

VOLUME I OF III

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WALTER DOUGLAS BARCLAY,

APPELLANT

APPELLATE CASE NO. 2012-212639

RECORD ON APPEAL

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SC Court of Appeals

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THE FOLLOWING IS ON FILE WITH THIS COURT:
DEFENSE COUNSEL’S VIDEO RECORDING OF APPELLANT AT HOSPITAL

STATE OF SOUTH CAROLINA	}	IN THE COURT OF GENERAL SESSIONS
	}	FOR THE COUNTY OF CHARLESTON
COUNTY OF CHARLESTON	}	INDICTMENT NUMBERS: 2009-GS-10-4089;
	}	2011-GS-10-2817; 2011-GS-10-2848
STATE OF SOUTH CAROLINA,	}	
	}	
vs.	}	
	}	
WALTER DOUGLAS BARCLAY,	}	
	}	
Defendant.	}	
_____	}	

DEFENDANT'S MOTION TO EXCLUDE RESULTS OF BLOOD TESTS FOR FAILURE OF STATE TO COMPLY WITH FELONY DUI ADVISEMENT OF RIGHTS AND TO EXCLUDE BLOOD TEST BY REASON OF ILLEGAL SEIZURE OF DEFENDANT'S BLOOD WITHOUT A WARRANT

NOW COMES the Defendant, by and through his undersigned attorney, and pursuant to Rule 4(a) of the South Carolina Rules of Criminal Procedure and Rule 104 of the South Carolina Rules of Evidence,¹ hereby moves this Court to dismiss the felony DUI charges against Defendant on the specific grounds stated herein, to wit:

The State failed to advise the Defendant of his rights prior to the taking of a blood sample as required by statute and the deputy who ordered the non-consensual blood draw under S.C. Code Ann. § 56-5-2946 did not have the requisite probable cause to order that a sample be taken without the accused's consent.

I. The State Failed to Advise Walter Douglas Barclay of His Rights Before Obtaining a Blood Sample

The Defendant herein is charged with violation of S.C. Code Ann § 56-5-2945, the felony DUI law. Pursuant to S.C. Code Ann. § 56-5-2946:

Notwithstanding any other provision of law, a person **must submit** to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs **if there is probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945.**

¹ In the interest of justice the accused requests that the hearing on the admissibility of the evidence referenced in this motion to dismiss be conducted out of the hearing of the jury.

A person who is tested or gives samples for testing may have a qualified person of his choice conduct additional tests at his expense and must be notified of that right.

The provisions of Section 56-5-2950, relating to...additional tests at the person's expense... are applicable to this section.

Former S.C. Code Ann. § 56-5-2950 (2003)² provides, in pertinent part:

(a) No tests may be administered or samples obtained unless the person has been informed in writing that:

(3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;

(4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and

(5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

(e) Policies, procedures, and regulations promulgated by SLED may be reviewed by the trial judge or hearing officer on motion of either party. The failure to follow any of these policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence any tests results, if the trial judge or hearing officer finds that such failure materially affected the accuracy or reliability of the tests results or the fairness of the testing procedure.

CCSO Deputy Herman M. Martin ["Deputy Martin"] was dispatched directly to MUSC by radio. Deputy Martin was not at and therefor did not observe Mr. Barclay at the scene of the accident. Mr. Barclay arrived at MUSC at 7:37 p.m. and underwent a battery of medical tests. Based upon his medical records, Mr. Barclay was alert, oriented and cooperative from the time he was first assessed by EMS medics at the scene of the accident, in route to the hospital, and during his initial assessment and treatment by the emergency department staff at MUSC. There is no indication in his medical records that any doctor or nurse who attended Mr. Barclay thought he was intoxicated.

At 9:45 p.m., medical records indicate that Deputy Martin was at Mr. Barclay's bedside in the ER. At 9:50 p.m., MUSC Nurse Charles R. Heath [hereinafter "RN Heath"] noted in Mr.

² The statute applicable to this arrest and quoted herein was the 2003 version of §56-5-2950. Minor changes were made to the statute by 2008 Act. No. 201, §9, eff. February 10, 2009, resulting in the statute presently in use.

Barclay's chart: "2150 - legal blood drawn from pts R FA. Site cleaned with the iodine prep supplied with the specimen kit. Two tubes filled without difficulty and turned over to Officer Martin." Apparently, Deputy Martin instructed RN Heath to take the blood sample from Mr. Barclay without his consent pursuant to S.C. Code Ann. § 56-5-2946.³

At the time Mr. Barclay's blood was drawn, Mr. Barclay was not under arrest for violation of §56-5-2945. Therefore, the non-consensual taking of his blood could only be legally accomplished under §56-5-2946 if Deputy Martin, the only deputy present at MUSC and the deputy requesting the blood draw, had sufficient information at his disposal to form probable cause to believe that Mr. Barclay had violated that felony DUI statute.

Whether Deputy Martin had the requisite knowledge to form probable cause to believe that Mr. Barclay was in violation of §56-5-2945 at the time he ordered his blood to be drawn without consent, and without providing Mr. Barclay the required felony advisement of rights form in writing is a question that has yet to be answered. Any information Deputy Martin had about the scene of the accident would have been hearsay he received by radio transmission. If Deputy Martin did not have the required personal knowledge to form probable cause and a belief that a felony DUI violation existed, then the non-consensual blood draw from Mr. Barclay is in violation of §56-5-2946, §56-5-2950 and the Fourth Amendment. Deputy Martin has never attested that he believed at the time of ordering the blood draw that he had probable cause to believe a felony DUI had occurred, only that Mr. Barclay appeared intoxicated at the hospital. That is not sufficient to strip away Mr. Barclay's right to consent or refuse the blood draw under §56-5-2950 (2003). If Deputy Martin did not have within his own personal knowledge facts which establish probable cause to believe Mr. Barclay committed the crime of felony DUI he could not direct the taking of Mr. Barclay's blood without his consent.

Also notable is the fact that Deputy Martin did not sign off on the required Felony DUI Advisement of Rights Form in this case. Deputy Brinson and Deputy Michael E. Burrell ["Deputy Burrell"] arrived at MUSC at 10:02 p.m. Sometime after Deputy Brinson's arrival at MUSC he prepared and then required Mr. Barclay to sign the SLED FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT FORM (which has no date or time filled in) and the SLED Urine/Blood Collection Report on which the blank for "Time of Arrest" is not filled in. This is another clear indication that the advisement required to be given to Mr. Barclay in writing by former 56-5-2950 was in fact accomplished after the blood test took place.

As stated, Deputy Brinson was not present at MUSC at the time Mr. Barclay's blood was drawn. Because he was not there, it is impossible for him to have provided Mr. Barclay with the written advisement form as required by the statute then in effect. Even though Deputy Brinson did not provide Mr. Barclay the SLED FELONY DRIVING UNDER THE INFLUENCE

³ "The test must be administered at the direction of a law enforcement officer who has probable cause to believe that the person violated or is under arrest for a violation" of the felony DUI statute. S.C. Code Ann. 56-5-2946.

ADVISEMENT FORM in writing before his blood was drawn as required by statute⁴, he thereafter signed off as if he had actually complied with the law. The burden is on the State to prove it complied with the law in all respects before taking a blood sample without consent; this is a burden the State cannot carry in this case.

While it would have been impossible for Deputy Brinson to provide Mr. Barclay with the form due to the fact that he was not present before the blood draw, Deputy Brinson nevertheless signed off and attested that the SLED FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT FORM was given to Mr. Barclay before his blood was drawn. Deputy Brinson conveniently neglected to include either the date or the time the advisement was purportedly given in the portion of the form where this information must be written.⁵ The proper procedure for the use of this form requires the officer to fill in the date and time and sign off on the form thereby attesting to his compliance with this legal prerequisite to the collection of a blood sample for alcohol testing before the test is completed. The entry of the date and time on the form is intended to evidence that Mr. Barclay was advised of his rights before any sample collection procedure begins.⁶

In addition to the prejudice inherent in his not being able to refuse the blood draw due to Deputy Martin proceeding under §56-5-2946 without probable cause, the failure of Deputy Martin or Brinson to provide Mr. Barclay with his advisement of rights form (felony or otherwise) prior to the obtaining of his blood prejudiced Mr. Barclay insofar as it deprived him of the knowledge that he was allowed to have an independent blood test conducted at his own expense. The necessity of having a contemporaneous blood draw is patently obvious. By Deputy Brinson failing to properly complete the advisement form and contemporaneously record the date and time of the advisement, he has failed in a material way to prove that the State complied with the advisement law.

Because the state failed to properly advise Mr. Barclay of his rights before the testing process began, thereby depriving him of the right to refuse the test and by failing to advise him that he could have procured his own independent test, thereby materially affecting the fairness of the testing procedure, the Court should exclude the blood test from evidence.

{Signature Page to Follow}

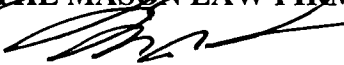
⁴ See, **Exhibit 1** which is an excerpt from Deputy Brinson's testimony at the preliminary hearing in which Deputy Brinson testified he did not give Mr. Barclay the Advisement of Implied Consent Rights.

⁵ See, **Exhibit 2** which is the Advisement of Implied Consent Rights form signed by Deputy Brinson in which the date and time are blank. It is also very noteworthy that Deputy Brinson's handwriting is also on the South Carolina Law Enforcement Division - Urine/Blood Collection Report (See also, **Exhibit 3**) which was provided to Mr. Barclay, even though Deputy Brinson was not present when the sample was taken.

⁶The advisement process consists of the officer reading a copy of the applicable advisements and furnishing the subject a copy. *SLED Policy and Procedures Manual*, Section #8.12.5 (E)(1).

Respectfully submitted,

~~THE MASON LAW FIRM, P.A.~~

BY: 

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Attorneys for the Defendant

Mount Pleasant, South Carolina
October 19, 2011

EXHIBIT 1

CENTRALIZED PRELIMINARY HEARING COURT

JUDGE JAMES B. GOSNELL, JR.

THE STATE,

Case No.: 2008-QW-10-007526

Plaintiff,

Uniform Warrant No: K352620

-vs-

WALTER DOUGLAS BARCLAY,

Defendant.

PRELIMINARY EXAMINATION/BOND RECONSIDERATION

HEARING taken on Monday, January 5, 2009, commencing
at 11:07 a.m. at 3870 Leeds Avenue, Suite 112, North
Charleston, South Carolina, 29405.

REPORTED BY: Nicole D. White

1 mind whether or not Mr. Barclay was under the
2 influence of alcohol?

3 MR. TODD: Objection, your Honor.
4 I'm going to start objecting just about
5 to every question.

6 MR. MASON: I believe that's a fair
7 question, your Honor.

8 THE COURT: The officer that was
9 with the Defendant had blood drawn at
10 the time that he arrived at MUSC; is
11 that correct?

12 DEPUTY BRINSON: Yes, sir.

13 THE COURT: Answer the question.
14 This officer was not there.

15 BY MR. MASON:

16 Q. You were not there, as the Judge just said,
17 Deputy Brinson, you were not there when
18 Mr. Barclay's blood was drawn; is that correct,
19 sir?

20 A. That is correct.

21 Q. Deputy Brinson, Deputy Burrell was not there
22 when Mr. Barclay's blood was drawn; isn't that
23 correct, sir?

24 MR. TODD: Objection. Objection,
25 your Honor.

EXHIBIT 2

ADVISEMENT OF IMPLIED CONSENT RIGHTS

BARCLAY, WALTER DOUGLAS

Subject's Name (Print)

211560255

Driver's License Number



Date of Birth

S.C.

State Licensed

COPY

DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here → ♦ Inform subject of video recording.
 ♦ Advise subject of Miranda rights.
 If answer is No, start here → ♦ Inform subject of the type (breath, blood, urine) samples requested.

(B) Then read the following advisement to subject:

- ♦ You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
- ♦ The arresting officer has directed that samples be taken for alcohol and/or drug testing.
- ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- ♦ You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least ninety (90) days and your refusal may be used against you in court.
- ♦ If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
- ♦ If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
- ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
 (D) Time stamp Breath Alcohol Analysis Test Report. (Not required if a refusal has occurred.)
 (E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)
 (F) Enter biographical data into BAC DataMaster. (Required for all tests, including refusals.)

FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

- (B) Will test be video recorded? If answer is Yes, start here → ♦ Inform subject of video recording.
 ♦ Advise subject of Miranda rights.
 If answer is No, start here → ♦ Inform subject of the type (breath, blood urine) samples requested.

(B) Then read the following advisement to subject:

- ♦ You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
- ♦ The officer has directed that samples be taken for alcohol and/or drug testing.
- ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- ♦ Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
- ♦ The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
- ♦ If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
- ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material.
 (D) Time stamp Breath Alcohol Analysis Test Report.
 (E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample.
 (F) Enter biographical data into BAC DataMaster.

STATE 012, 3-16-09

BRINSON, W

Officer's Name (Print)

Officer's Signature

Subject's Signature (Received Copy)

Date

Time

EXHIBIT 3

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: BARCLAY WALTER DOUGLAS **COPY** 10
 Last Name First Name Middle Name County of Arrest

Subject's Address: [REDACTED]
 Driver's License Number: 0011560055 State: S.C. DOB: [REDACTED] Sex: M Race: W
 Arresting Officer: BRINSON, W Agency: CHARLESTON COUNTY SHERIFF'S OFFICE
 Arresting Officer's Address: 3505 BINEHAVEN DR. N. CHARLESTON, S.C. 29405
 Date of Arrest: 12-08-08 Time of Arrest: AM/PM Traffic Ticket Number:
 Date of Test: 12-08-08 Time of Test: 2150 AM/PM Location of Collection: MUSC HOSPITAL

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- ☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415;
 or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
☐ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- ☐ Subject had a DataMaster reading of less than 0.08%, and a urine sample is requested. DataMaster reading: (optional)
☐ Subject is unconscious or otherwise Incapable of refusal and is considered Informed, therefore, a blood sample is requested.
☐ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.
☒ Subject is under arrest for, or in violation of, Section 56-5-2945 or 50-21-113, and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
☐ A blood sample is requested by the subject for his/her own independent test.

Name and Title of Licensed Medical Personnel: Charles R Heath RN
 (Please Print)

Signature of Licensed Medical Personnel: C Heath

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- ☒ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
☐ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: Charles R Heath RN
 (Please Print)

Signature of Licensed or Trained Collector: C Heath

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- ☒ Sample collection was under my direct supervision.
☒ Sample container is properly labeled with the subject's name and time of collection.
☒ Sample is properly sealed and ready for transport.

Signature of Officer: [Signature] Date: 12-08-08

I, W D Bo received a copy of this report on 12-8-08
 (Subject's Signature) Date

White Copy: Arresting Officer Canary Copy: Hospital Pink Copy: Subject Goldenrod Copy: SLED

STATE OF SOUTH CAROLINA	}	IN THE COURT OF GENERAL SESSIONS
	}	FOR THE COUNTY OF CHARLESTON
COUNTY OF CHARLESTON	}	INDICTMENT NUMBERS: 2009-GS-10-4089;
		2011-GS-10-2817; 2011-GS-10-2848
STATE OF SOUTH CAROLINA,	}	
	}	
vs.	}	
	}	
WALTER DOUGLAS BARCLAY,	}	
	}	
Defendant.	}	
	}	

**DEFENDANT'S MOTION *IN LIMINE* TO SUPPRESS EVIDENCE
RELATING TO JIM BEAM BOTTLE FOUND SOMEWHERE IN THE
WOODS AND SAID EVIDENCE WAS DESTROYED BY STATE BEFORE
TRIAL**

NOW COMES the Defendant, by and through his undersigned attorney, and pursuant to Rule 4(a) of the South Carolina Rules of Criminal Procedure and Rule 104 of the South Carolina Rules of Evidence,¹ hereby moves this Court *in limine* to enter an order as requested below on the specific grounds stated herein, to wit:

1. At the scene of the accident Investigator Kathy B. Kjellman photographed a Jim Beam bottle in the woods, without any point of reference from which one could determine the location of the bottle. *See* Exhibit A. There is no evidence as to the ownership of the bottle. Investigator Kjellman took possession of the bottle.
2. On July 14, 2010, Deputy Michael E. Burrell, for some unknown reason, instructed Investigator Kjellman to destroy all physical evidence collected at the scene.
3. Defendant's counsel made a request that the State perform a fingerprint analysis on the Jim Beam bottle to determine if the Jim Beam bottle had Defendant's fingerprints on it or that the State make the Jim Beam bottle available for fingerprint analysis by Defendant's expert. This was not accomplished because the State had destroyed this evidence.
4. A fingerprint analysis of the Jim Beam bottle would have established that it did not have Mr. Barclay's fingerprints on it which would have had an exculpatory value which was apparent before the evidence was destroyed and which Mr. Barclay cannot

¹ In the interest of justice the accused requests that the hearing on the admissibility of the evidence referenced in this motion *in limine* be conducted out of the hearing of the jury.

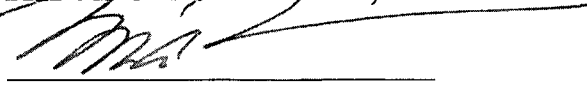
obtain other evidence of comparable value by other means.

5. Deputy Burrell, who instructed that the evidence be destroyed, is a main prosecution witness. He had actual knowledge that the criminal charges against Defendant had not yet gone to trial.
6. Alcoholic beverages are to be treated the same as any other evidence collected. Standard criminal evidence handling protocol is that evidence should not be destroyed until after entry of judgment or dismissal of the criminal proceeding, including the appeal process. Liquor evidence collected in cases of arrest shall not be disposed of until after court disposition of pending charges.
7. This Court should exclude reference to evidence that has been destroyed before trial where the defendant demonstrates either that the "State destroyed evidence in bad faith, or that the State destroyed evidence that possessed an exculpatory value that is apparent before the evidence was destroyed and the Defendant cannot obtain other evidence of comparable value by other means." *State v. Mabe*, 306 S.C. 355, 412 S.E.2d 386 (1991). Defendant is entitled to the exclusion of evidence relating to the Jim Beam bottle based upon both of these grounds.
8. The introduction of the photograph of the Jim Beam bottle, found somewhere in the woods, does not have the "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.
9. The introduction of the photograph of the Jim Beam bottle should be excluded because the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues and could mislead the jury. Rule 403, SCRE. In *State v. Sprouse*, 325 S.C. 275, 478 S.E.2d 871 (Ct. App. 1996), the South Carolina Court of Appeals stated "evidence, even if arguably relevant, must be excluded if its probative value is outweighed by the prejudicial impact of its admission."

[Signature Page to Follow]

Respectfully submitted,

THE MASON LAW FIRM, P.A.

BY: 

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Attorneys for the Defendant

Mount Pleasant, South Carolina
October 18, 2011

Exhibit A



STATE OF SOUTH CAROLINA	}	IN THE COURT OF GENERAL SESSIONS
	}	FOR THE COUNTY OF CHARLESTON
COUNTY OF CHARLESTON	}	INDICTMENT NUMBERS: 2009-GS-10-4089;
		2011-GS-10-2817; 2011-GS-10-2848
STATE OF SOUTH CAROLINA,	}	
	}	
vs.	}	
	}	
WALTER DOUGLAS BARCLAY,	}	
	}	
Defendant.	}	

**DEFENDANT'S MOTION TO DISMISS FOR FAILURE OF STATE TO
COMPLY WITH THE DUI VIDEO RECORDING REQUIREMENTS**

NOW COMES the Defendant, by and through his undersigned attorney, and pursuant to Rule 4(a) of the South Carolina Rules of Criminal Procedure and Rule 104 of the South Carolina Rules of Evidence,¹ hereby moves this Court to dismiss the felony DUI charges against Defendant on the specific grounds stated herein, to wit:

The State failed to video record the Defendant's conduct at the incident site. For this reason, the charges against the Defendant Walter Douglas Barclay must be dismissed.

APPLICABLE LAW AND ARGUMENT

I. The State Failed to Videotape the Defendant's Conduct at the Incident Site Without Satisfactory Excuse for Said Failure

Former S.C. Code Ann. § 56-5-2953 (2003)² entitled "Videotaping of breath and incident sites" in effect at the time of this accident states:

(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 **must have his conduct at the incident site and the breath test site videotaped.**

(1) The videotaping **at the incident site** must:

¹ In the interest of justice the accused requests that the hearing on the admissibility of the evidence referenced in this motion to dismiss be conducted out of the hearing of the jury.

