor
25 Montgomery? How about the EMT, Chelsea Arrowood and the

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1 people who were in close contact with Shana immediately
2 after the accident who were all over. Neither one of
3 them smelled alcohol, neither one of them have any sort
4 of bias in her favor, okay.

5 So you've got eight witnesses saying Shana was not
6 impaired that versus a blood alcohol reading and a
7 prescription drug testing that was done four hours later.
8 We'll come back to that but if this is my life on the
9 line I want that test done immediately after. And I
10 submit to you that if that test were done immediately
11 after this accident we wouldn't be here today. That's
12 the first discrepancy.

13 The second discrepancy is these speeds, all right.
14 You heard from Doctor -- or not Doctor Mr. Lee from the
15 MAIT team who described a speed for Shana of 79 miles per
16 hour. And then you heard his older colleague who had
17 been on the MAIT team and retired some years back, Mr.
18 Hill, come in and debunk it all. And we are going to get
19 into that in detail.

20 But those are the two big discrepancies that I would
21 ask you to keep in mind in this case, okay. There are a
22 lot of errors in this case and all those errors create
23 doubt that needs to be resolved in Shana's favor, okay.
24 I want to go through kind of the chronology and I'm going
25 to pause to talk about those two big discrepancies but I

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1 want to just remind you guys the State is suggesting that
2 Shana's memory is somehow selective, that it is somehow
3 convenient for her case. Guys, nothing could be further
4 from the truth. I have worked with Shana throughout this
5 whole process. You heard her testify that they came and
6 hired me the day after this accident; the day that she
7 was charged, okay.

8 And I have seen the progression and maybe you got a
9 sense for it while she was on the stand but she is
10 tormented every day trying to remember what happened,
11 okay, even to the extent of saying -- of thinking at one
12 time when she couldn't remember what had happened that
13 someone had given her Ruffies, okay. Hopefully some of
14 you guys know what Ruffies are and can explain to the
15 others of you. But you know when the toxicology report
16 did come back some months later that's when we learned
17 okay, that's not what happened. She honestly believed
18 that.

19 I'm not a fact witness I didn't know but when that
20 tox report came back we thought what on earth happened?
21 And that's when some months later we got the medical
22 records and figured out that she had a concussion and
23 that explained why she had a very imperfect memory; bits
24 of pieces and flashes which come back over time. It's
25 not alcohol related. That couldn't be more clear to me

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1 and hopefully through the testimony that has been
2 presented that will become clear to you guys as well.
3 Okay. So on the night in question what happened?

4 Shana was at home with her Mom keeping her Mom
5 company. She's not drinking. Her friend Brittany came
6 over from next door and had had a fight with her
7 boyfriend of some sort and boyfriend was not going to let
8 her use the car and Brittany needed to turn in a test and
9 said Shana can you help me? Yes, of course.

10 Shana drives her up to the Trident campus -- the
11 Berkeley campus of Trident rather, to drop off the test.
12 Brittany, what's going on? Oh, man it's terrible. All
13 right, let's go talk about it. They go to Applebee's,
14 they sit down, they're talking, they get a -- I think
15 they each had a vodka cranberry was what they first
16 ordered and sat there for a while and talked it through.

17 And you heard Doctor Bennett, the forensic
18 toxicologist, testify that about -- the rule of thumb is
19 about for each hour that goes by the body metabolizes one
20 drink fully out of the system, okay. And that's about
21 what Shana had. The first drink was at 5 o'clock
22 roughly, maybe 4:45 or maybe 5:05 but 5 o'clock roughly.
23 The second drink was roughly at 6 o'clock. They were
24 still at Applebee's she and Brittany hanging out talking.
25 Girls can talk you know; God knows. So they are there