² The statute applicable to this arrest and quoted herein was the 2003 version of §56-5-2953. Minor changes were made to the statute by 2008 Act. No. 201, §11, eff. February 10, 2009, resulting in the statute presently in use.

(a) begin not later than the activation of the officer's blue lights and conclude after the arrest of the person for a violation of Section 56-5-2930, 56-5-2933, or a probable cause determination that the person violated Section 56-5-2945; and

(b) include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered.

The videotapes of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(B) Nothing in this section may be construed as prohibiting the introduction of other evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the videotape equipment at the time of the arrest, probable cause determination, or breath test device was in an inoperable condition, stating reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the videotape because the person needed emergency medical treatment, or exigent circumstances existed. Further, in circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the videotape. (emphasis provided)

On December 8, 2008 at 6:06 p.m., a two (2) car accident occurred on Point of Pines Road on Edisto Island. The first Charleston County Sheriff's Office ["CCSO"] deputy to arrive at the scene was Dustin J. Luckadoo ["Deputy Luckadoo"], who arrived at 6:16 p.m. According to

evidence disclosed by the State pursuant to Rule 5 and *Brady*, Deputy Luckadoo is expected to testify that the Defendant, Mr. Walter Douglas Barclay ["hereinafter Mr. Barclay"] smelled like alcohol, had slurred speech and appeared to be intoxicated. According to records received in discovery, Deputy Scott D. Brown also arrived on the scene of the incident at 6:37 pm. Medical records for Mr. Barclay indicate that he was transported from the scene of the incident at 6:48 pm. Therefore, Deputy Luckadoo was present at the scene with Mr. Barclay for 32 minutes and Deputy Brown was present at the scene with Mr. Barclay for 11 minutes prior to Mr. Barclay's departure by ambulance.

Neither Deputy Luckadoo nor Deputy Brown have submitted affidavits as to why they failed to video the conduct of Mr. Barclay at the incident site as required by former §56-5-2953 (A)(1)(a). Rather, the State has provided an affidavit from Deputy William E. Brinson ["Deputy Brinson"] who was the seventh (7th) CCSO deputy to arrive at the scene. Deputy Brinson arrived at the scene at 7:23 p.m., 35 minutes after Mr. Barclay had been transported to MUSC for medical treatment. Deputy Brinson was not present at the scene when Mr. Barclay was there and thus has no personal knowledge as to why neither Deputy Luckadoo nor Deputy Brown who (each arrived before him and were present when Mr. Barclay was still present) failed to make a video recording of Mr. Barclay at the scene. Deputy Brinson arrested Mr. Barclay for felony DUI at MUSC at 10:44 p.m. after a blood test was performed.

Pursuant to the applicable statute, the videotape, when created as required, is admissible by either party to the criminal action. As such, had the State videotaped the conduct of Mr. Barclay at the scene, he could use that video to demonstrate that he was not exhibiting the signs of intoxication which Deputy Luckadoo is expected to testify to. The State's failure to follow the statutory mandate that a defendant must have his conduct at the incident site....videotaped effectively deprives the accused of potentially exculpatory evidence.

The Court should take note that as justification for their failure to video record Mr. Barclay at the incident site or at the time of arrest the State produced the "CHARLESTON COUNTY SHERIFF'S OFFICE AFFIDAVIT FOR FAILURE TO PRODUCE VIDEO (Incident Site)"³ signed by Deputy Brinson which states that "it was physically impossible to produce a video recording (from the vehicle I was operating), of the defendant at the time of arrest or probable cause determination because the defendant needed emergency medical treatment." MUSC records reflect that at 10:15 p.m. Mr. Barclay was "discharged home with Charleston County deputies." Mr. Barclay then walked out of the hospital without assistance and without restraints. Between 10:15 p.m. and 10:44 p.m. Mr. Barclay, Deputy Brinson and Deputy Burrell stood outside in front of the MUSC emergency department in front of the Deputies' CCSO patrol cars and smoked a cigarette. Deputy Brinson's patrol car was equipped with a video camera. After the men finished smoking, Mr. Barclay was placed under arrest, handcuffed and put in the back of a patrol car, without the initiation of any video recording of any field sobriety tests or the arrest. There is absolutely no

³ See, Exhibit 1, CHARLESTON COUNTY SHERIFF'S OFFICE AFFIDAVIT FOR FAILURE TO PRODUCE VIDEO (Incident Site)

reason why at the time of arrest a video recording could not have been made of Mr. Barclay, nor has the State offered any excuse or enumerated exception explaining why it was not done. If Mr. Barclay's medical treatment was complete at or before the time of arrest, if he could walk out of the ER on his own power without any assistance and stand around out of handcuffs smoking cigarettes with the deputies for nearly thirty minutes directly in front of their video camera equipped patrol cars before being placed under arrest, a video recording showing his conduct should have been made of the arrest as required by law.

Former Section 56-5-2953 required video recording of the defendant's entire DUI arrest with an existing video camera. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007). The State has failed to provide an adequate excuse under the statute as to why this REQUIRED videotaping was not accomplished by the first two deputies on the scene of this accident or by Deputy Brinson immediately prior to arresting Mr. Barclay at MUSC. A law enforcement agency's failure to comply with the video recording requirements has been held fatal to the prosecution of a DUI case. *Town of Mt. Pleasant v. Roberts*, Shearhouse Adv. Sht. Opinion No. 27005 (Filed July 11, 2011). Failure to produce a video tape in a DUI case is grounds for dismissal if no exceptions apply. *Id.*

The State having failed to provide any valid exception from (1) a law enforcement officer present at the scene of the incident when Mr. Barclay was likewise present or (2) from Deputy Brinson as to why he failed to video the arrest at MUSC, the charges must be dismissed.

Respectfully submitted,

~~THE MASON LAW FIRM, P.A.~~

BY: 

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Mount Pleasant, South Carolina
October 19, 2011

EXHIBIT 1

CHARLESTON COUNTY SHERIFF'S OFFICE
AFFIDAVIT FOR FAILURE TO PRODUCE VIDEO
RECORDING

(Incident Site)

Case Number: 2008-025736-8

I hereby affirm that I cannot produce a video recording from the vehicle I was operating because:

- A. ☐ At the time of the defendant's arrest the vehicle I was operating had not yet been equipped with a video recording device and therefore pursuant to § 56-5-2953, the video recording requirement regarding vehicles is not applicable.
- B. ☐ At the time of the defendant's arrest or probable cause determination, the video recording equipment in the vehicle I was operating was in an inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition.
- C. ☒ It was physically impossible to produce a video recording (from the vehicle I was operating), of the defendant at the time of the arrest or probable cause determination because:
- ☒ the defendant needed emergency medical treatment; or
- ☐ exigent circumstances existed which are outlined below:
- D. ☐ Other valid reasons existed for failing to produce the video recording based on the totality of the circumstances. These reasons are outlined below:

Signature of Deputy & Badge #

Date

State of South Carolina
 County of Charleston

Sworn to and subscribed before me this 16 day of September, 20 11

Michael B. Ringey Notary Public for the State of South Carolina.
 My Commission Expires

My commission expires: December 12, 2013

1 **THE COURT:** And of course, then it would become a weight
2 issue as to whether his recollection was affected by certain
3 things, whether it was accurate at the time, or whether it is
4 more accurate now at the time of trial.

5 So, that motion is denied to exclude, um -- with the
6 clar- -- with the -- with the clarification as to what the
7 scope of his testimony would be.

8 Again, you will have to make a contemptant
9 (phonetic/sic) -- contem- -- contemporaneous objection at the
10 time that, uh, The State seeks to illicit the information,
11 and subject to them being able to establish a foundation for
12 the testimony.

13 **MR. MASON:** Thank you, Your Honor.

14 **THE COURT:** You're welcome. (After pause) Now, let's
15 deal with the Jim Beam bottle, which is number nine.

16 What, uh -- if The State could give me a brief synopsis
17 of exactly what happened with the bottle, where it was
18 found---

19 **MS. KINZELER:** I can---

20 **THE COURT:** ---and what the police procedure was in, uh,
21 documenting that and then subsequently what happened.

22 And then, um, Mr. Mason, I've read your motion; I
23 understand the basis of it. I will need you to respond, but
24 I don't need you to read your motion to me.

25 You may proceed.

1 **MS. KINZELER:** Um -- Your Honor, that night, Kathy
2 Kjellman, the forensic investigation (sic) for the Sheriff's
3 Office, collected a cooler, several beer cans that were not
4 open but they were burst, and an empty Jim Beam bottle.

5 And Mr. Mason put it in his motion one exhibit, but
6 it's -- and he said there was no point of reference. I can
7 make this photo a Court's exhibit.

8 Um -- in -- in this photo the officer can testify at
9 trial where in this photo the Jim Beam bottle is. Um -- if I
10 may approach, Your Honor?

11 **THE COURT:** Uh-huh.

12 **MS. KINZELER:** It's---

13 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
14 CONFERENCE, OFF THE RECORD.)

15 (WHEREUPON, COURT RESUMED.)

16 **MS. KINZELER:** Um -- so Kjellman collects all this
17 evidence; they're all located in the same area. It's not as
18 far away or off in the woods as described in the motion.

19 **THE COURT:** Where exactly is the bottle, 'cause I see
20 beer cans---

21 **MS. KINZELER:** Oh, I can---

22 **THE COURT:** ---but I don't see a bottle.

23 **MR. MASON:** I don't see a bottle.

24 **MS. KINZELER:** ---it's -- it's not a particularly good
25 picture, which is why I would---

1 **THE COURT:** Are you talking about way off in the
2 distance, right here?

3 **MS. KINZELER:** It's -- no, ma'am, it's -- and Officer
4 Burrell can testify to this -- it's that right there, which
5 is why they got the close-up picture.

6 **MR. MASON:** May -- may I approach to see what---

7 **THE COURT:** Uh-huh. Gosh, that doesn't even look
8 like it.

9 **MS. KINZELER:** And -- and it would have to be
10 supplemented with, um---

11 **THE COURT:** It's right here.

12 **MS. KINZELER:** ---Kjellman's testimony and Sergeant
13 Burrell's testimony.

14 **THE COURT:** So they're saying that at the time of this
15 incident they searched the, uh, margins of this -- of this
16 road and they located a cooler -- and I'm extrapolating from
17 what's in the picture -- a cooler, several beer cans -- I
18 assume either empty or full -- and a Jim Beam---

19 **MS. KINZELER:** Um -- an empty Jim Beam bottle. And I
20 have photos that show where this is in relation to the truck.
21 It's right here next to it.

22 **THE COURT:** Is there a -- a picture that has markers for
23 these things?

24 **MS. KINZELER:** Um---

25 **THE COURT:** Which is what crime scene generally does?

1 **MS. KINZELER:** ---I mean, I have several.

2 **THE COURT:** 'Cause they took all this into evidence
3 didn't they?

4 If there's anyone in the gallery that needs to have
5 someone signed up, I would suggest you deal with your
6 respective Solicitor and go ahead and get that done because
7 I'm gonna take a break -- a brief break and do those pleas
8 and then resume these motions.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
10 CONFERENCE, OFF THE RECORD.)

11 (WHEREUPON, COURT RESUMED.)

12 **MS. KINZELER:** And, Judge, Mr. Mason's requested that
13 they be marked by the Court Reporter with numbers---

14 **THE COURT:** They do need to be, uh-huh, for Court's
15 Exhibits, yeah.

16 **MS. KINZELER:** These are the photos that I have. I
17 mean, where -- things -- I don't think things were marked
18 with, um---

19 **THE COURT:** Evidence markers?

20 **MS. KINZELER:** ---like the -- like the -- like the tents
21 that you see---

22 **THE COURT:** Uh-huh.

23 **MS. KINZELER:** ---sometimes. They -- I don't think that
24 was done.

25 **THE COURT:** So did they collect any of these things?

1 MS. KINZELER: Yeah, I can explain further.

2 THE COURT: Okay. And are these your only copies?

3 MS. KINZELER: I have -- they're on a disc so I can
4 print new ones.

5 THE COURT: Okay.

6 MS. KINZELER: Um -- so Investigator Kjellman collects
7 this evidence and it's all located in the same general area.

8 THE COURT: How close in proximity to the incident was
9 all this collected?

10 MS. KINZELER: I think the picture -- one of the
11 pictures I gave you, Your Honor, has the truck in it, right
12 next to it.

13 THE COURT: Okay.

14 MS. KINZELER: So, relatively close proximity; it wasn't
15 far off, it wasn't out in the woods, they didn't have to
16 procure a---

17 THE COURT: No, when I say proximity I'm talking about
18 within timing. What time did the accident happen, when did
19 they arrive, and when were these items---

20 MS. KINZELER: Uh -- the---

21 THE COURT: ---photographed?

22 MS. KINZELER: ---accident happened around six-o-six
23 p.m. E-M-S and fire get there around six-fifteen.

24 THE COURT: Uh-huh?

25 MS. KINZELER: It takes a while for, um, Deputy Brinson

1 and Burrell and Investigator Kjellman to get out there. It's
2 probably seven-thirty or eightish before they---

3 **THE COURT:** But there's no indication that anything was
4 moved prior?

5 **MS. KINZELER:** No, ma'am; um, Deputy---

6 **THE COURT:** That the scene remained basically intact
7 because it was preserved once law enforcement arrived?

8 **MS. KINZELER:** ---Deputy Luckadoo (phonetic) got there
9 much earlier; probably by six-fifteen or six-thirty and
10 secured the scene. So, those things hadn't been moved once
11 the scene was secure. I can't represent what happened before
12 the scene was secured. Um -- but---

13 **THE COURT:** So that would have been a time difference of
14 seven minutes between the accident and when the scene was
15 secured?

16 **MS. KINZELER:** This is all an estimate without me having
17 to call Officers in front of you.

18 **THE COURT:** Uh-huh.

19 **MS. KINZELER:** Um -- I would say maybe twenty-four
20 minutes-ish (sic) tops. That's just an estimate; I can look
21 and clarify, um, next week, Your Honor.

22 **THE COURT:** I just needed a general point of reference.

23 **MS. KINZELER:** Yeah, not -- not long after. So---

24 **THE COURT:** And so, would their testimony be that when
25 they arrived, this was the condition of the scene?

1 **MS. KINZELER:** Yes.

2 **THE COURT:** And is there some indication that these came
3 out of the vehicle?

4 **MS. KINZELER:** Yes, Your Honor; we, um, Jose -- Jose --
5 and I shared this with Mr. Mason -- Jose said he saw a man
6 immediately after the collision picking the cans and the
7 bottle. Presumably all -- it was all together; that he saw
8 this man -- not anyone involved in the collision, just a
9 person---

10 **THE COURT:** Uh-huh?

11 **MS. KINZELER:** ---picking these materials up and putting
12 them back in the cooler.

13 **THE COURT:** Hump.

14 **MS. KINZELER:** By the -- and the -- I believe it's the
15 same individual that called 9-1-1. Um -- and then when my
16 officers get there in that ten, fifteen, twenty-minute gap,
17 they appear to be on the side of the road.

18 I mean -- it's my position, Your Honor, that---

19 **THE COURT:** Well---

20 **MS. KINZELER:** ---they were moved by -- but -- prior to
21 law enforcement arriving.

22 **THE COURT:** ---well, all of that becomes a weight issue.
23 What I'm trying to figure out is, number one, was the scene
24 secured?

25 Number two; were these things photographed and who

1 photographed them?

2 Number three, were they ever taken into evidence?

3 **MS. KINZELER:** Right.

4 **THE COURT:** And if they were, what happened to 'em?

5 **MS. KINZELER:** Um -- and they were photographed.

6 Investigator Kjellman took them into evidence. They remained
7 there for a year-and-a-half---

8 **THE COURT:** Uh-huh?

9 **MS. KINZELER:** ---and it's my understanding that Deputy
10 Burrell -- it -- we're in agreement that Sheriff's Office
11 policy does say something to the effect of this -- evidence
12 shouldn't be released until the Solicitor's Office tells
13 you that the case is disposed of or until you know it's
14 disposed of.

15 **THE COURT:** Uh-huh?

16 **MS. KINZELER:** The Sheriff's Office does an annual
17 audit---

18 **THE COURT:** Uh-huh?

19 **MS. KINZELER:** ---of their evidence compound -- it's a
20 small place -- each year or however so often. Burrell's here
21 to testify to that -- what can we get rid of?

22 This came up on that list and was destroyed with other
23 materials---

24 **THE COURT:** Why---

25 **MS. KINZELER:** ---and it---

1 **THE COURT:** ---when it had not yet been disposed of?

2 **MS. KINZELER:** ---it -- it -- it -- what -- Burrell
3 didn't okay the destruction of this evidence---

4 **THE COURT:** Uh-huh?

5 **MS. KINZELER:** ---with actual knowledge. He didn't
6 consider whether or not the case had been disposed of yet,
7 and I have him here to testify if you want to hear from him.
8 It hadn't been disposed of---

9 **THE COURT:** I don't think it's contested that it was
10 destroyed.

11 **MS. KINZELER:** Right.

12 **THE COURT:** What his intentions were really are not
13 dispositive. I need to know why it was destroyed, why nobody
14 was consulted, and was -- was it ever tested for anything?

15 **MS. KINZELER:** It was never tested for fingerprints and
16 my understanding from speaking with him---

17 **THE COURT:** Well, based on the condition of all this,
18 it's unlikely -- I mean, I've been trying a lot of these
19 cases for a long time. It's unlikely they would have found
20 any fingerprints on any of these beer cans or bottles.

21 **MS. KINZELER:** That's---

22 **THE COURT:** It's not a -- a conducive surface for
23 prints; it was probably wet outside and just because of the
24 evening dew or otherwise, so it's unlikely any prints would
25 have ever been found on this stuff.

1 But, that doesn't answer the question, which is, why
2 would you destroy it?

3 **MS. KINZELER:** My understanding in talking with Deputy
4 Burrell was that it -- it -- it wasn't whether or -- the
5 question at the time wasn't whether or not it had been
6 disposed of. The question for him at the time, whether
7 consistent with their policy or not, was, we have photos
8 of this, it's been here a year-and-a-half, it can't be
9 fingerprinted, there's nothing else we can do with it and
10 it's taking up space. And, it was destroyed with other
11 evidence that was part of the audit. And -- and that's
12 really the best answer I have without him testifying.

13 **THE COURT:** But that's uncontested that that's happened?

14 **MS. KINZELER:** Yeah, absolutely.

15 **THE COURT:** Okay; now, having made that -- I wanted to
16 know what the continuum was and I wanted to be clear as to
17 what -- what happened in terms of the destruction of the
18 evidence.

19 **MS. KINZELER:** And it -- it -- it wasn't just the
20 Jim Beam bottle, it was the cooler, the cans, the Jim Beam
21 bottle together.

22 **THE COURT:** Was the cooler ever fingerprinted?

23 **MS. KINZELER:** No, none of it was, Your Honor. And --
24 and it's my understanding that it -- it wasn't fingerprinted
25 because it couldn't have been is my understanding.

1 **THE COURT:** The cooler couldn't be fingerprinted?

2 **MS. KINZELER:** That it wouldn't have yielded any prints.
3 I mean, I don't have Kjellman here to testify to that, but in
4 speaking with them about the destruction, that's my
5 understanding of why it wasn't done.

6 **THE COURT:** Well, they would have made a preliminary
7 decision at the scene as to whether it was suitable for
8 fingerprints.

9 (After pause) Is anybody gonna testify that they saw
10 these items flung from this vehicle?

11 **MS. KINZELER:** I don't have an eyewitness to tes- -- no.
12 The -- the testimony is limited to Jose saw an individual
13 picking them up off the road and putting them back in the
14 cooler, and by the time---

15 **THE COURT:** But this is the person you speculate called
16 9-1-1?

17 **MS. KINZELER:** The per- -- yeah, the person that
18 picks -- putting them in he cooler is the person I believe
19 probably called 9-1-1. It's just that---

20 **THE COURT:** Is there any indication that that person is
21 connected to the Defendant or the victims?

22 **MS. KINZELER:** It -- it's my understanding that he's
23 friends with the Defendant.

24 **THE COURT:** Okay; and what is that understanding based
25 upon?

1 **MS. KINZELER:** These, um -- well, and -- my investigator
2 speaking with him in his yard for a few minutes. And he
3 lives on Point of Pines---

4 **THE COURT:** Did anybody ever ask him if, in fact, he was
5 picking up these bottles or whatever and---

6 **MS. KINZELER:** He -- I -- I've never -- I've never asked
7 him that---

8 **THE COURT:** ---or cans? I'm sorry.

9 **MS. KINZELER:** ---I've never asked him that for -- I --
10 I didn't speak with him. David from our office -- the
11 investigator -- spoke with him in his front yard for a few
12 minutes just to see if he remembered it. He lives on Point
13 of Pines Road.

14 **THE COURT:** Uh-huh?

15 **MS. KINZELER:** Jose -- the passenger that lived in the
16 Geo---

17 **THE COURT:** Uh-huh?

18 **MS. KINZELER:** ---said this man -- which I learned to be
19 Willie Gray Woods and his son, Brian Woods -- I don't know
20 where he lives but I can take you there. So, we drove over
21 there and he identified that individual as the same person he
22 saw.

23 **THE COURT:** And there's an indication that that person
24 is the person who was picking up these items?

25 **MS. KINZELER:** He said that is the person he saw picking

1 them up.

2 **THE COURT:** Did anybody ever ask this person if they
3 were actually doing that?

4 **MS. KINZELER:** Uh -- I haven't asked him that, Your
5 Honor---

6 **THE COURT:** Uh-huh?

7 **MS. KINZELER:** ---and I, two days ago, got statements
8 randomly provided to Eddie Phipps -- how he fits in I have no
9 idea -- that I sent to Mr. Mason. But, I'm not calling them
10 as witnesses because I don't believe them to be truthful,
11 Your Honor. So, I believe the Defense, Mr. Barclay---

12 **THE COURT:** Do you plan to seek to introduce these
13 photos?

14 **MS. KINZELER:** I don't necessarily have to introduce the
15 photos, although I would like to. But I don't intend on -- I
16 intent on introducing evidence that this was found at the
17 scene through witness testimony at least.

18 **THE COURT:** So how else -- and so my question -- you
19 haven't answered my question. My question is, do you plan to
20 seek to introduce these photos in your case in chief?

21 **MS. KINZELER:** Yes.

22 **THE COURT:** Okay. And, why do you believe them to be
23 relevant and admissible?

24 **MS. KINZELER:** Well, they're relevant because...

25 (After pause) Alcohol was clearly involved in this

1 accident and this is the very beginning of how we know that
2 alcohol becomes to be involved. It sort of develops the
3 whole probable cause and learning what happened and where
4 people had been and what they had been doing.

5 This isn't a road with random patches of litter
6 everywhere. It's very obvious that this alcohol only came
7 from one of the two cars, and it was physically impossible to
8 come from the Geo. It could have only come from his car, and
9 it's a D-U-I case, Your Honor.

10 So, I mean, I think it's very relevant for the purposes
11 of establishing something as more of a -- you know.

12 **THE COURT:** Uh-huh. Mr. Mason, what is the basis of
13 your objection to the admissibility of the photograph?

14 **MR. MASON:** Well -- well, Your Honor, first of all
15 there's -- there's no -- there's no evidence of -- of -- of
16 ownership of the items. They took possession of it---

17 **THE COURT:** Well, inferentially there's a lot of
18 circumstantial evidence as to the ownership of them now that
19 there is some connection as to this -- they have a (sic)
20 eyewitness who says they saw somebody picking up these things
21 and attempting to put -- put them back in the cooler.

22 And, through their investigation they've determined that
23 person is connected to your client -- in the light most
24 favorable to them.

25 So how -- so that's a -- that's like the breadcrumb to a

1 certain extent that leads to some circumstantial evidence
2 regarding an inference that your client was, in fact,
3 drinking prior to this accident.

4 **MR. MASON:** Well---

5 **THE COURT:** So, how -- what's the basis of the objection
6 to the admissibility of the photograph?

7 **MR. MASON:** ---well first of all, it doesn't make any
8 sense, 'cause the picture shows the bottle in the woods. If
9 they were picked up---

10 **THE COURT:** So you don't care about the cans, you
11 just---

12 **MR. MASON:** Well, right---

13 **THE COURT:** ---have an objection to the bottle?

14 **MR. MASON:** ---'cause the cans -- right, the cans are
15 unopened, okay? The testimony is that there are six unopened
16 Budweiser cans that burst open in the accident. They didn't
17 find any open alcohol.

18 But not with the cooler we have this Jim Beam bottle.
19 And the reason it's so important, Your Honor, is it appears
20 to be a plastic bottle. It's -- appears to have some type of
21 a, um, a purchase, uh -- like a sticky, uh, purchase label on
22 it. The age of bottle is a price label, which is very
23 uncommon. It's -- it's -- it's age---

24 **THE COURT:** Well, it depends on where you buy it.

25 **MR. MASON:** Well---

1 THE COURT: I don't really drink---

2 MR. MASON: ---the---

3 THE COURT: ---so I don't -- wouldn't know, but I---

4 MR. MASON: ---the---

5 THE COURT: ---I---

6 MR. MASON: ---I think they're using bar codes.

7 THE COURT: ---I think it depends on where you buy stuff
8 from as to whether -- I mean, there are some -- still some
9 old A-B-C stores that operate with the little sticker gun---

10 MR. MASON: Right---

11 THE COURT: ---and they put the price on alcohol
12 bottles. I mean---

13 MR. MASON: ---you're right, Your Honor; I've been in
14 Mount Pleasant too long.

15 THE COURT: ---you know, your neighborhood stores, I --
16 I don't think they've changed it. I don't think they've gone
17 to---

18 MR. MASON: But---

19 THE COURT: ---electronic inventory---

20 MR. MASON: ---but---

21 THE COURT: ---I think they still are -- you know.

22 MR. MASON: ---but -- but in any event, they -- they
23 collected it with a glove on, okay?

24 THE COURT: Uh-huh.

25 MR. MASON: They clearly, when they -- when they -- when

1 they went into the woods and picked it up, they had a glove
2 on.

3 **THE COURT:** Uh-huh?

4 **MR. MASON:** They -- they took it into evidence; they
5 brought it to the evidence compound to keep it for some
6 evidentiary value.

7 It's -- it's our position -- and I've looked at this
8 issue too -- is that it's -- it -- there's many -- there's
9 many, many reported cases where fingerprints are lifted from
10 beer bottles, beer cans, liquor bottles. It's -- it's very,
11 very common.

12 We would have had the ability prior to trial, had they
13 not destroyed it in violation of policy -- and what's very
14 interesting---

15 **THE COURT:** Well, let me ask you another question; when
16 exactly was it destroyed? What date?

17 **MS. KINZELER:** It -- it was destroyed -- let me answer
18 that, Your Honor. This happened on December 8th of 2008 and
19 it was destroyed July -- July of 2009. I don't have the
20 exact date; I want to say July 9th.

21 **THE COURT:** When did you begin to represent, uh,
22 Mr. Barclay Mr. Mason?

23 **MR. MASON:** December the 8th, 2008.

24 **THE COURT:** Why didn't you ask for the bottles to have
25 them tested if that was the case---

1 **MR. MASON:** Well, because---

2 **THE COURT:** ---before 2009?

3 **MR. MASON:** ---well, because they were reported to me as
4 having been secured in the Charleston County evidence locker.
5 I relied entirely on the fact that Charleston County
6 Sheriff's Department would follow it's written and published
7 guidelines -- which were also in conformance with all crime
8 evidence compound requirements -- that you don't dispose of
9 physical evidence while a case is pending.

10 And in this case, not only was it disposed of, the
11 instruction for the disposal came from one of The State's
12 chief prosecuting witness (sic) in this case -- Officer
13 Burrell. Or, Dep- -- Deputy Burrell, who is here -- is here
14 in the courtroom. He's the one that dis- -- instructed. So,
15 if anyone was gonna know this case wasn't disposed of, it --
16 it---

17 **THE COURT:** Well, it's a -- it's a nebulous issue, and
18 I'm gonna tell you why.

19 One is, after legal requirements have been met, that is
20 an issue of interpretation, which is, if we don't plan to
21 fingerprint it then our legal requirements have been met.

22 I'm a little concerned that you waited seven months. If
23 I had -- that's significant evidence. I would have had
24 somebody test it long before seven months. It's July from
25 December---

1 **MR. MASON:** But---

2 **THE COURT:** ---I would have at least looked at it---

3 **MR. MASON:** ---well -- well---

4 **THE COURT:** ---in a seven-month period.

5 **MR. MASON:** ---and -- and you're right, Your Honor. But
6 the -- the question is---

7 **THE COURT:** And I know things come up. I know you --
8 you -- you know, lawyers, you ans- -- at least when I
9 practiced, you deal with the first fire every morning. I
10 mean -- and you intend to do things, you just -- until the
11 fire burns hot enough, you don't get around to it 'cause
12 there's always something else burning hotter every day. I --
13 I understand that concept; been there, done that.

14 But, the -- the question becomes -- and it really
15 becomes a speculative issue because -- again, I tried many,
16 many, many a cases (sic); I've probably listened to more
17 fingerprint experts than I care to recall. And what -- at
18 least my recollection of what they do is, they look at a
19 surface at the scene and they basically make a determination
20 about whether they're gonna fingerprint it or not. They
21 determine right at that moment whether it's a sur- -- whether
22 it is a surface that is gonna be conducive to printing. And
23 if they look at the conditions of the weather and otherwise
24 and they determine they're not gonna be able to print it,
25 they don't bother.

1 And so, they just put it in an evidence bag somewhere
2 'cause they never have any intention of fingerprinting it.
3 So then it becomes on -- it becomes incumbent on you to
4 decide whether you're gonna have an independent expert do
5 something with it, and if you don't, um, absent there being
6 some indication that for some reason he was trying to do
7 something inappropriate or, um -- or, uh -- what's the word
8 that I'm looking for?

9 **MS. KINZELER:** Bad faith?

10 **THE COURT:** Yeah, bad faith, that's what it is. You
11 know, it really becomes an evidentiary issue of weight. It
12 becomes just like any fo- -- fo- -- foliation -- I always
13 mispronounce that word -- issue because it becomes one of
14 weight, which is, um -- because it really inferentially,
15 circumstantially, is relevant to The State's case.

16 As to one, whether these items came out of the truck;
17 whether they, in fact, had been utilized by the Defendant
18 that evening based on the attendant facts and circumstances
19 of what is alleged to have happened that evening. Cause I
20 don't know; I haven't heard the whole case.

21 Um -- and whether, in fact -- what this witness is going
22 to testify to -- what they saw this other person actually
23 attempting to put back into the cooler.

24 So it really becomes one of weight for The State to
25 argue that all these things belong to the Defendant, they

1 were part of the course of his behavior that evening. And
2 then it becomes incumbent on you to argue, well, if it was
3 that important, why'd you destroy it?

4 Um -- it really becomes a -- you know, if it was really
5 that important, why did you destroy it and why didn't you
6 keep it and why didn't you fingerprint it? And, you know,
7 you'd ask that of the -- of the -- of your forensic folk
8 (sic) -- your crime scene folk (sic) -- why didn't you?

9 And I -- I -- I feel very confident in ans- -- in a- --
10 a- -- of, um, assuming what that person's gonna say. I've
11 heard Detective Kjellman testify many times about
12 fingerprints and I think she's probably gonna say well, it
13 was wet out there, we weren't gonna get no prints of it so we
14 didn't make any attempts to do it.

15 **MR. MASON:** You---

16 **THE COURT:** So -- you know, I don't know, but---

17 **MR. MASON:** ---but you -- this is -- Your Honor, I -- I
18 think that the key issue is whether The Court finds that it
19 has potentially any exculpatory value. If it -- if it
20 potentially has exculpatory value and they destroyed it --
21 good faith or bad faith -- we -- it -- you -- we -- we
22 would -- it would be our position it would need to be kept
23 out of evidence.

24 We would ask Detective Kjellman -- first of all, she
25 apparently got there quickly after the accident happened. It

1 wasn't raining, it was a dry, uh, beautiful evening. She
2 collected it---

3 THE COURT: I don't think she's gonna say that---

4 MR. MASON: But---

5 THE COURT: ---'cause by this time of night dew would
6 have fallen on the ground---

7 MR. MASON: ---she---

8 THE COURT: ---it wouldn't have been dry out there.

9 MR. MASON: ---she -- she specifically recorded the
10 humidity and dew level in her report.

11 THE COURT: And what does she say it was---

12 MR. MASON: Um---

13 THE COURT: ---'cause in Charleston---

14 MR. MASON: ---it -- it's---

15 THE COURT: ---it's always ninety percent---

16 MR. MASON: ---it -- it---

17 THE COURT: ---that time of the year.

18 MR. MASON: ---well, it's -- it---

19 THE COURT: Any time of the year it's ninety percent---

20 MR. MASON: ---it---

21 THE COURT: ---and in summer---

22 MR. MASON: ---Your Honor---

23 THE COURT: ---it's more than that.

24 MR. MASON: ---yeah; and it's -- it's an exhibit, um,
25 number, um, two to motion number one, and it is page one

1 where she records that it is fifty-two degrees---

2 **THE COURT:** Uh-huh?

3 **MR. MASON:** ---and sixty-three percent humidity with
4 winds east/northeast at six miles per hour and clear skies.
5 That---

6 **THE COURT:** The dew still would have fallen on the
7 ground that time of year; it still would have been wet that
8 time of the evening, wouldn't it?

9 I don't know that it really has anything to do with
10 whether they would be able to obtain prints or not. I mean,
11 there's so many variables. I don't know whether the
12 person was wearing gloves or not; I -- I have no idea. It
13 a- -- it's -- it's a lot of speculation about whether it
14 would be exculpatory.

15 At this point I'm not willing to go that far that it
16 would have been exculpatory. And, um, it all becomes
17 speculative. But, I think it's a weight issue. And, based
18 on what I've heard, it -- it is relevant circumstantially and
19 it would be for you to argue as to its weight.

20 And if it was that important to them why didn't they
21 maintain it, why didn't they keep it, why didn't they test
22 it? Or, you simply would ask the officers, were there any
23 finger -- where my client's fingerprints on the bottle? No.
24 Why not? We never tested it.

25 **MR. MASON:** You know -- and you know---

1 **THE COURT:** You know, there are lots of lines of
2 questioning regarding weight that you would be able to argue.
3 But, I don't think it makes any of this inadmissible -- the
4 fact that they destroyed it.

5 **MR. MASON:** ---Your Honor, will you, um -- and I respect
6 everything you're saying -- will you at least wait until --
7 let Officer Kjellman testify? If on the witness stand she
8 testifies that yes, I could have taken prints off of this
9 bottle and that if I took it to the evidence compound those
10 prints could have been taken by -- by me, and---

11 **THE COURT:** Here's the bottom line. Even if she
12 testified she could have taken them and she didn't, it's
13 still not exculpatory.

14 **MR. MASON:** But the -- the -- the problem is is---

15 **THE COURT:** You would -- you would have to prove to me
16 that his fingerprints would not have been found on it---

17 **MR. MASON:** And if I could---

18 **THE COURT:** ---for it to be exculpatory.

19 **MR. MASON:** ---test it, that would be what I would be
20 able to prove to you, Your Honor.

21 **THE COURT:** Well, you had seven months to test it and
22 you didn't. So, it -- apparently it was not at the forefront
23 of being that important to you.

24 So, at this point it's all speculative. I don't hear --
25 I haven't heard anything that would make it exculpatory.

1 I hear lots of things that would make it doubtful in
2 terms of weight that certainly you have the ability to argue.
3 Um -- but at this point I haven't heard anything that would
4 make it inadmissible.

5 **MR. MASON:** So -- so you determine it's not exculpatory,
6 Your Honor?

7 **THE COURT:** No; you haven't presented anything beyond
8 light speculation that it would be exculpatory.

9 **MR. MASON:** Well, right; and -- and because De- --
10 Detective Kjellman is on vacation today 'til Monday -- I --
11 I -- and I -- we did serve her with a subpoena---

12 **THE COURT:** Motion in limine; it's not final. I don't
13 know what she's gonna testify to. But, I've heard her
14 testify many times under similar circumstances and on these
15 conditions she would have taken prints right there at the
16 scene. She would have preserved it to take prints. She can
17 tell you whether something's suitable -- a suitable...

18 I've heard her testify about window frames and other
19 things -- bottles, you name it -- and they pretty much make a
20 contemporaneous decision right then about whether they gonna
21 fing- -- fingerprint something. They don't take it back to
22 the lab to decide whether they're gonna fingerprint it. They
23 pretty much decide whether that surface is conducive to
24 print.

25 And, there are other variables. For example, this

1 happened in December; it's cold in December. There's so many
2 other things that could have been happening. The person
3 could have had gloves on; they could have had other things
4 that would not have left fingerprints.

5 Um -- I just haven't heard anything at this point that
6 would tell me that one, that the fingerprints would have been
7 obtainable or that they would have been on them. However,
8 his would have been on them. But that does not preclude you
9 from arguing as to the weight of that testimony; whether it
10 should be given any weight at all.

11 And then you got your other witnesses. I don't know
12 what they're gonna say about what they saw; whether they
13 believe it's his or not, whether they're gonna say it was
14 there before the accident, I don't know. I have no idea. I
15 would assume that there must be some indication of that since
16 The State is not gonna call them as witnesses and they say
17 they don't believe they're credible in terms of, um, you
18 know, what happened on that -- or, their involvement in what
19 happened.

20 Um -- but, it becomes a weight issue. It's no different
21 than a fol- -- foliation situation in a civil case where
22 something's been destroyed.

23 It shouldn't have been. Um -- have I seen it done
24 before? Absolutely. Charleston County at The Clerk's
25 Office, with the volume of cases we move, if you saw the --

1 the size of that evidence room, stuff gets destroyed all the
2 time---

3 **MR. MASON:** But we---

4 **THE COURT:** ---'cause you just need the space. And I
5 don't know that that's a bad faith kind of a situation.

6 **MR. MASON:** ---but we -- we don't accept that the
7 destruction of evidence in violation of policy isn't per se
8 bad faith.

9 **THE COURT:** That is your interpretation of a violation
10 of policy. It comes down to their interpretation of whether
11 their legal requirements have been met. It doesn't say your
12 legal requirements, it says their legal requirements.

13 **MR. MASON:** Understood, Your Honor; and -- and just
14 for---

15 **THE COURT:** Which means their evaluation of the case and
16 their -- how they need to try their case and meet their
17 burden of proof.

18 **MR. MASON:** Your Honor, just -- just for the record, in
19 my brief I've cited the specific Charleston County Sheriff's
20 Office---

21 **THE COURT:** I've read it.

22 **MR. MASON:** ---regulation. And -- and I would just ask
23 that that be part of the record in relation to---

24 **THE COURT:** You should file it.

25 **MR. MASON:** It is filed in the---

1 **THE COURT:** Then it's a part of the record.

2 **MR. MASON:** But I have to prove the policy through --
3 'cause it's not like a statute, I have to prove it so that---

4 **THE COURT:** I don't think there's any contention that's
5 not their policy.

6 **MR. MASON:** Okay; thank you.

7 **THE COURT:** But it -- the policy is what is written on
8 this page; it is not what you interpret it to be.

9 **MR. MASON:** Right; I just -- the written policy---

10 **THE COURT:** Uh-huh.

11 **MR. MASON:** ---I just want to make sure it's in the
12 record.

13 **THE COURT:** If you filed it, it's in the record.

14 **MR. MASON:** Thank you, Your Honor.

15 **MS. KINZELER:** And, Judge, just a brief clarification.
16 The day of the destruction was July 14, 2010 -- July 14,
17 2010.

18 **THE COURT:** Did I say 2009?

19 **MS. KINZELER:** I said 2009; my mistake, Your Honor. I
20 just wanted to correct myself for the record.

21 **THE COURT:** So that was two years later.

22 **MS. KINZELER:** Roughly a year-and-a-half or so.

23 **THE COURT:** Uh-huh. Vivian, I need you to mark those
24 pictures for me, please; can you reach 'em? You can mark 'em
25 individually or as a package, however you want to do it.

1 They'd be Court's exhibits.

2 **COURT REPORTER:** I marked them collectively Court's one
3 Your Honor.

4 **THE COURT:** Thank you, ma'am.

5 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 WAS ADMITTED INTO
6 EVIDENCE.)

7 **THE COURT:** Now, my next one that I want to deal with is
8 one about the Officer. I need to know if the Officer has any
9 specialized education, training, or experience in accident
10 reconstruction or is he a part of a fatality team or
11 otherwise.

12 **MS. KINZELER:** Your Honor, his -- specifically, his
13 training and experience is, um, as traffic collision -- he's
14 a certified traffic safety officer. He went through a four-
15 to-five-week training. It's a three-phase training...

16 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
17 CONFERENCE, OFF THE RECORD.)

18 (WHEREUPON, COURT RESUMED.)

19 **MS. KINZELER:** ...it's a three-phase training involving
20 accident investigation and reconstruction. In addition to
21 the, um, normal requirements that all the officers to through
22 for the Police Academy, he did nine weeks of that, four to
23 five weeks of the traffic safety collision investigation.
24 He's certified in that, and at the time of this accident it's
25 his estimate that he had investigated approximately thirty-

1 five traffic fatalities' collisions prior to this incident as
2 of the---

3 **THE COURT:** Fatality or collision?

4 **MS. KINZELER:** I mean collisions resulting in fatalities
5 or serious not resulting in fatalities; but, definitely
6 collisions, Your Honor.

7 **THE COURT:** Is he a part of a fatality team?

8 **MS. KINZELER:** Yes.

9 **THE COURT:** (After pause) And what would be the
10 substance of his testimony?

11 **MS. KINZELER:** Your Honor, based on Deputy Brinson's
12 training and experience, he and Sergeant Burrell took
13 measurements of the tires, the gouge marks, striations, all
14 these things that are---

15 **THE COURT:** I'm -- I can -- yeah, I pretty much
16 assume -- I know what the fatality team does.

17 **MS. KINZELER:** ---correct.

18 **THE COURT:** What would be the subject -- what would he
19 be opining?

20 **MS. KINZELER:** That---

21 **THE COURT:** Do you plan -- well, I guess the question
22 comes, do you plan to qualify him as an expert?

23 **MS. KINZELER:** I mean, Your Honor, I believe that he is
24 able to testify as a lay witness, based on his training and
25 experience, to what he learned in his -- through his

1 investigation, but I can qualify him as an expert.

2 **THE COURT:** Well, the rules are very specific. You can
3 testify as a layperson if it doesn't require specialized
4 training, experience and education---

5 **MS. KINZELER:** Then I would move to---

6 **THE COURT:** ---that is outside -- that is within the
7 ambit of the ordinary person. If it's something that an
8 ordinary person would not be able to opine about and it
9 requires specialized education, training, and experience, it
10 becomes an expert opinion.

11 **MS. KINZELER:** ---I -- I would be seeking to admit him
12 as a traffic expert.

13 **THE COURT:** Has he been ad- -- um, admitted as an expert
14 witness before in traffic reconstruction or ac- -- or
15 fatalities?

16 **MS. KINZELER:** No, Your Honor.

17 **THE COURT:** All right; so this would be the first time?

18 **MS. KINZELER:** Yes, Your Honor.

19 **THE COURT:** Okay. Um -- and then tell me what the
20 substance of his opinion would be?

21 **MS. KINZELER:** I mean, to get straight to the point,
22 Your Honor, it would be that the collision occurred in the
23 victim's lane of traffic. That---

24 **THE COURT:** In other words, it was a head-on, and -- but
25 it was a crossover to -- of the centerline?

1 **MS. KINZELER:** ---offset head on, crossing over the
2 center line; yes, Your Honor.

3 **THE COURT:** So in other words, they were coming in
4 opposite -- I'm chal- -- directionally challenged. They were
5 coming opposite directions, one person crossed over and---

6 **MS. KINZELER:** Mr. Barclay crossed over the
7 centerline -- not entirely into the other lane head on to
8 head on, but offset driver's side to driver's side.

9 **THE COURT:** ---so one side -- yeah---

10 **MS. KINZELER:** Correct.

11 **THE COURT:** ---so it was a head on but just not full
12 head on---

13 **MS. KINZELER:** Right.

14 **THE COURT:** ---but part of the---

15 **MS. KINZELER:** And -- and -- and it's a basis of this is
16 crossing the centerline into the oncoming lane.

17 **THE COURT:** ---okay. And that based on striations, tire
18 marks, et cetera---

19 **MS. KINZELER:** Right.

20 **THE COURT:** ---measurements, he was able to make that
21 determination based on his education, training, and
22 experience?

23 **MS. KINZELER:** Right; he measured all the tire marks and
24 where the -- all the marks were. He knows what the marks
25 look like based on training and experience. He can identify

1 striations from actual point of engagement -- point of
2 impact---

3 **THE COURT:** Uh-huh?

4 **MS. KINZELER:** ---and determine, based on these
5 measurements the width of the Geo and where it was in it's
6 lane and he can testify, based on his training and
7 experience, that that Geo was fully in it's lane and that
8 Mr. Barclay had traveled over the center line.

9 **THE COURT:** And he is employed with -- with---

10 **MS. KINZELER:** The Charleston County Sheriff's Office.

11 **THE COURT:** And the Charleston County Sheriff's Office
12 has a fatality team?

13 **MS. KINZELER:** Yes.

14 **THE COURT:** And he is a part of that team?

15 **MS. KINZELER:** Yes.

16 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
17 CONFERENCE, OFF THE RECORD.)

18 (WHEREUPON, COURT RESUMED.)

19 **MS. KINZELER:** And I don't know if you're accepting case
20 law, Your Honor, but there is a 1991 case, *State versus*
21 *Goode*, where an officer with twelve weeks of police academy
22 training and four to five months of experience on the road,
23 with one week of specialized---

24 **THE COURT:** Ms. Kinzeler -- Ms. Kinzeler, I need you to
25 slow...

1 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
2 CONFERENCE, OFF THE RECORD.)

3 (WHEREUPON, COURT RESUMED.)

4 **THE COURT:** ...I need you to slow down a little bit;
5 Ms. Vivian's having a hard time keeping up with you.

6 **MS. KINZELER:** Sorry; I get that all the time.

7 **THE COURT:** You're about three hundred words a minute---

8 **MS. KINZELER:** Sorry.

9 **THE COURT:** ---you need -- I need you to slow down
10 just -- just a smidgen.

11 **MS. KINZELER:** I get that all the time. Um---

12 **THE COURT:** Okay.

13 **MS. KINZELER:** ---Your Honor---

14 **THE COURT:** Uh-huh?

15 **MS. KINZELER:** ---he -- this case is -- and I -- there
16 aren't many. I know that, um, Mr. Mason referred to several,
17 but they're very old and if you actually read the cases they
18 don't say anything about the substance of the qualifications
19 or disqualifications; they just say the person wasn't
20 qualified.

21 Um -- *State versus Goode* is Court of Appeals 1991 case.

22 **THE COURT:** You can just give me the citation.

23 **MS. KINZELER:** It is 305 S.C.---

24 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
25 CONFERENCE, OFF THE RECORD.)

1 (WHEREUPON, COURT RESUMED.)

2 **THE COURT:** Mr. Brown, did you have a guilty plea today?

3 **MR. BROWN:** No, ma'am, Your Honor; I have a simple,
4 uh---

5 **THE COURT:** A bond hearing?

6 **MR. BROWN:** ---a bond, yes.

7 **THE COURT:** Okay, I'm gonna do those as well. Just if
8 you'd give us a few minutes? I just wanted to make sure that
9 I had all my private lawyers signed up for their, uh -- for
10 their guilty pleas.

11 I'm sorry, you may continue.

12 **MS. KINZELER:** Um -- the citation, Your Honor, is
13 305 S.C. 176, and it's *State versus Goode*. Um -- The Court
14 held that a -- an officer who had twelve weeks of training at
15 the Highway Department -- or, the Highway Department Academy,
16 including specific training on determining point of impact
17 in -- in accident investigations, one week in the road -- on
18 the road, um, with the municipal force and had been a State
19 Trooper for four or five months, in light of this training
20 and experience could guide and assist the jury on the
21 question of the point of impact. And, that's significantly
22 less experience---

23 **THE COURT:** Uh-huh.

24 **MS. KINZELER:** ---than Deputy Brinson.

25 **THE COURT:** Uh-huh.

1 **MS. KINZELER:** He's been, um -- he left the academy in
2 1999, at which point the training was nine weeks not twelve;
3 had four to five weeks of training in this particular area
4 and is actually certified in this particular area, and has --
5 at the time of this collision -- done at least thirty-five
6 prior investigations of this nature.

7 **THE COURT:** Uh-huh. What would be the basis of the
8 objection to his testimony Mr. Mason?

9 **MR. MASON:** Your -- Your Honor, uh, in addition to his
10 not being qualified, the main thing is that he did not do an
11 accident reconstruction in this case. He didn't locate the
12 point of impact. He---

13 **THE COURT:** What do you mean? That's -- Ms. Kinzeler
14 says that's what he's gonna testify to.

15 **MR. MASON:** Well -- well he didn't -- he didn't locate
16 it. What he did was, he marked what's called maximum
17 engagement. And what you have is, when you have two vehicles
18 that are going down the road and they collide, they collide
19 at some point before the point of maximum engagement.

20 So, what happens is, in this case, Your Honor, which was
21 an offset frontal collision, you have two vehicles going down
22 the road. What we say happened is that, uh, Mr. Garcia's
23 vehicle came into Mr. Barclay's lane. They hit like this
24 (gesture). The two vehicles then crunched together and then
25 they spin and separate.

1 **THE COURT:** You have somebody that's gonna testify to
2 that?

3 **MR. MASON:** It -- well -- well, Your Honor, he -- the --
4 the -- the -- when I'm allowed to examine him on his
5 opinion---

6 **THE COURT:** That's not my question. Are you gonna be
7 able to have somebody opine that that's in fact what
8 happened?

9 **MR. MASON:** If -- if -- if -- if we decide to call a
10 witness to testify to that, yes we will.

11 But, the -- I won't have to because De- -- I believe,
12 um, that -- that Deputy Brinson is gonna say, when I'm
13 allowed to question him about the reliability of his opinion,
14 he's gonna say one thing.

15 First of all, he's gonna say I didn't do an accident
16 reconstruction in this case; I didn't do a scale drawing;
17 I didn't determine the vectors and forces; I didn't
18 determine---

19 **THE COURT:** Fatality team never does that.

20 **MR. MASON:** ---well -- well, again, but that's what an
21 accident reconstructionist will---

22 **THE COURT:** But that's not what he is; he's a fatality
23 team investigator, which they have 'em for the Highway
24 Department, they have 'em for every county agency, and
25 there's a different level of training they go through for the

1 purpose of establishing exactly these things we're talking
2 about.

3 **MR. MASON:** Well, if -- if he wants to say---

4 **THE COURT:** He's not an engineer; they're not trained to
5 be engineers.

6 **MR. MASON:** Exactly; and that's why the reliab- ---

7 **THE COURT:** They don't have to be.

8 **MR. MASON:** ---well, he -- this is the distinction, Your
9 Honor. He can say, I found this gouge mark here in the road
10 and I found this there in the road. And he can point all
11 that out.

12 What the problem is is -- what I believe he can't say is
13 that I determined the collision -- that he didn't see --
14 happened in a certain way.

15 What I don't -- what -- what our objection is is that he
16 hasn't done any kind of a reliable, um, reconstruction of
17 this accident to where he can say -- 'cause he -- he didn't
18 identify, I've got all the reports -- where the point of
19 impact (sic).

20 With a centerline case, Your Honor, what's critical is
21 where the vehicles first collided, not where they maximally
22 engaged, okay? In order to do, uh -- determine point of
23 impact, he's got to do really a whole reconstruction, which
24 does involve engineering.

25 We're talking about a matter of a foot in one direction

1 or another, Your Honor. This is -- this whole case is about
2 a couple of feet, so---

3 **THE COURT:** All of that sounds like weight to me, not
4 admissibility.

5 **MR. MASON:** Well -- well -- but again, Your Honor, we
6 believe that---

7 **THE COURT:** Our case law does not support that you have
8 to be an engineer to determine the point of impact.

9 **MR. MASON:** Well -- well -- well---

10 **THE COURT:** If that were the case, three-quarters of the
11 Highway Patrolmen that testify as to fatalities and the
12 fatality team would not be qualified to testify in this
13 state, and it happens every single day. It happens in
14 automobile accidents in civil court, it happens in criminal
15 court.

16 They are qualified, based on their education, training,
17 and experience to testify of these issues, which is the point
18 of impact.

19 Now, if you want to call an engineer to contest that
20 opinion, you certainly are -- are entitled to do that.

21 If you want to question him regarding the weight of his
22 opinion -- in other words, if you want to question -- because
23 a jury does not have to accept an opinion even though it is
24 uncontroverted. They can give it -- it's no different than
25 any other lay testimony; they can give it the weight they

1 think it deserves. If they think it is contrary to the
2 weight of the evidence of the case they can disregard it
3 entirely in fact.

4 And, what you are talking about is -- are variables and
5 how he would have calculated the point of impact -- the
6 methodology he may have employed.

7 But, he is not an engineer; he's not required to be an
8 engineer to make that assessment.

9 **MR. MASON:** Your Honor, you -- I recognize that you're
10 the gatekeeper. And as the gatekeeper, you're -- it's our
11 position that you need to hear him testify about his
12 qualifications in which I get to voir dire him at a point.

13 **THE COURT:** Well of course.

14 **MR. MASON:** And -- and---

15 **THE COURT:** I mean, we're on---

16 **MR. MASON:** ---and that you---

17 **THE COURT:** ---this is a motion in limine.

18 **MR. MASON:** Right.

19 **THE COURT:** I -- but I'm not doing that on a motion in
20 limine.

21 **MR. MASON:** And that you need to hear his actual
22 testimony outside---

23 **THE COURT:** Uh-huh?

24 **MR. MASON:** ---the hearing of the jury to determine if
25 it's reliable. And we just -- that's wh- -- why we filed the

1 motions. We want to make sure that we get the chance for you
2 to make that---

3 **THE COURT:** Well---

4 **MR. MASON:** ---decision before---

5 **THE COURT:** ---you will make -- you will make a
6 contemporaneous objection. But, she will be allowed to lay
7 the foundation regarding his expert -- his training,
8 education, and experience in the presence of the jury.

9 You will then be given the question to either pose
10 objections or question his qualifications.

11 She will then move for him to be admitted as an expert,
12 and I will either admit him or not admit him and we'll go
13 from there---

14 **MR. MASON:** But, Your Honor, you---

15 **THE COURT:** ---'cause, in order for him to render an
16 opinion, he's gonna have to be qualified.

17 Um -- but I'm not gonna do that outside the presence of
18 the jury; I don't have to.

19 **MR. MASON:** Well, once he's qualified though, Your
20 Honor---

21 **THE COURT:** Uh-huh?

22 **MR. MASON:** ---it's our position that outside of the
23 hearing of the jury you need to hear what his opinion's gonna
24 be to determine if it's reliable.

25 If you determine that it's reliable then you can let it

1 in. If -- we just want to make sure that during---

2 **THE COURT:** Reliability goes to the reliability---

3 **MR. MASON:** ---yeah---

4 **THE COURT:** ---of the science. He is not testifying to
5 a science, he is testifying as a (sic) officer trained to do
6 a particular methodology.

7 And, unless you can -- and that methodology is taught
8 all over the country. There is no question regarding the
9 reliability of that methodology.

10 **MR. MASON:** But -- but -- but if he got all his
11 measurements wrong---

12 **THE COURT:** That's---

13 **MR. MASON:** ---and the directions wrong and thirty
14 things wrong you could---

15 **THE COURT:** ---that's for you to question him on cross.
16 You haven't said anything to me that indicates all that was
17 wrong---

18 **MR. MASON:** It---

19 **THE COURT:** ---and you'd---

20 **MR. MASON:** ---I'm---

21 **THE COURT:** ---have to have---

22 **MR. MASON:** ---I'm telling---

23 **THE COURT:** Well then you'd cross-examine him on that---

24 **MR. MASON:** Right.

25 **THE COURT:** ---'cause that would go to the weight of his

1 opinion---

2 MR. MASON: Well---

3 THE COURT: ---but not its admissibility.

4 MR. MASON: ---it -- it goes to its reliability and it's
5 our position, Your Honor---

6 THE COURT: Uh-huh?

7 MR. MASON: ---that you as the gatekeeper have to make
8 that decision. And whatever it is---

9 THE COURT: Actually, you're---

10 MR. MASON: ---it needs---

11 THE COURT: ---mixing two concepts.

12 MR. MASON: ---it---

13 THE COURT: The Court determines reliability of science,
14 not the weight of opinions and that's what you're arguing.
15 And you have two concepts; you're -- you're overlapping two
16 concepts that are unrelated.

17 The science is clearly -- or, the methodology is clearly
18 reliable. It's taught all over the country; it's admissible
19 all over the country.

20 What you're talking about is the way he implemented
21 his methodology and whether it's accurate. That's a weight
22 issue.

23 MR. MASON: Well -- well, but you still have to
24 determine, as the gatekeeper, whether it -- it is reliable
25 enough for you to let it in. And that's what we're asking---

1 **THE COURT:** Well, I'll hear that when they establish --
2 try to establish his -- the foundations for his opinions and
3 you'll be allowed to cross-examine him regarding that.

4 **MR. MASON:** Okay; thank you.

5 **THE COURT:** And then I'll make a decision as to the
6 admissibility of it. But, I'm not gonna hear that in camera;
7 there's no necessity to do that.

8 **MR. MASON:** Understood, Your Honor; we think that's
9 appropriate.

10 **THE COURT:** Yeah.

11 **MR. MASON:** I mean, in camera not today or in camera at
12 the trial? 'Cause at the trial is what we're asking for the
13 reliability determination to be made outside the jury.

14 **THE COURT:** I've already ruled, Mr. Mason.

15 **MR. MASON:** Okay.

16 **THE COURT:** That science is reliable. It's not science
17 really, it's methodology.

18 **MR. MASON:** I understand---

19 **THE COURT:** And it's reliable.

20 **MR. MASON:** ---so -- so I'm not---

21 **THE COURT:** And absent you showing me something that
22 says it isn't reliable -- if that's the case then every
23 school that teaches this in the country would need to change
24 its methodology.

25 **MR. MASON:** ---so---

1 **THE COURT:** You're talking about the weight of his
2 opinion.

3 **MR. MASON:** ---okay.

4 **THE COURT:** I'm gonna hear what The State has to say; I
5 will give you the option to question him regarding his
6 education, training and experience.

7 They will move, as they -- I assume they will, to admit
8 him as an expert and I'll make a decision at that time
9 regarding him rendering an opinion.

10 But, once I decide, based on what they present to me,
11 that his education, training and experience is sufficient for
12 him to testify as to being a part of the fatality team -- he
13 is not an accident reconstructionist. He is not testifying
14 to that; he doesn't have to. He doesn't have to be an
15 expert. There's case law on point that allows officers,
16 based on their education, training and experience to
17 determine the point of impact of an accident.

18 Everything you have stated so far is a weight issue.
19 You would question him regarding the underlying basis of his
20 opinions. In other words, his measurements, whether he got
21 'em right, whether he applied the methodology as is supposed
22 to be applied. Those are all weight issues; those are not
23 reliability issues.

24 **MR. MASON:** So if I understand, you're not gonna let me
25 question outside the hearing of the jury on reliability and

1 that's The Court's ruling.

2 **THE COURT:** What I have found is that you've not raised
3 anything that -- you're mixing two concepts. You're asking
4 me, as a matter of law, to exclude his opinion based on a
5 weight issue not a reliability issue.

6 **MR. MASON:** No; reliability and weight, Your Honor --
7 let me give you an example.

8 **THE COURT:** Reliability deals with the reliability of
9 the science; whether it is reliable, whether it has been
10 tested, and whether it is something that is widely used
11 across an industry or as a standard.

12 Unless you can show me something that says his
13 methodology and his training is outside the ambit of what is
14 taught in every police school -- SLED or otherwise -- in this
15 country, that goes to reliability. That does not go to the
16 weight or substance of his opinion.

17 What you've been arguing is substance and weight, not
18 reliability. So, absent you showing me something regarding
19 reliability -- that's when I'm required to have a hearing
20 regarding the reliability of the science.

21 Uh -- for example, uh, before D-N-A was widely accepted,
22 the methodology -- reliability of the science.

23 You haven't said anything at this point that talks about
24 the reliability of the methodology that he employed. What
25 you have talked about so far is whether any weight should be

1 given to his opinion; whether his measurements were accurate.
2 That's not a reliability factor, that's a weight factor.

3 **MR. MASON:** I need---

4 **THE COURT:** That's the application of the methodology---

5 **MR. MASON:** Right---

6 **THE COURT:** ---that's not reliability.

7 **MR. MASON:** ---right. And the -- and that's where,
8 respectfully, I think you still have to make that decision as
9 well.

10 **THE COURT:** Case law does not support that position.
11 I'll note your exception for the record.

12 Of course, again, these are motions in limine and you
13 will be required to make contemporaneous objections to
14 support and sustain your record.

15 (After pause) Now, the next motion deals with the blood
16 sample, and I need a synopsis of what happened after the
17 collision and how the Defendant's samples came to be taken.

18 **MS. KINZELER:** Your Honor, are you referring to number
19 one?

20 **THE COURT:** I'm actually referring to...

21 **MS. KINZELER:** Or the advisement of rights issue?

22 **THE COURT:** The advisement of rights issue, which is
23 number ten.

24 **MS. KINZELER:** Um -- Your Honor, I can correct the
25 facts, and I don't think -- and correct me if I'm wrong,

1 Mr. Mason -- I don't think we disagree, um, wholeheartedly on
2 some of the facts.

3 Um -- the collision happened a little bit after six.
4 Officers, E-M-S workers indicate they believe Mr. Barclay was
5 under the influence. Deputies collectively -- I'm not sure
6 who specifically at this point -- send Martin -- I think it's
7 Burrell and Brinson who are the case agents. Um -- Martin
8 goes to the hospital to basically stand by. He, I believe,
9 is at the, um, Defendant's bedside at nine. I think that's
10 in the memo; I don't know, I think he may have said
11 nine-forty-five.

12 **THE COURT:** What's the nature of his injuries?

13 **MS. KINZELER:** Uh -- he had---

14 **THE COURT:** Was he transported by E-M-S?

15 **MS. KINZELER:** ---he was transported by ground E-M-S.
16 The victim passenger that lived was transported by air. He
17 had a, um, two-to-four-inch laceration on his head. Short of
18 that they determined---

19 **THE COURT:** Was any of it life threatening?

20 **MS. KINZELER:** No, ma'am.

21 **THE COURT:** Was the passenger's, uh -- uh, injuries life
22 threatening?

23 **MS. KINZELER:** Yes, ma'am; that's why they decided to
24 airlift him.

25 **THE COURT:** So then the, uh -- one of the persons in the

1 other car was deceased?

2 MS. KINZELER: Right.

3 THE COURT: Were they declared deceased at the scene?

4 MS. KINZELER: Yes, ma'am.

5 THE COURT: And then the other person was injured and
6 what -- what happened with them?

7 MS. KINZELER: We have the Defendant who was injured and
8 transported by ground. The passenger victim that was
9 transported by air, and then the deceased drive of the Geo.

10 THE COURT: Okay, that's where you're confusing me. You
11 gave me the impression that there was somebody riding in the
12 vehicle with the Defendant---

13 MS. KINZELER: No, just---

14 THE COURT: ---and there was not---

15 MS. KINZELER: ---right.

16 THE COURT: ---and I did not believe that to be the
17 case, but the way you said it---

18 MS. KINZELER: Sorry.

19 THE COURT: ---gave me that impression.

20 MS. KINZELER: So---

21 THE COURT: Okay; so, I need to know what happened. The
22 Defendant was transported by ground E-M-S; he had a
23 laceration, nothing life threatening. What happened after
24 that?

25 MS. KINZELER: ---so, Deputy Martin's at the hospital

1 beginning around nine p.m. when Mr. Barclay gets back from
2 all his tests.

3 Deputy Brinson and Deputy Burrell and Deputy Luckadoo,
4 they're all still at the scene. Deputy Brinson learns about
5 everyone's impressions and observation at the scene. Deputy
6 Martin has his own observations at -- at the hospital room
7 about him being highly intoxicated, jovial -- it's in the
8 supplemental report I gave to Mr. Mason in August.

9 They talked to each other on the phone some point
10 between nine and nine-fifty; this is what we learned out at
11 the scene, what's he like over there, this is what I'm
12 observing right now.

13 Deputy Brinson makes the determination that he's got
14 probable cause for a---

15 **COURT REPORTER:** I'm sorry, Your Honor---

16 **THE COURT:** You'll have to slow down.

17 **MS. KINZELER:** Sorry.

18 **THE COURT:** You have -- the Court Reporter can't keep
19 up.

20 **MS. KINZELER:** Sorry. Um---

21 **THE COURT:** You need her to repeat what she just said,
22 Vivian?

23 **COURT REPORTER:** Yes, please.

24 **THE COURT:** I'm sorry; did you say yes, please?

25 **COURT REPORTER:** Yes, please.

1 **THE COURT:** I need you to repeat the last sentence.

2 **MS. KINZELER:** Deputy Brinson and Deputy Burrell are at
3 the scene; Deputy Martin is in the hospital room. They're
4 speaking on the telephone about what they both observed at
5 each place.

6 While at the scene, Deputy Brinson makes the
7 determination that they have probable cause to believe that
8 Mr. Barclay committed felony D-U-I, at which point they
9 direct Deputy Martin to have legal blood drawn.

10 Deputy Martin reads him his Miranda rights; doesn't yet
11 do the waiver form -- or, the advisement form; that comes
12 later. Reads him his Miranda rights out loud; reads him and
13 gives him a copy of his implied consent rights. And then
14 legal blood is drawn. And the nurse's signature on the, um,
15 blood collection report indicates -- in addition to
16 everything that will be testified to -- that those two things
17 did occur prior to him drawing the blood.

18 **THE COURT:** Mr. Mason, is there any contest that this is
19 the continuum of what happened?

20 **MR. MASON:** Ab- -- absolutely, absolutely.

21 **THE COURT:** Okay; then I'll give you a chance to
22 respond.

23 Now, um, what statute are you relying on that you-all --
24 that you are contending The State was in compliance with in
25 drawing the blood?

1 **MS. KINZELER:** My understanding is that we're dealing
2 with the issue -- specifically, number ten.

3 **THE COURT:** Uh -- you need to tell me what statute
4 you're relying on.

5 **MS. KINZELER:** Um -- I just want to make sure I'm
6 addressing the right motion, Your Honor.

7 **THE COURT:** You are; number ten.

8 **MS. KINZELER:** Okay. Um -- this is 29-45, and -- which
9 is the felony D-U-I statute; and, 29-46. And 29-46---

10 **THE COURT:** What subsections are you referring to in
11 29-45 and 29-46?

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 **MS. KINZELER:** Twenty-nine-forty-six; and, Your Honor,
16 we're dealing with the 2008 version of the statute.

17 Twenty-nine-forty-six didn't have subsections, and I
18 don't believe -- although I'm not positive, I can't find it
19 this sec- -- section -- that 29-45 did either.

20 Twenty-nine-forty-five is the felony D-U-I statute.
21 Twenty-nine-forty-six didn't have any subsections.
22 Twenty-nine-forty-six says -- the second paragraph just
23 to direct The Court's attention -- the test must be
24 administered at the direction of a law enforcement officer
25 who has probable cause to believe the person violated or is

1 under arrest for a violation of 29-45, which is the felony
2 D-U-I statute.

3 So, Deputy Brinson determined -- as a law enforcement
4 officer -- he had probable cause to believe that Mr. Barclay
5 committed felony D-U-I, and that's the basis for getting the
6 blood draw. And, there's case law that clearly supports, um,
7 warrant of seizure of blood in felony D-U-I cases given the
8 evidence nature of the blood. And it---

9 **THE COURT:** And what's that -- what cases are you
10 relying on?

11 **MS. KINZELER:** *State v. Williams*.

12 **THE COURT:** What's the citation?

13 **MS. KINZELER:** It is 297 S.C. 290. And in that case The
14 Court held that not -- a seizure of the Defendant's blood did
15 not violate his Fourth Amendment rights.

16 (After pause) It also addresses chain of custody and it
17 specifically says that, um -- it cites to another case from
18 the United States Supreme Court saying that the Supreme Court
19 held a formal arrest is not required for police to conduct a
20 limited search necessary to preserve highly evi- -- evidence
21 if there's probable cause to arrest. Warrant with seizure of
22 appellant's blood did not violate his Fourth Amendment rights
23 if there is probable cause to arrest at the time of the
24 accident. Which, within -- do I need to repeat? Sorry.

25 Um -- which, Your Honor, is our basis for the blood

1 draw. And I know that Mr. Mason has raised several issues
2 about who signed what form, and I just want to go ahead and
3 mention to The Court that there is no statute anywhere -- not
4 in Title 56, not in any case law anywhere -- that says
5 anything about certain forms having to be signed and dated
6 and timed.

7 We agree Brinson was at the scene and Martin was at the
8 hospital room. The important thing for The Court to note is
9 that blood can be drawn at the direction of a law enforcement
10 officer with probable cause to believe that crime had been
11 committed, and I think the probable cause is clear in this
12 case from the get-go.

13 Um -- and -- and the signing of the forms or lack
14 thereof is -- and he can cross-examine these officers all day
15 long about why they didn't date things.

16 Um -- it is worth noting -- Mr. Mason brought up --
17 Deputy Brinson signed the implied consent rights form. He
18 signed it indicating those rights were read to him; he didn't
19 sign it for the purpose of establishing -- for the purposes
20 of establishing -- establishing that he was the one that read
21 them to him. It's undisputed that he signed the form but
22 he's not the one that read them to him. All the law
23 requires---

24 **THE COURT:** Was it done in his presence?

25 **MS. KINZELER:** Other officers saw Deputy Br- -- Brinson

1 signing the form, and---

2 **THE COURT:** That's not my question. Who -- who gave him
3 his rights?

4 **MS. KINZELER:** Nurse -- Deputy Martin advised him of his
5 Miranda rights and his implied consent rights before Nurse
6 Heath drew the blood.

7 **THE COURT:** Uh-huh?

8 **MS. KINZELER:** He gave him a copy of it and read it to
9 him just like he is supposed to.

10 **THE COURT:** Uh-huh?

11 **MS. KINZELER:** He started the paperwork for Deputy
12 Brinson by filling out the information at the top like the
13 Defendant's name, the date, but he didn't sign the bottom of
14 the form because it -- he -- he wasn't the arresting officer.

15 And -- and -- and it was -- it was just Deputy Martin
16 not signing the form, it doesn't have anything to do with
17 whether or not he complied with the statute because the
18 statute says nothing about who signs what form.

19 And he can cross-examine about that all day long, but
20 the point---

21 **THE COURT:** What statute are you referring to when you
22 say the statute doesn't require?

23 **MS. KINZELER:** Well, part of my point is that there
24 isn't one so I can't refer you to one, but---

25 **THE COURT:** Okay.

1 MS. KINZELER: ---29-46 incorporates by reference 29-50.

2 THE COURT: Uh-huh?

3 MS. KINZELER: Twenty-nine-fifty is the implied consent
4 statute---

5 THE COURT: Uh-huh?

6 MS. KINZELER: ---and as Your Honor knows, I'm sure, by
7 consent right you initially consent to giving a sample---

8 THE COURT: Uh-huh.

9 MS. KINZELER: ---but you can withdraw that consent in a
10 misdemeanor case.

11 THE COURT: Uh-huh?

12 MS. KINZELER: Twenty-nine-forty-six says,
13 notwithstanding any other provision of law.

14 THE COURT: It gives them, uh-huh, the right---

15 MS. KINZELER: A person must---

16 THE COURT: ---to withdraw it.

17 MS. KINZELER: ---submit.

18 THE COURT: Uh-huh.

19 MS. KINZELER: So, 29-50 is where you find the implied
20 consent rights. And the implied consent rights listed in
21 29-50 are the misdemeanor D-U-I implied consent rights; you
22 have a right to refuse, blah blah blah. But the felony D-U-I
23 rights he's read are essentially consistent with that; you
24 have a right to have a person of your own choosing retest the
25 blood, which Mr. Mason was there and requested and then

1 withdrew that same night.

2 Um -- so, 29-50, I believe it's section B is the section
3 that says a person must be given a copy of and verbally
4 informed of his implied consent rights. But, nowhere in the
5 entire criminal code does it say anything about who must sign
6 what form and when. It says he has to be given a written
7 copy and verbally advised.

8 **THE COURT:** Uh-huh?

9 **MS. KINZELER:** Deputy -- Deputy Martin could have
10 written it on a notepad if he knew it by heart and he was
11 giving it to him and it wouldn't have made any difference.
12 If those forms weren't signed at all it wouldn't make any
13 difference.

14 The point is, we have officers available to testify
15 under oath, subject to cross-examination, that he was read
16 and given a copy of his implied consent rights.

17 And, his signature -- the Defendant's -- is on the
18 implied consent form which says, I received these rights.
19 And he can say---

20 **THE COURT:** Uh-huh?

21 **MS. KINZELER:** ---it wasn't 'til after the blood was
22 drawn, but Nurse Heath will testify that he signed the blood
23 collection report form which I'm -- I'm sure Your Honor might
24 also be familiar with. It's the, you've been advised of your
25 implied consent rights, you're under arrest for a violation

1 of this section, we're now drawing blood, here's my licensed
2 medical personnel, and Chuck Heath would not sign that form
3 without verifying that those two things occurred -- Miranda
4 and implied consent -- before drawing it.

5 **THE COURT:** Uh-huh?

6 **MS. KINZELER:** And -- and everything else that we've
7 been talking about, about who was where -- I mean, Deputy
8 Martin doesn't have to -- I -- I think Mr. Mason thinks, and
9 he can correct me when he gets a chance to respond -- that
10 Deputy Martin had to have his own independent probable cause
11 or had to be present at the scene to understand what happened
12 at the scene.

13 It's at the direction of a law enforcement officer.
14 It's not -- I don't know what law ever said that probable
15 cause has to be a personal eyewitness observation. It's the
16 facts and circumstances within the officer's knowledge at the
17 time.

18 Um -- and Deputy Martin, he, um, did a supplement that
19 also basically indicated the highly level -- the high --
20 quote, highly intoxicated.

21 Um -- so, I think even if The Court were to go that way,
22 Deputy Martin still had probable cause, although the
23 direction was given to Martin from Brinson at the scene if
24 that makes any sense.

25 So, in essence, Your Honor, it's a big non-issue is my

1 contention.

2 **THE COURT:** Okay; Mr. Mason?

3 **MR. MASON:** Your -- Your Honor, it -- it's a monstrous
4 issue. Um -- what happened was, Deputy Brinson was not at
5 the hospital when blood was drawn. He was not there---

6 **THE COURT:** Where -- where in the statute does it say he
7 has to be?

8 **MR. MASON:** Okay; he doesn't have to be. But, this is
9 the point. He signed the form, which is exhibit two to the
10 motion, and all the handwriting on the form is his. Not a
11 bit of it is Deputy Martin's like is -- was represented by
12 The State, it's all Mr. Brinson's.

13 **THE COURT:** Let's assume it's all true; what difference
14 does it make?

15 **MR. MASON:** Well, because the statute--

16 **THE COURT:** Where does the statute say he has to do it?

17 **MR. MASON:** ---it says---

18 **THE COURT:** The statute simply says they have to
19 verbally give it to him---

20 **MR. MASON:** ---no, they have to---

21 **THE COURT:** ---and written give it to him.

22 **MR. MASON:** ---they have to advise him in writing before
23 the blood is drawn.

24 **THE COURT:** And your client signed the form indicating
25 he received it. So, the question is not one of -- with the

1 officers -- nothing in the statute requires the officer to
2 sign anything. All it requires is that your client be
3 advised and that he be given copies of the forms.

4 **MR. MASON:** Before the test is given, and there's a
5 question of fact because an officer who wasn't there when
6 the -- when the---

7 **THE COURT:** How does that create a question of fact?
8 The issue becomes, did your client sign the form? When did
9 he sign it?

10 **MR. MASON:** Correct.

11 **THE COURT:** Did he sign it before or after the blood was
12 drawn? So it becomes, who is the fact witness that saw him
13 sign the form? They say they have a (sic) eyewitness that
14 saw him sign the form before the blood was drawn. So, that
15 becomes the critical issue.

16 **MR. MASON:** Okay; well, we need that person---

17 **THE COURT:** The officers are---

18 **MR. MASON:** ---to testify, Your Honor.

19 **THE COURT:** ---the officers are a red herring.

20 **MS. KINZELER:** Your Honor---

21 **THE COURT:** No; you can -- you know what the facts
22 are as you contend them; I don't need to hear anybody.
23 You-all -- it's uncontested. The State says that they were
24 given before the blood was drawn.

25 **MS. KINZELER:** No---

1 **THE COURT:** So your position has to be...

2 **MR. MASON:** The fact is, they were given---

3 **THE COURT:** You need to correct my assumption?

4 **MS. KINZELER:** One thing you said, Your Honor, I just
5 want to correct before we go too far.

6 The statute says, and Deputy Martin's testimony would
7 be, he was read and given a written copy of it.

8 **THE COURT:** Yeah, that's what the statute says.

9 **MS. KINZELER:** I'm not saying that Mr. Barclay signed
10 the form before the blood draw and I'm not aware of any
11 statute that requires his signature.

12 **THE COURT:** When did it happen -- so when are you-all
13 contending it happened?

14 **MS. KINZELER:** I -- I---

15 **THE COURT:** 'Cause then I did misunderstand you 'cause
16 that's what you just said a little while ago.

17 **MS. KINZELER:** ---I don't -- no, I -- I'm not saying
18 when Barclay signed the form 'cause I'm not entirely sure
19 when Barclay signed the form because everyone---

20 **THE COURT:** I thought you said the nurse witnessed him
21 sign the form.

22 **MS. KINZELER:** The nurse witnessed the officer---

23 **THE COURT:** I misunderstood then; okay---

24 **MS. KINZELER:** ---reading them---

25 **THE COURT:** ---I stand corrected.

1 **MS. KINZELER:** ---and giving him a written copy. I'm
2 not saying---

3 **THE COURT:** Okay; I got you.

4 **MS. KINZELER:** ---we have an eyewitness to the
5 Defendant's signature for timing purposes. I'm just saying
6 that he did, in fact, sign it.

7 **THE COURT:** And you have a -- I stand corrected; you
8 have an eyewitness that saw him advised and get a copy.

9 **MS. KINZELER:** And that is not specific---

10 **THE COURT:** Is this the same nurse that drew the blood?

11 **MS. KINZELER:** Right; and that's not specific
12 independent recollection necessarily. It might be, I will
13 clarify with him.

14 But, he is saying, I would not be signing this form --
15 my signature on this form is an indication that everything
16 prior to -- which includes Miranda, implied consent and
17 you -- you're under arrest for et cetera, et cetera has been
18 complied with. And he would never draw someone's blood if he
19 hadn't observed those requirements being complied with before
20 doing so. It---

21 **THE COURT:** You're talking about the person who drew the
22 blood?

23 **MS. KINZELER:** Right; Chuck Heath, yes, ma'am.

24 **THE COURT:** And what is his -- who is he?

25 **MS. KINZELER:** He is the nurse that drew the blood.

1 **THE COURT:** And he says he's familiar with state law and
2 he would not have drawn the blood unless he know -- knew this
3 had been complied with?

4 **MS. KINZELER:** Right, which is indicated by his
5 signature on the form. And I---

6 **THE COURT:** So he's gonna testify he signed the form
7 before he drew the blood?

8 **MS. KINZELER:** Right.

9 **THE COURT:** And he did that in the presence of the
10 Defendant?

11 **MS. KINZELER:** I -- I'm talking about the urine blood
12 collection report. I'm not talking about advising him of
13 implied consent. And, Your Honor, I'll give you this copy.

14 **THE COURT:** I don't need it; I just need you to be clear
15 about what you're referring to so the record's clear.

16 **MS. KINZELER:** The urine-slash-blood collection report.

17 **THE COURT:** He's gonna say he did -- would not have done
18 the draw and would not have collected the samples if he
19 did not personally see the Defendant advise and -- or knew
20 that he had been advised and given a copy prior to those
21 collect -- that collection?

22 **MS. KINZELER:** Exactly.

23 **THE COURT:** Okay; so we're back to the original issue,
24 which is, Mr. Mason, there's nothing in the statute that says
25 these officers have to sign anything. It simply says that no

1 test may be administered or samples obtained unless
2 upon -- oh, no, I'm reading the wrong thing; I apologize.

3 Yeah, um, upon activation of the video recording
4 equipment and prior to the commencement of the testing
5 procedure, the person has been given a written copy of and
6 verbally informed. And then it has the rights, of course,
7 that they are required to be given.

8 So, the question of critical importance for purposes of
9 the statute becomes, are you saying you have evidence or
10 testimony that your client was not advised of these rights
11 and given a copy prior to the samples being drawn?

12 **MR. MASON:** Ab- -- absolutely; and the evidence---

13 **THE COURT:** And who is that gonna be?

14 **MR. MASON:** Officer Brinson. He was not there when --
15 he was not there when the test was drawn. All the---

16 **THE COURT:** What does that have to do with whether he
17 was verbally advised and given a copy?

18 **MR. MASON:** Well -- well, because the statute doesn't
19 require verbal advise -- advice. You're reading -- Your
20 Honor, with all due respect, it's the 56-529-50 2000---

21 **THE COURT:** I just read from it verbatim.

22 **MR. MASON:** ---2003 version. You're reading -- you're
23 reading, uh, the -- the portion that didn't come into effect
24 until, um, February of 2009.

25 **THE COURT:** I apologize if I'm inaccurate.

1 **MR. MASON:** And I -- the -- the...

2 **THE COURT:** (After pause) The date of this incident was
3 2008, correct?

4 **MR. MASON:** Right.

5 **MS. KINZELER:** Right.

6 **MR. MASON:** And -- and---

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 CONFERENCE, OFF THE RECORD.)

9 (WHEREUPON, COURT RESUMED.)

10 **MR. MASON:** I believe I cited in my memorandum, at page
11 two, Your Honor, um -- um...

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 **MR. MASON:** But, in any -- any event---

16 **THE COURT:** I'm gonna look it up on Westlaw; I'll have
17 the 2008 version in one second.

18 **MR. MASON:** ---it -- it---

19 **THE COURT:** That's what's applicable; it's not the 2003
20 version.

21 **MR. MASON:** ---well, one requires in writing, the other
22 one requires in writing and verbally.

23 **THE COURT:** Whatever 2008 requires, that's---

24 **MR. MASON:** And---

25 **THE COURT:** ---what I'm gonna---

1 MR. MASON: ---and---

2 THE COURT: ---be bound by.

3 MR. MASON: ---and it says, in -- verbally and writing
4 after a video has been activated. So, we don't have a video
5 in this case of him being advised.

6 THE COURT: Actually, that's not what the statute says
7 of my recollection of it. I'm gonna read it, but the statute
8 has not been amended regard- -- what it says is, before you
9 can do certain things they have to be advised.

10 Activation of video, comma. It doesn't say videoed.
11 It -- you -- I -- I have to -- but I'm gonna read the exact
12 verbiage from 2008 and then -- and then we'll all be bound by
13 whatever the statute says.

14 MR. MASON: Yeah.

15 THE COURT: I don't think there's anything ambiguous
16 about the statute; we'll be bound by what it says. And I
17 apologize that I had the wrong version.

18 Um -- (after pause) after we dispose of this motion,
19 that only leaves us with one, two, and eleven, correct?

20 MR. MASON: I -- I'm sorry, Your Honor?

21 THE COURT: I said, after we dispose of this motion,
22 that only leaves us with number one, two, and number eleven,
23 correct?

24 MS. KINZELER: I believe so, Your Honor.

25 THE COURT: Which is the video---

1 **MR. MASON:** Yes -- yes -- yes, Your Honor--

2 **THE COURT:** ---Miranda---

3 **MR. MASON:** ---one, two, and eleven.

4 **THE COURT:** ---and chain on the blood sample.

5 **MR. MASON:** Yes, Your Honor.

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
7 CONFERENCE, OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 **THE COURT:** Okay; I need you-all to bear with me a
10 while. We're looking up that statute, I'm gonna hear a few
11 bonds. You-all can stay where you are.

12 (WHEREUPON, HEARING RECESSED AT 3:31 P.M.)

13 (WHEREUPON, HEARING RESUMED AT 3:46 P.M.)

14 **THE COURT:** Ready? We looked at the 2003 version of the
15 statute, and what it says is really not much different from
16 the 2000 -- uh, the current version.

17 The current version says, no test may be administered or
18 samples obtained unless, upon activation of the video
19 recording equipment and prior to the commencement of the
20 testing procedure, the person has been given a written copy
21 of it and verbally informed that -- and this -- then the
22 advisement of rights.

23 The 2003 version simply says, blood and urine samples
24 must be obtained by physicians licensed by the State Board of
25 Medical Examiners, registered nurses licensed by the State

1 Board of Nursing, and other medical personnel trained to
2 obtain the samples in a licensed medical facility. Blood and
3 urine samples must be obtained and handled in accordance with
4 procedures approved by SLED. No test may be administered or
5 samples obtained unless the person has been informed in
6 writing that...

7 That's all it requires. It does not require that
8 anything be signed; it simply requires that they be informed
9 in writing. Which really, the subsequent statutes are merely
10 a clarification which is that they be given a written, um --
11 a written -- in other words, I think it says the same thing,
12 just differently. One says given a written copy, one says
13 informed in writing, which has the same impact---

14 **MR. MASON:** Correct---

15 **THE COURT:** ---which is to be given---

16 **MR. MASON:** ---correct.

17 **THE COURT:** ---a written copy.

18 **MR. MASON:** Well, SLED policies say that they should
19 enact, uh, procedures to put this into effect. They -- they
20 prepared a form; the form was, in fact, used. It has places
21 for people to sign---

22 **THE COURT:** Uh-huh?

23 **MR. MASON:** ---and a person that was not there when it
24 was done -- the only person whose handwriting is on that
25 form -- is somebody who was not there at the time, who did

1 not give the rights to my client before the blood was drawn.

2 And on that basis there's been a failure to---

3 **THE COURT:** Well that's your contention that he wasn't
4 advised before it was done.

5 Their contention -- and they have eyewitnesses that they
6 did -- becomes a factual issue.

7 **MR. MASON:** And so we need to hear sworn testimony for
8 you to resolve that. And that's why we've made the motion---

9 **THE COURT:** It's uncontroverted as what their position
10 is and what yours is.

11 **MR. MASON:** Oh -- oh, we absolutely controvert their---

12 **THE COURT:** No -- no; their version is uncontroverted;
13 your version is uncontroverted. I'm not resolving a question
14 of fact, the jury will resolve that.

15 **MR. MASON:** What, so the jury's gonna decide -- so I --
16 and you're gonna tell the jury that they're to find -- if
17 they find that Mr. Barclay was not properly advised they're
18 to disregard---

19 **THE COURT:** Oh actually---

20 **MR. MASON:** ---the results---

21 **THE COURT:** ---let me rethink that.

22 **MR. MASON:** ---of his blood test?

23 **THE COURT:** Wait, wait, wait, wait, wait, wait; slow
24 down. Back up for me for a moment.

25 I think we probably are gonna have to take testimony

1 'cause I need -- I am gonna have to resolve that. That's the
2 issue of whether there was compliance with the statute.
3 That's a -- that's a legal issue for The Court to resolve.

4 But, I think we're gonna -- I'm gonna have to hear that
5 one tomorrow at two-thirty.

6 **MR. MASON:** Okay.

7 **THE COURT:** I mean two o'clock.

8 **MR. MASON:** Tomorrow at two?

9 **THE COURT:** Uh-huh.

10 **MS. KINZELER:** The witnesses that would testify to the
11 implied consent, right?

12 **THE COURT:** Uh-huh.

13 **MS. KINZELER:** Okay.

14 **THE COURT:** Because I'm gonna have to resolve that issue
15 of fact to determine if there was compliance with the
16 statute.

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 CONFERENCE, OFF THE RECORD.)

19 (WHEREUPON, COURT RESUMED.)

20 **MS. KINZELER:** Judge, I -- I just want to clarify one
21 thing.

22 **THE COURT:** Uh-huh?

23 **MS. KINZELER:** Um -- I -- I -- I understand Mr. Mason's
24 position, I just don't know if this resolves anything or not
25 for The Court---

1 **THE COURT:** Uh-huh?

2 **MS. KINZELER:** ---but this printed handwriting at the
3 top of the form is Herman Martin's. This signature is Deputy
4 Brinson's and I don't know if that's an issue or not, but I
5 just want to clarify it.

6 **THE COURT:** The issue is whether the statute was
7 complied with before---

8 **MS. KINZELER:** That's fine---

9 **THE COURT:** ---the blood was drawn---

10 **MS. KINZELER:** ---I just want to clarify it on the
11 record.

12 **THE COURT:** ---which abs- -- really has nothing to do
13 with the forms.

14 **MS. KINZELER:** Right.

15 **THE COURT:** It doesn't matter who signed it; what I need
16 to know is---

17 **MS. KINZELER:** That's my position.

18 **THE COURT:** ---who advised him, was he given it -- to
19 him in writing, who drew the blood, and was it done before or
20 after the written advisement was given?

21 **MS. KINZELER:** So do I need to have the nurse who drew
22 the blood present tomorrow also?

23 **THE COURT:** That's up to you; it's your burden of proof.

24 **MS. KINZELER:** Okay.

25 **THE COURT:** (After pause) 'Cause I assume you don't have

1 your witnesses here today, correct?

2 MS. KINZELER: Your Honor, I wasn't aware I would even
3 hear this motion today.

4 THE COURT: Yeah; that's why I said we'd hear it
5 tomorrow.

6 Okay. Now, the other mo- -- let me determine -- now,
7 the other motion is the *Jackson versus Denno*; that is gonna
8 require, uh, testimony, correct?

9 MS. KINZELER: I -- I believe so, Your Honor.

10 THE COURT: Is your witness here for that---

11 MS. KINZELER: Yes.

12 THE COURT: ---or, your witnesses?

13 MS. KINZELER: Yes.

14 THE COURT: How many witnesses do you have?

15 MS. KINZELER: Um -- really just two; the officer that
16 Mirandized him -- Deputy Brinson -- at the sce- -- at the
17 hospital---

18 THE COURT: Uh-huh?

19 MS. KINZELER: ---and the, um, officer that he made the
20 spontaneous statement to.

21 THE COURT: I need to take some guilty pleas and do a
22 couple other bonds which is gonna take about thirty minutes.
23 Um -- do you-all have any opposition to us picking up those
24 hearings, doing that *Jackson versus Denno* after that thirty
25 minutes? Or, we can do it -- I'd prefer, if the witnesses

1 I'm not gonna say it verbatim -- but, um, she said that the,
2 uh -- the twenty-day gab on the chain of custody, uh, Ms.,
3 uh -- uh, Sorrells, uh, would be able to provide the
4 information for.

5 Q Okay; so you -- you understand that by provide the
6 information, in other words she would remember -- she would
7 need to remember what it is and relate it in some testimonial
8 way?

9 THE COURT: Don't mischaracterize the testimony,
10 Mr. Mason. He does not know. Having tried many of these
11 cases, I can anticipate what that -- what that person's gonna
12 testify as to the chain of custody. You're asking him
13 questions outside of his knowledge.

14 MR. MASON: Your -- Your Honor, he was shaking his head
15 in agreement with me when you didn't allow him to answer.

16 THE COURT: I don't know; it doesn't matter. The
17 Solicitor made an objection; I've sustained it. Move on; ask
18 him questions within the ambit of his knowledge.

19 MR. MASON: Your Honor, this is -- this is outside of
20 the hearing of the jury and we would like to---

21 THE COURT: Mr. Mason, once The Court has ruled there's
22 no further argument. Argument is to aid The Court.

23 MR. MASON: I understand.

24 THE COURT: When I ask you for the basis of your
25 objection, you're to give it. If once, um -- and if I need

1 argument from The State I'll ask for it and the same in
2 reverse.

3 Argument is to aid The Court, not to perfect your
4 record. So---

5 **MR. MASON:** I understand; we're just seeking to make a
6 proffer of what he would have testified to.

7 **THE COURT:** You have continued to ask him questions that
8 are really outside of -- out of his knowledge, outside of his
9 responsibility. You've not laid the appropriate foundation;
10 I've given you latitude. The objection has been made and
11 sustained. Ask your next question.

12 Q Now, did you and Wendy Bell share any emails or was this
13 a verbal communication?

14 **MS. KINZELER:** Objection, Your Honor; this is discovery
15 at this point.

16 **MR. MASON:** Your Honor, if it please The Court, by
17 responding---

18 **THE COURT:** It is discovery.

19 **MR. MASON:** what -- what---

20 **THE COURT:** Um -- if you want to know if they had
21 emails, you need to serve them with a discovery response.

22 **MR. MASON:** I -- I have.

23 **THE COURT:** And if they didn't---

24 **MR. MASON:** It -- Your -- can I---

25 **THE COURT:** Sir, please answer the question to the best

1 MS. KINZELER: Deputy Martin will take the stand
2 first.

3 THE COURT: Okay.

4 MS. KINZELER: Since he was the arresting---

5 THE COURT: Okay. Just tell me which one you're
6 calling first and then the other one can go stand in the
7 hallway until we are ready.

8 MS. KINZELER: Martin.

9 THE COURT: Okay. If you would take the witness
10 stand for me and then, sir, if you would step out in the
11 hallway for us. Oh, I'm sorry, I got them totally
12 confused. I'm sorry. I'm having one of those days.

13 MR. MASON: Your Honor, would that relate also to
14 the SLED witnesses?

15 THE COURT: SLED witnesses aren't here, are they?

16 MR. MASON: I thought they could come in, so...

17 THE COURT: They aren't going to have anything to
18 do with Jackson versus Denno. They aren't testifying
19 anything about that by the State, so---

20 MR. MASON: ---well---

21 THE COURT: ---I think I am astute enough to know
22 when someone is lying to me and when they are contrive.
23 I'm not a jury. I been doing this a long time. All
24 right. Please swear the witness?

25 HERMAN M. MARTIN, after being duly sworn,

1 testified as follows:

2 THE CLERK: Please state your full name and spell
3 your last name for the Court?

4 THE WITNESS: Herman Maurice Martin. My last name
5 is spelled M-A-R-T-I-N.

6 THE COURT: Sir, please tell me your first name
7 again?

8 THE WITNESS: Herman, H-E-R-M-A-N.

9 THE COURT: And, you said Maurice?

10 THE WITNESS: Middle name, yes, ma'am.

11 THE COURT: Martin?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION BY MS. KINZELER:

15 Q Deputy Martin, tell the Judge a little bit about your
16 law enforcement background? How long have you been in the
17 Sheriff's Office?

18 A Approximately 1992, May of 1992.

19 MS. KINZELER: Your Honor, the SLED witnesses are
20 parking.

21 THE COURT: That's fine. Just let me know when
22 they get here.

23 By Ms. Kinzeler:

24 Q 19---

25 A ---1992, yes, ma'am.

1 Q Was the Sheriff's Office your first job?

2 A Yes, ma'am.

3 Q How -- did you go the Police Academy?

4 A Yes, ma'am.

5 Q How long was that?

6 A Back then it was approximately eight weeks.

7 Q Did you have any other additional training or
8 experience or education in DUI enforcements?

9 A Oh, yes, ma'am.

10 Q Tell the Judge about that?

11 A I went to several DUI enforcement schools.

12 Q Did you go through the standardized field sobriety
13 test training?

14 A Yes, ma'am.

15 Q Did you learn about the data master?

16 A Yes, ma'am.

17 Q And, when did you go through all of those trainings?

18 A Offhand I can't tell you the year.

19 Q Just roughly?

20 A I'll say about ten (10) years ago, ten (10) to twelve
21 (12) years ago, approximately.

22 Q Do you recall being involved in a Felony DUI case on
23 December 8, 2008?

24 A Yes, ma'am.

25 Q Tell the Judge a little bit about your involvement?

1 When did you first become involved?

2 A I was working in the area of Main Road, Johns Island.

3 The call went out. Deputy Brinson, Burrell---

4 Q Let me back up for a second. What team are you on
5 now currently?

6 A Traffic. I'm part of the Traffic Enforcement Unit.

7 Q Were you in Traffic in December of 2008?

8 A Yes, ma'am.

9 Q Okay. And at that point, how many Felony DUI cases
10 had you worked on?

11 A I'll say approximately twelve (12) or more.

12 Q In 2008?

13 A Yes, ma'am.

14 Q And on that day, were you working as a Traffic
15 Enforcement Officer?

16 A Yes, ma'am, I was.

17 Q And, when did you receive a call about this case?

18 A When I -- a little after -- a little around about
19 7:00 I think it was offhand.

20 Q And, where did you go?

21 A I went to the MUSC Trauma Unit, MUSC Hospital Trauma
22 Unit.

23 Q Tell the Judge a little bit about that call, why you
24 went to the MUSC Trauma Unit?

25 A I was directed by our Lieutenant, Lieutenant

1 Scarborough who is on scene at the traffic fatality to
2 head up to the hospital to check on one of the parties
3 that was there at the hospital.

4 Q When you got to the ER, was the Defendant in the area
5 where you were waiting for him?

6 A No, they had taken him off to, I think, it was --
7 offhand, it was the CAT scan.

8 Q So, roughly what time did he come back to the area?
9 I guess it's not a room? Describe it for us?

10 A Oh, just a large operating area, emergency room type
11 facility.

12 Q Did it have curtain dividers?

13 A Yes, it had curtain dividers, to divide up each bed
14 area for the patients.

15 Q Where you waiting for him there?

16 A Yes, yes, ma'am, I was.

17 Q Roughly what time did you get back to his area after
18 the test?

19 A Let's see, I arrived there approximately about 7:30
20 p.m. around that time. I would say that he got back
21 around about an hour after I was there.

22 Q And at that point and time, did you have any
23 conversations or asked him any questions at all at that
24 particular point and time?

25 A I basically just, you know, asked -- verified who he

1 was and...

2 Q And, confirmed that he was Mr. Barclay?

3 A Yes, ma'am.

4 Q At some point while you were in the ER, did you have
5 a conversation with Deputy Brinson and Burrell?

6 A Yes, talked to Deputy Burrell.

7 Q And, where were they?

8 A They were still at the accident scene.

9 Q Did you talk to -- how did -- what was the
10 communication with Burrell?

11 A Telephone, by telephone.

12 Q By telephone?

13 A Yes, ma'am.

14 Q And, what was the gist of that communication? What
15 was the point of that conversation?

16 A They basically asked me his status---

17 MR. MASON: Objection, hearsay.

18 MS. KINZELER: He is not repeating what anyone
19 said.

20 THE COURT: It's not being offered for it's truth.

21 In addition to that, hearsay is admissible in the course
22 of an investigation and to report the course of a
23 continuum of an investigation. Overruled. You may
24 proceed. Sir, you may answer the question.

25 By Ms. Kinzeler:

1 A I'm sorry. Could you say it again?

2 Q This conversation that you had with Deputy Burrell on
3 the phone, why did he call you? What was the point of his
4 conversation?

5 A To check on Mr. Barclay's status and to find out if
6 he had any alcoholic beverages or if I could smell any
7 alcoholic beverages on his person.

8 Q At that point from that phone conversation, did they
9 communicate anything to you about what they learned at the
10 scene?

11 A They said there were signs of approximate alcohol use
12 by Mr. Barclay.

13 Q Do you recall any particular observations that they
14 related to you?

15 A Not offhand.

16 Q You don't recall any observations of speed---

17 MR. MASON: Objection, leading.

18 THE COURT: I am going to give her a little
19 latitude in the interest of time. Overruled.

20 By Ms. Kinzeler:

21 Q Just not the particular words that they used, but
22 just in general what observations were they relaying to
23 you from the scene?

24 A There were beer cans or whatever at the scene in the
25 vehicle.

1 Q And, that's to the best of your recollection?

2 A Yes, ma'am.

3 Q Did you share your observations of him in the
4 hospital room with them in that same phone call?

5 A Yes, ma'am, I did.

6 Q And, what were those observations?

7 A Basically I could smell alcoholic beverages on Mr.
8 Barclay's person, bloodshot eyes, that was basically it.

9 Q At that point and time did it -- what happened next?

10 A Deputy Burrell advised me to go ahead and do the
11 blood collection for Felony DUI.

12 Q So, who are you actually speaking to on the phone?

13 A I was talking to Deputy Burrell, Sergeant Burrell
14 actually.

15 Q Was Deputy Brinson there also?

16 A Yes.

17 Q And, do you know who it was that made the
18 determination that you needed to get blood?

19 MR. MASON: Objection. Asked, answered, leading.

20 THE COURT: Overruled.

21 By Ms. Kinzeler:

22 A As far as I know it was Deputy Brinson telling
23 Burrell to go ahead and, you know, tell me to do this.

24 Q So, at that point you had been -- had you been
25 directed to get blood -- you had been directed to get

1 blood?

2 A Yes, ma'am.

3 Q And, what's the first thing you did in this case
4 before the blood sample was ever drawn?

5 A I read him his Miranda rights.

6 Q And, did you do that verbally or in writing?

7 A I did it verbally. I carry a card that I have and I
8 read it to him. Read it to him.

9 Q Did he indicate in anyway that he understood those
10 rights?

11 A Yes, he did.

12 Q How did he--

13 A He said, yes. At the last part of the Miranda, I
14 asked him if he understood everything and he said, yes, he
15 did.

16 Q And, what were those rights that you read to him?

17 A Do you want me to read them verbally?

18 Q Did you do it from a card?

19 A Yes, I have a card that I carry.

20 Q Okay. Would you go ahead and tell the Court what you
21 read to him that night?

22 A From the card, you have the right to remain silent.
23 Anything you say can and will be used against you in a
24 court of law. You have the right to talk to an attorney
25 and have him or her present with you while you're being

1 questioned. If you cannot afford to hire an attorney, one
2 will be appointed to represent you before any questions if
3 you want. You can decide at any time to exercise these
4 rights and not answer any questions or make statements.
5 Do you understand these rights I have explained to you?
6 When I said that part, he said, yes. And, having these
7 rights in mind do you have -- wish to talk to us now?

8 Q And at that point, did he indicated that he was
9 invoking any rights that you read to him?

10 A No, ma'am, he didn't say anything else after that.

11 Q Okay. Did you ask him anything after that?

12 A No, ma'am.

13 Q At---

14 MS. KINZELER: Your Honor, for purposes of the
15 Denno Hearing I wasn't going to get into the whole blood
16 thing, but while I have him here I can do that.

17 THE COURT: That's fine.

18 MS. KINZELER: Or did you want me to do it one at a
19 time?

20 THE COURT: You might as well be efficient.

21 MS. KINZELER: Okay.

22 By Ms. Kinzeler:

23 Q Deputy Martin, what did you do next?

24 A Then I read him the implied consent.

25 Q Which implied consent, Misdemeanor, Felony?

1 A Felony.

2 Q And, did you give him a written copy?

3 A Yes, ma'am, I did.

4 Q Was he able to read along with you?

5 A He was holding it up and it appeared that he
6 understood what was going on as I was reading my copy to
7 him he had his copy.

8 MS. KINZELER: Your Honor, may I approach?

9 THE COURT: Yes.

10 By Ms. Kinzeler:

11 Q Do you recognize this---

12 MR. MASON: Your Honor, I object.

13 THE COURT: Basis?

14 MR. MASON: She hadn't shown me a copy of it and
15 it's not the original. This is a multi-part form. I made
16 a demand on her last night to have the original file---

17 THE COURT: ---do you have a copy---

18 MR. MASON: ---with---

19 THE COURT: Be quiet, please for a moment, I'm
20 speaking. My hand is up. Don't over speak the Court. Do
21 you have a copy for Mr. Mason?

22 MS. KINZELER: Yes, it's the same copy that already
23 has been presented. That's the copy, but he wants the
24 actual original carbon copy.

25 THE COURT: Uh-huh, where is it at?

1 *MS. KINZELER:* Deputy Brinson is getting it from
2 his car. It is my understanding that 901, 902 that he
3 testified from his personal knowledge that that's what it
4 purports to be the best sufficient for parole evidence.
5 But, the original---

6 *THE COURT:* If you have the original, let's see if
7 we can locate that.

8 *MS. KINZELER:* We do, Your Honor, may I proceed?

9 *THE COURT:* Yes, you may.

10 *MR. MASON:* Can she show it to me first?

11 *THE COURT:* Sure.

12 *MR. MASON:* Okay.

13 By Ms. Kinzeler:

14 Q If you can give that a quick look?

15 A Uh-huh.

16 Q Do you recognize that form?

17 A Yes, ma'am.

18 Q And, how do you recognize it?

19 A This is the same form that I filled out at the top.

20 Q And, what is that?

21 A It's the advisement and implied consent rights form.

22 Q And, whose handwriting appears on the top of that
23 form?

24 A It's my handwriting.

25 Q And for purposes of the record, what's on the top of

1 that form?

2 A Walter Douglas Barclay the name of the Defendant,
3 driver's license, date of birth, and South Carolina --
4 licensed in the State of South Carolina.

5 Q All right. And, then at the bottom there is some
6 additional handwriting. Of that handwriting, what is
7 yours?

8 A Where it says officer's name, print. That is my
9 handwriting.

10 Q And, what did you write in that place?

11 A Ma'am?

12 Q What did you write there?

13 A Deputy Brinson's handwriting -- excuse me, Deputy
14 Brinson's name, I'm sorry.

15 Q And, did you read this form to Mr. Barclay verbatim?

16 A Yes, ma'am.

17 Q Was this before blood was collected?

18 A Yes, ma'am.

19 Q And for purposes of the record, can you just read to
20 the Court what it is that you wrote to him that night from
21 this form?

22 A You want me to start...

23 Q From the---

24 A ---start it at the---

25 Q ---I'll show you.

1 A Okay.

2 Q Yeah, you can start right here. Will...

3 A Okay. Will be tested---

4 MR. MASON: Your Honor, can we have the exhibit
5 marked before it's read from so that the record will---

6 THE COURT: It's going to eventually get into the
7 record as a Court's exhibit, Mr. Mason.

8 By Ms. Kinzeler:

9 Q Can you go ahead and---

10 THE COURT: Proceed with publishing the document,
11 please.

12 By Ms. Kinzeler:

13 Q Can you go ahead and read for the Court the---

14 A Okay. Will test, be video recorded. Then I went
15 down and if the answer is, no, start here. Inform subject
16 of the type blood -- breath, blood, urine, samples of
17 which? I circled blood.

18 Q Is that your handwriting on that form?

19 A Yes, ma'am.

20 Q Continue.

21 A The second part (B) then read the following advised
22 of the subject. You are under arrest for felony driving
23 under the influence. Section 56-5-2945 South Carolina
24 Code of Laws 1976 as amended or law enforcement officer
25 has probable cause to believe that you have violated this.

1 section. An officer has directed that samples be taken
2 for alcohol and/or drug testing. The samples will be
3 taken and tested according to section 56-5-2950 SLED
4 policies.

5 Pursuant to section 56-5-2946 you must submit to
6 either one or a combination of chemical test for the
7 purpose of determining the presence of alcohol or drugs or
8 a combination of alcohol or drugs. The resistance or
9 obstruction or opposition to testing pursuant to section
10 56-5-2946 is evidence admissible at trial. If your test
11 or samples have an alcohol concentration of fifteen one
12 hundreds of 1 percent or more, your privilege to drive in
13 South Carolina must be suspended for at least thirty (30)
14 days.

15 You have the right to have a qualified person of
16 your own choosing conduct additional independent test at
17 your expense and the officer. Upon rest, you must provide
18 the affirmative assistance.

19 You have the right to request an administrative
20 hearing within thirty (30) days of the issuance of the
21 notice of suspension. If you do not request an
22 administrative hearing or if your suspension is upheld at
23 the administrative hearing, you must enroll in an alcohol
24 and drug safety action program.

25 Q And at that point, was that the extent of what you

1 read to him?

2 A Yes, ma'am.

3 Q And at that point and time, did he have a copy while
4 you were reading it out loud?

5 A Yes, ma'am.

6 Q Did he sign it right then or what happened next?

7 A Oh, yes, I went ahead and let him sign it.

8 Q When did Mr. Barclay sign it? Did he sign it with
9 you at that moment or---

10 A Or later, I'm sorry, later.

11 *THE COURT:* I'm sorry. I didn't hear the answer.

12 *THE WITNESS:* Later, ma'am.

13 *THE COURT:* Did he sign it in your -- I don't
14 understand?

15 By Ms. Kinzeler:

16 Q Did he sign the advisement of rights form in your
17 presence?

18 A No, it was signed later.

19 Q Okay. And, does the officer's signature at the
20 bottom, underneath your handwritten print---

21 A ---uh-huh---

22 Q ---is that your handwriting?

23 A No, ma'am.

24 Q Okay. Why -- tell the Court---

25 *MS. KINZELER:* At this point, I move to enter the

1 advisement of rights form as an exhibit, State's 1. I
2 don't have the original, do you want a copy?

3 *THE COURT:* It's up to you. If it's admitted at
4 trial it might be remarked. It's probably better to put a
5 copy in for this hearing and then save the original for
6 trial.

7 (WHEREUPON, Court's Exhibit No. 9 was marked for
8 identification and received into evidence.)

9 *THE COURT REPORTER:* It's Court Exhibit 9, Your
10 Honor, not 1.

11 *THE COURT:* Thank you, ma'am.

12 *MS. KINZELER:* Just for the record, this is a copy
13 of the same copy that I gave to Mr. Mason that has been
14 provided in discovery.
15 By Ms. Kinzeler.

16 Q And, who was with you -- were any other officers in
17 this area in the ER with you and Mr. Barclay?

18 A No, just nursing staff.

19 Q And, was the nurse present for the reading of the
20 Miranda and the advisement of consent rights, the nurse
21 that drew the blood?

22 A As far as I know he was.

23 Q And, at that point after the Miranda and after the
24 implied consent rights had been read, what happened next?

25 A Did the blood collection form.

- 1 Q Did the nurse draw the blood?
- 2 A Yes, yes, he did.
- 3 Q Did you watch this?
- 4 A Yes, yes, ma'am.
- 5 Q So you observed the blood draw?
- 6 A Yes, ma'am.
- 7 Q Did you observe the officer -- I'm sorry, did you
- 8 observe the nurse sealing the vials and labeling them?
- 9 A Yes, ma'am.
- 10 Q What -- tell the Court why you filled out paperwork
- 11 and didn't sign it? Why did you fill out this advisement
- 12 of consent rights form for Deputy Brinson and not sign it
- 13 if you're the officer that read the rights?
- 14 A Because I'm not the arresting officer.
- 15 Q So, the purpose of filling it out...
- 16 A Was to get paperwork started before Deputy Brinson
- 17 and Burrell got there.
- 18 Q Okay. And, was this -- once the nurse draws the
- 19 blood and puts it in the vials, what happens next?
- 20 A Turns everything over to me.
- 21 Q Did he put the vials in the---
- 22 A Put everything in -- there is a little box that comes
- 23 with the kit and all the vials go inside the kit.
- 24 Q Are they secure in some way?
- 25 A Yes, they are secure with a -- some type of little

1 sticker with name and pertinent information on the
2 sticker.

3 Q Okay.

4 A That goes over the vials.

5 Q To seal the vials?

6 A Yes.

7 Q Now when the vials go in the box, are they just
8 gosling around in the box?

9 A No, they're secured in little slots.

10 Q Okay. And at that point, did the nurse give you the
11 box?

12 A Yes.

13 Q At that point and time, was the box already sealed or
14 was there additional information that had to go in the
15 box?

16 A There was still information that had to go in there
17 so it wasn't sealed yet.

18 Q And---

19 MS. KINZELER: To cover all issues at once, Your
20 Honor, I am going to go ahead on. Your Honor, I don't
21 know if you want me to go as far as the chain of custody
22 and filing out of the legal stickers with him and for
23 purposes---

24 THE COURT: You might as well do it all at one time
25 no need to be yo-yoing him back and forth.

1 By Ms. Kinzeler:

2 Q I'm going to show you some forms that we've marked
3 and see if you recognize them?

4 MS. KINZELER: May I approach?

5 THE COURT: You may.

6 By Ms. Kinzeler:

7 Q Do you recognize the information on that form?

8 A Yes, ma'am?

9 MR. MASON: Your Honor, for the record---

10 THE COURT: Is there an objection?

11 MR. MASON: Yes.

12 THE COURT: The basis of the objection?

13 MR. MASON: We need to have these exhibits marked
14 so that the record can be clear so that the witnesses---

15 THE COURT: You cannot dictate how she is going to
16 mark her exhibits. She is complying with the procedure.
17 It is an in camera hearing. We're not with a jury. They
18 will be marked for purposes of the record. I have to
19 review them. She is going to mark her exhibits. Thank
20 you. Let us do this expediently. You may proceed.

21 By Ms. Kinzeler:

22 Q Deputy Martin, how do you recognize this form?

23 A This is the paperwork that goes with the specimen.

24 Q Does it actually appear like this in the SLED kit or
25 is this a copy of a sticker?

- 1 A This is how it appears.
- 2 Q And, what are we looking at? What are these like?
- 3 Are these stickers that you peel off the back? Or how
- 4 does it come to you in a blood kit before you start to
- 5 fill it out?
- 6 A They have stickers on there and you peel it off and
- 7 attach them to the specimen.
- 8 Q Okay. And, if you look at the longer skinny one?
- 9 A Uh-huh.
- 10 Q It says specimen seal?
- 11 A Uh-huh.
- 12 Q Whose handwriting is that?
- 13 A That's my handwriting.
- 14 Q And, is that also your handwriting where you wrote
- 15 the arresting office's name is Deputy Brinson?
- 16 A Yes, ma'am.
- 17 Q And the signature to the right Charles Heath, is that
- 18 your handwriting or his?
- 19 A I'm sorry, to the right you said?
- 20 Q To the right, right here?
- 21 A Oh, no, that's not my handwriting right there.
- 22 Q Okay. And, what time was this blood drawn?
- 23 A Oh, the blood drawn 2150.
- 24 Q Which in non military is 9:50?
- 25 A 9:50, yes, ma'am?

1 *THE COURT:* You said 2150?

2 *THE WITNESS:* Yes, ma'am.

3 *THE COURT:* Which equates to 9:50?

4 *THE WITNESS:* Yes, ma'am.

5 *THE COURT:* Thank you. You may continue.

6 By Ms. Kinzeler:

7 Q That seal, do you recognize that to be the seal that
8 was used to seal the vials that night?

9 A Yes, ma'am.

10 Q And the label next to it is that also your
11 handwriting, the investigating officer's report?

12 A Yes, ma'am.

13 Q Is that a sticker or a form?

14 A It's a form. It's a little form. I think it's a
15 little form that I can recall. I'm not sure if it's a
16 sticker or not.

17 Q Does it appear to the box?

18 A Yes, I think it does.

19 Q And, is that your handwriting there, also?

20 A Yes, ma'am.

21 Q Okay. And, if you go down to blood drawn by, is that
22 your handwriting?

23 A Blood drawn by?

24 Q Right there, blood drawn by?

25 A Yes, Charles Heath, it says Charles Heath.

1 Q Okay. And, was that the nurse that drew the blood?

2 A Yes, ma'am.

3 Q And, underneath that it says chain of possession
4 received from. Can you tell the Court what that says?

5 A Received from Charles Heath.

6 Q By?

7 A Herman Martin.

8 Q And, underneath that the date and time indicates?

9 A When it was received from Charles Heath.

10 Q What's the date?

11 A Date 12/8/08 and time 2200 which is 10:00 p.m.

12 Q So what does that mean? Is that indication of Heath
13 giving the blood?

14 A Yes, ma'am, it is.

15 Q And, that's document---

16 A That I got it from Mr. Heath at that time.

17 Q Okay. And at that point it wasn't -- the box wasn't
18 sealed yet?

19 A No, no, ma'am.

20 Q The vials were sealed?

21 A Yes, ma'am, the vials were sealed.

22 Q And what do you do next? You have the blood kit,
23 what do you do next?

24 A I sit there with the box and I was waiting on Deputy
25 Brinson and Burrell to get there.

1 Q And, while you were waiting on them to arrive, was
2 there anyone else, did you ever leave the box out of your
3 eye sight or...

4 A No, ma'am, I stayed and protected the box for the
5 chain of custody.

6 Q Where was it? Were you holding it in your hand?

7 A No, ma'am. It was on the table. It was a long table
8 and I was by it.

9 Q And at some point, did Deputy Brinson and Deputy
10 Burrell arrive?

11 A Shortly about that time they arrived about 10:00 p.m.

12 Q Okay. What happened when they arrived?

13 A I turned everything over to Deputy Brinson.

14 Q You physically picked it up from the table and
15 actually physically give it to Brinson?

16 A Yes, ma'am, I did. I told him, hey, this is the
17 blood, paperwork, and give it to him.

18 Q Was that the extent of your involvement in this case?

19 A Yes, ma'am, it was.

20 Q Did you leave the hospital at that point?

21 A Yes, ma'am, I did.

22 MS. KINZELER: I think that's all I have. I think
23 I need to move this in for an exhibit, Your Honor, it will
24 be number 2.

25 THE COURT: Everything that you have been referring

1 to needs to be marked as a Court's Exhibit.

2 (WHEREUPON, Court's Exhibit No. 10 was marked
3 for identification and received into evidence.)

4 THE COURT REPORTER: That's exhibit No. 10, Your
5 Honor, not 2.

6 MS. KINZELER: Oh, I'm sorry. I think that's all I
7 have for Deputy Martin.

8 THE COURT: Any questions for the witness?

9 MR. MASON: Yes, Your Honor.

10 CROSS-EXAMINATION BY MR. MASON:

11 Q Good afternoon, Deputy Martin?

12 A How you doing, sir?

13 Q Thank you, yourself?

14 A Good.

15 Q You testified that your recollection is that you read
16 Mr. Barclay his Miranda rights on the card that you carry,
17 is that correct?

18 A Yes, sir.

19 MR. MASON: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 MS. KINZELER: May I see what you're showing him?

22 By Mr. Mason:

23 Q Do you recognize the document I just handed to you?

24 A No, sir.

25 Q Is your handwriting on that document?

1 A No, sir, that's not my handwriting.

2 Q Whose handwriting is that?

3 A I can't tell you offhand.

4 MS. KINZELER: Your Honor, if it's not his
5 handwriting, I don't know if he can testify to it.

6 THE COURT: I haven't really heard the question
7 because they are both mumbling. So, I need Mr. Mason to
8 repeat the question and the Deputy to restate his answer
9 and then I'll make a ruling on your objection. Restate
10 the question, please?

11 By Mr. Mason:

12 Q Deputy, yes, is your handwriting on the document that
13 I've handed to you?

14 A No, sir, it's not.

15 Q And, then my next question was, do you recognize
16 whose handwriting that would be?

17 A No, sir.

18 Q Okay.

19 THE COURT: Your objection is overruled.

20 By Mr. Mason:

21 Q Now, it's my understanding from your testimony that
22 you weren't able to actually see Mr. Barclay until
23 approximately 8:30 when he came back from the CAT scan, is
24 that correct?

25 A Yes, sir, about that time.

1 Q And, you testified that one of the things that you
2 were instructed to do was to determine if you could smell
3 alcohol on his person, is that---

4 A Alcoholic beverages, yes, sir.

5 Q Alcoholic beverages. At what point and time -- did
6 you try to get close to him and use your sense of smell to
7 see if you could smell it?

8 A Yes, sir.

9 Q Did that occur at sometime after 8:30?

10 A Yes, sir, right about that time. As soon as he got
11 back, I went over to him and got close enough so I could
12 smell alcoholic beverages on him.

13 Q Okay. And, did you relate to the Court in your
14 testimony everything that you remember about his
15 condition? In other words, he smelled of alcohol and
16 that's essentially the extent of what you remember is?

17 A Yes, sir, alcoholic beverages, yes, sir.

18 Q Okay. But, you don't remember him screaming,
19 yelling, being uncooperative in anyway? Isn't that a fair
20 statement, he wasn't acting in that manner?

21 A No, sir, not while I was there, no, sir.

22 Q Okay. And, you didn't hear him laughing or giggling
23 or joking that somebody had died or something or any such
24 comments by him, isn't that correct?

25 A He was jovial, but I didn't -- not about anybody

1 dying or any -- I never told him that somebody had died in
2 the accident.

3 Q So as far as you know, he may not have known, is that
4 a fair statement?

5 A Yes, sir, as far as I know.

6 Q And, as far as his conduct, would you agree that it
7 was in every way appropriate. In other words, you can't
8 point to anything that was in your mind that was
9 inappropriate?

10 A No, sir.

11 Q Okay. And, you explained to him some rather
12 complicated rights. And, you said that you had been doing
13 this for a long time. Often don't you have people that
14 are very -- seemed very confused when you start going
15 through these advisements and they have lots of questions?

16 A Yes, sir.

17 Q Okay. Did Mr. Barclay seem to fully comprehend the
18 precise legal rights which you were describing to him in
19 the hospital?

20 A Yes, sir, as far as I could tell he did. He
21 understood.

22 Q And, you testified that you handed him a document
23 that you refer to as the advisement of rights and did he
24 appear to read it and follow along with you as you were
25 reading it to him?

1 A Yes, sir, as far as I can tell he had it in front of
2 him as I was reading and he was looking at the paper, yes,
3 sir.

4 Q Had this large gash in his head already been sewed up
5 at that time, do you recall?

6 A As far as I recall, yes, it was. As far as I can
7 recall.

8 Q Okay. I mean, is it a fair statement that you didn't
9 get into these legal issues with him until he pretty much
10 received whatever medical treatment that he needed?

11 A Yes, sir.

12 Q And, was he -- you know how they have the beds in
13 there in the open area and you talk about, I guess there
14 would be stretchers probably a better way to describe
15 them?

16 A Yes, sir.

17 Q Was he sitting kind of up in the stretcher at the
18 time? I mean in other words, as close to laying in a flat
19 position. Was he sitting upright?

20 A As far as I could recall, they had him in a back wise
21 in an upward position.

22 Q Okay. And, insofar as his speech was concerned, did
23 he give you appropriate answers to your questions?

24 A Yes, sir, it was basically yes or no.

25 Q Right.

1 A Yes, sir.

2 Q And, the paperwork that you related to the Court that
3 you presented to Mr. Barclay, it was indicated that you're
4 not sure when it was he actually signed it. Is that a
5 fair statement?

6 A Yes, sir.

7 Q Okay. And, you don't have a recollection of
8 witnessing him sign it, is that a fair statement?

9 A Not offhand, I don't recall, sir.

10 Q Well, I am trying to go through this it was two years
11 and ten (10) months ago, right?

12 A Yes, sir.

13 Q Now, do you carry this paperwork with you when you're
14 on duty?

15 A Yes, sir.

16 Q It's like in the front of your car or something?

17 A Yes, it's in a box. I keep everything on file.

18 Q When you came in you had what you needed -- the
19 paperwork you needed to have with you already?

20 A Yes, sir.

21 Q Okay. Do you carry a Miranda form with you, too? Do
22 you carry it with you as well?

23 A Yes, sir.

24 Q Okay. You just decide in some cases that you use it
25 and others that you won't -- it's part of your discretion?

1 A Yes, sir.

2 Q Okay. And, with regards to Mr. Barclay once you
3 Mirandized him, he didn't want -- he just asserted his
4 rights, I guess you might say, and did not answer any
5 questions or make any statements that you---

6 MS. KINZELER: Objection, Your Honor, misleading.

7 THE COURT: Sustained, characterization, rephrase.

8 By Mr. Mason:

9 Q I'm sorry. After you Mirandized Mr. Barclay, you
10 know, read him from the card, did he make any statements
11 to you?

12 A No, sir, he didn't.

13 Q Okay. So he remained silent, is that a fair
14 statement?

15 A Yes, sir.

16 Q Okay. And, you didn't over hear him say anything to
17 any of the nursing staff even if it wasn't directed to
18 you, but did you over hear him say anything?

19 A No, I didn't.

20 Q Okay. So, what we're trying to find out for the
21 trial of this case, you don't know of any statement that
22 you can recall that Mr. Barclay made at the hospital at
23 MUSC, is that a fair statement?

24 A Fair.

25 Q Okay.

1 A Yes, sir.

2 Q And, you've related to me from the conversation that
3 you had with Deputy Burrell who was with Deputy Brinson, I
4 guess, at the scene, is that correct?

5 A I'm sorry, say again.

6 Q You've related to the Court a conversation that you
7 had with Deputy Burrell while you were at the hospital,
8 isn't that correct?

9 A Correct, yes, sir.

10 Q And, in that conversation if I've correctly written
11 down or if I have correctly understood I guess I should
12 say, that Deputy Burrell told you that there was beer
13 inside of Mr. Barclay's truck?

14 A Beer cans, if I recall correct, that's what he said
15 offhand.

16 Q The question is a little more specific than that. Is
17 it your recollection that Deputy Burrell told you there
18 were beer cans inside of Mr. Barclay's truck?

19 A That I can recall, yes.

20 Q Did Sergeant Burrell tell you anything about getting
21 allegedly conduct of Mr. Barclay at the scene of the
22 accident? In other words, did he tell you that before Mr.
23 Barclay left the scene of the accident in the ambulance,
24 that Mr. Barclay had said or done anything that you can
25 recall?

1 A No, sir.

2 Q So, is it a fair statement that even though you did
3 talk to Deputy Burrell over the phone, he didn't give you
4 any information about impairment? The only thing he
5 related to you was the presence of beer cans in Mr.
6 Barclay's car?

7 A He did say that it was possible, possibly drunk,
8 that's what he told me.

9 Q Possibly drunk?

10 A Yes, sir.

11 Q But, as far as who said that or why or who thought
12 that, you didn't see any---

13 A No, I didn't ask.

14 Q And, did you realize that Deputy Burrell had -- that
15 Mr. Barclay had already left the scene before Deputies
16 Burrell and Brinson even got all the way down to Edisto
17 Island, did you know that?

18 A As far as I know, yes, sir.

19 Q Okay. So, you knew that neither Deputy Burrell or
20 Deputy Brinson had actually observed Mr. Barclay at any
21 point and time at least until they got to the hospital, is
22 that a fair statement?

23 A Correct.

24 Q Now, do you recall talking or receiving information
25 from a Deputy Dustin J. Luckado(sp)?

1 A No, sir.

2 Q So, you have no information -- or have no information
3 at the time you requested that blood be drawn as to
4 anything Deputy Luckadoo(sp) said or did, is that a fair
5 statement?

6 A Right, yes, sir, it is.

7 Q Okay. Had you gone to MUSC Hospital and not having
8 any information from Deputies Brinson and Burrell, all you
9 would have seen was Mr. Barclay who at least appears to
10 you to be acting okay, isn't that a fair statement?

11 A I mean, I said he looked like he was intoxicated,
12 impaired.

13 Q And, it is your testimony that the nurse, Charles
14 Heath, who drew the blood was actually at the bedside when
15 you read and give Mr. Barclay a copy of the DUI advisement
16 of rights?

17 A Yes, sir, as far as I can recall, yes. He was there,
18 right there.

19 Q Such that -- did you ask him to stop doing anything
20 he was doing in order for you to take care of the business
21 you needed to take care of?

22 A I can't recall if he was doing something, I grabbed
23 him, hey, we need to do this process or...

24 Q I understand. Did you get permission from the
25 medical staff before you proceeded to deal with Mr.

1 Barclay?

2 A Permission as in for...

3 Q Ask the nurses is it okay for you to come stand near
4 his bed or...

5 A Oh, yeah, I guess asked them is it okay. You know, I
6 don't want to get in the way or anything.

7 Q Sure.

8 A Just in case they had something going on with him.

9 Q Yes, that made sense.

10 A Yes, sir.

11 Q Now with regards to that, about how long would you
12 say that it takes -- did you go over the Miranda, the DUI
13 advisement of rights, and the blood collection report all
14 at the same time? I mean in other words, one after the
15 other bam, bam, bam?

16 A Uh-huh, yeah.

17 Q You did. Oh, you didn't do one and then wait twenty
18 (20) minutes to do another?

19 A No.

20 Q You did it in sequence, is that a fair statement?

21 A Yes.

22 Q Now, about how long would you say -- you know, you
23 say you've been doing this for about 12 years?

24 A Uh-huh.

25 Q About how long would you say that it takes to go

1 through that sequence of legal advisements, you know if
2 you're doing it so that you want the other party to
3 understand it, that kind of thing?

4 A About I am going to say maybe approximately twenty
5 (20), twenty-five (25) minutes, thirty (30) minutes.

6 Q All right. Okay. So, is it your recollection that
7 it took twenty-five (25) to thirty (30) minutes for you to
8 complete describing to Mr. Barclay, reading to Mr. Barclay
9 his Miranda rights, the DUI advisement rights, and
10 anything else you had to explain to him before the test
11 could take place?

12 A As far as I can recall, sir.

13 Q But, and I understand it's been a long time, but...

14 A ---right---

15 Q ---but---

16 A ---I mean, if they have any questions in between, but
17 like I said, he didn't have any kind of questions.

18 Q I'm really asking more based on your experience?

19 A Uh-huh.

20 Q Is it about a twenty (20) minute process to go
21 through these forms that you described?

22 A It could be twenty-five (25) to thirty (30) minutes.

23 Q Okay. What is the---

24 A ---approximately---

25 Q ---what is the least amount of time?

1 A I can't give you a least amount of time, I can't.

2 Q Yes, sir, but your best testimony is twenty (20)
3 minutes?

4 A Twenty-five (25) to thirty (30) minutes.

5 Q Okay. And, this is a fair statement that you would
6 have to be at Mr. Barclay's bedside in order to
7 communicate with him. In other words, he can't come off
8 in some other room with you? You would have to be
9 standing by his bedside?

10 A Yes, sir, and that's what I did. I was right there
11 by him.

12 Q Okay. So, if the MUSC records reflect how long you
13 were at his bedside, you would have had to be at his
14 beside when all of this was taking place, is that a fair
15 statement?

16 A Yes, sir, it would explain everything, yes, sir.

17 Q And, it is your estimate that you were at his bedside
18 for approximately twenty (20) to twenty-five (25) minutes?

19 A Twenty-five (25) to thirty (30) minutes,
20 approximately.

21 Q Okay. Were you at the hospital when Mr. Barclay was
22 discharged?

23 A No, sir, I had already left.

24 Q Okay. And, you said you were not the arresting
25 officer so I assumed you did not place Mr. Barclay under

1 arrest, is that a fair statement?

2 A No, sir, I didn't.

3 Q Okay. And, Deputy Brinson was the arresting officer
4 and he got there just before you left, is that a fair
5 statement?

6 A Yes, sir.

7 Q Okay. And so as far as you know, Deputy Brinson and
8 Deputy Burrell were still at the hospital when you left?

9 A Yes, sir.

10 Q Okay. Do you know how long you were at the MUSC
11 Emergency Department area? Do you drive a patrol car?

12 A Uh-huh, yes, sir.

13 Q Did it have a -- equipped with a video camera?

14 A Yes, sir.

15 Q Okay. Do you know when you get near the Emergency
16 Department, do you back into a space so that you're ready
17 to leave when it's time to go?

18 A Did I back into a space?

19 Q Yes, you know, isn't that kind of -- isn't that the
20 way that you normally park?

21 A Uh-huh, yes, sir.

22 Q Is there a space reserved for law enforcement in
23 front of the EMS area where you park?

24 A Yes, it has certain areas where we park.

25 Q You get a spot if you can get there, right?

1 A It's there.

2 Q If somebody hadn't parked there?

3 A Right.

4 Q So when you left, were the other two patrol cars
5 parked there near or next to your patrol car?

6 A I don't recall where they were parked.

7 Q I understand. But at the point you left, you would
8 have had three Charleston County Sheriff's Office patrol
9 cars at least for some moment in time in the parking lot
10 area kind of immediately near the emergency park, is that
11 correct?

12 MS. KINZELER: Objection, that's an incorrect
13 statement of the testimony---

14 THE COURT: ---rephrase--

15 MS. KINZELER: ---and, it's---

16 THE COURT: ---and tie it together because I am
17 trying to figure out why it's relevant.

18 MR. MASON: Well, Your Honor, we're doing the video
19 one. I had gone into that where he hadn't yet been placed
20 under arrest and I'm establishing that the cars were
21 there, that they were equipped with video, and that the
22 arrest took place---

23 THE COURT: Ask that of the officers who actually
24 arrested him. This officer did not arrest him. He
25 testified that as they arrived, he left, that ends his

1 involvement.

2 MR. MASON: Thank you.

3 THE COURT: He says he doesn't know whether their
4 cars were there.

5 By Mr. Mason:

6 Q Now, when you say that ended your involvement, does
7 that mean you didn't go back? You didn't make any notes?
8 You didn't issue any reports, that kind of thing?

9 A I just did the supplemental report of what I did and
10 that was it.

11 Q Did you---

12 A ---but, I didn't go back or anything.

13 Q I understand that. The supplement that you did, did
14 you do it that night or maybe five or ten days later or...

15 A I couldn't tell you when I did it. Maybe the next
16 week, I think it was a week day -- weekend so...

17 Q Did you make any notes while you were there? Do you
18 carry like an investigative pad or anything like that
19 where you can make some notes?

20 A As far as I can recall, I did.

21 Q Did you have any discussions with Deputy Martin --
22 I'm sorry, you are Deputy Martin?

23 A Yeah, that's me. Yes, sir.

24 Q I have that listed, I meant to say Deputy Brinson and
25 Deputy Burrell once they arrived what -- did they relate

1 to you anymore information about their accident scene
2 work?

3 A No, sir, because I didn't ask. They, you know...

4 Q Now, you were asked those questions about the chain
5 of custody and you were shown a document that---

6 MR. MASON: Your Honor, may I approach the witness?

7 THE COURT: You may.

8 MR. MASON: Your Honor, may I approach the Court
9 Reporter.

10 THE COURT: You may.

11 By Mr. Mason:

12 Q Now, I am going to show you, Deputy Martin, what's
13 been marked as Court's Exhibit No. 10?

14 A Okay.

15 Q And, this is the document you've testified that you
16 filed out the investigating officer's report information
17 on it?

18 A Yes, sir.

19 Q Okay. And do you see how there is a place on there
20 where it says received from and by, and there is a date
21 and a time entered?

22 A Yes, sir.

23 Q Okay. Is it blank on Exhibit 10?

24 A Where it says received from?

25 Q Yeah, received from, yes?

1 A No, not blank.

2 Q You received it from Charles Heath but who received
3 it from you, blank. Is that a fair statement?

4 A Right, yes, sir.

5 Q Okay. So, do you know of any reason why when you
6 passed the evidence from yourself to Deputy Brinson as you
7 testified, that he wouldn't fill in when he got it and
8 that would then be signed and completed?

9 A Do I know any reason why?

10 Q Yeah. Why didn't he---

11 A I have no idea.

12 Q But, at that point it was his job to fill that part
13 in, is that a fair statement?

14 A Yes, sir.

15 Q You filled in your part, but when you turned over the
16 kit, Deputy Brinson failed to fill in on Court's Exhibit
17 10 when he had received the blood from you, isn't that
18 correct on that form?

19 A Yes, sir.

20 Q And, that's the form you testified is specifically
21 supplied the blood test kit, is that correct?

22 A Yes, sir.

23 Q Is there any particular reason you didn't ask Mr.
24 Barclay to sign the advisement of rights, right after that
25 process got finished? I mean is there anything---

1 A I don't recall, sir.

2 Q If there is a policy, as I understand it, that deals
3 specifically with how to use the advisement of rights
4 form, are you familiar with that policy?

5 A Yes, sir.

6 Q Have you ever---

7 MS. KINZELER: Your Honor, can he at least tell us
8 what policies he--

9 MR. MASON: I am going to ask him a specific
10 question.

11 THE COURT: You need to tell them what part of it
12 you're referring to so that he can know what you're
13 referring to.

14 MR. MASON: I see.

15 By Mr. Mason:

16 Q Okay. My first question is this, in the twelve (12)
17 years that you've been doing this, do you know of any
18 other situation in which you were the person who actually
19 gave the Defendant their rights but somebody else signed
20 the advisement of the consent form? In other words,
21 another situation similar where you were the one who gave
22 it, but another officer's name was put on there and signed
23 it?

24 A What do you mean?

25 Q Well, again---

1 MR. MASON: If I may approach, Your Honor?

2 THE COURT: Yes.

3 By Mr. Mason:

4 Q You just testified, as I understand it, that all the
5 handwriting on Court's Exhibit 9 the advisement of rights,
6 is yours except for two items the signature of Deputy
7 Brinson and the signature of Mr. Barclay, is that correct?

8 A Correct.

9 Q Okay. So, the question is do you know of any other
10 situation in your law enforcement career where you have
11 been the one who read the rights, you with me---

12 A ---uh-huh---

13 Q ---but, the paperwork was filled out not indicating
14 you had read them, but some other officer's name was on
15 there?

16 MS. KINZELER: Objection, Your Honor, relevance.

17 THE COURT: I'm going to give him a little bit of
18 latitude. Go ahead.

19 By Mr. Mason:

20 A Yes, it's happened before. It's been done before.

21 Q Okay. Now, with regards to---

22 MR. MASON: Your Honor, may I approach the witness?

23 THE COURT: You may.

24 By Mr. Mason:

25 Q Deputy Martin, I'm handing you a document which is

1 called the SLED implied consent administration of breath
2 alcohol test policy which on page three at item number two
3 begins to refer to SLED having prepared for use a felony
4 driving under the influence advisement form. Do you
5 believe you were using a SLED form at the time you did the
6 advisement?

7 A Yes, sir.

8 Q And, did you intend to follow whatever SLED policy
9 was in regards to the use of that form?

10 A Yes, sir.

11 Q Now on page four, if you don't mind just to speed
12 things up, on page four item (E) two talks about reading
13 the advisement to the subject, furnishing them with a copy
14 and then the next paragraph reads unless the subject is
15 unruly, he should be given the opportunity to sign the
16 advisement. Subject signature only signifies that he or
17 she received a copy of the form. When the subject is
18 provided a copy of the form, the subject has been informed
19 in writing of his or her rights whether or not he signs
20 the form. Have I read correctly from the document?

21 A Yes.

22 Q Okay. And, then after it goes over the advisement
23 process, it talks about the testing process beginning.
24 So, you did not complete the advisement process by getting
25 Mr. Barclay's signature on the document before his blood

1 was drawn, is that correct?

2 MS. KINZELER: Your Honor, objection as to
3 misstatement of---

4 THE COURT: Sustained.

5 MR. MASON: Okay.

6 By Mr. Mason:

7 Q Let me just ask it this way, a more simple way. The
8 blood was taken out of Mr. Barclay's arm before he signed
9 the Felony DUI advisement of rights, isn't that correct?

10 A I'm not sure what you're talking about.

11 Q It doesn't relate to the exhibit that's in front of
12 you it's a different question. Let me back up?

13 A Okay.

14 Q At some point and time, you testified that blood was
15 taken out of Mr. Barclay's arm, is that correct?

16 A Uh-huh, yes.

17 Q Mr. Barclay had not yet signed the DUI advisement
18 form at the time the blood came out of his arm, isn't that
19 correct?

20 A Yes, that's what I said.

21 Q And, he wasn't unruly. He did, in fact, sign it at
22 whatever time it was that it was presented to him, isn't
23 that correct?

24 A Right. He wasn't...

25 Q But, you weren't the one who asked him to sign it,

1 isn't that correct?

2 A No.

3 Q Okay. Some other officer after you left, isn't that
4 correct?

5 A Yes, sir.

6 MR. MASON: Your Honor, that's all I have of this
7 witness.

8 THE COURT: Any redirect?

9 MS. KINZELER: Briefly, Your Honor.

10 THE COURT: You may proceed.

11 REDIRECT EXAMINATION BY MS. KINZELER:

12 Q Deputy Martin, Mr. Mason asked you about a form
13 called Blood Collection reports?

14 A Uh-huh.

15 MS. KINZELER: May I approach, Your Honor?

16 THE COURT: Yes.

17 By Ms. Kinzeler:

18 Q Do you recognize this form, Deputy Martin?

19 A Yes, ma'am.

20 Q How do you recognize it?

21 A That's the form that was done at the hospital, Mr.
22 Barclay.

23 Q What form? What does---

24 A It's the South Carolina Law Enforcement Division
25 Urine Blood Collection Report form.

- 1 Q Is your handwriting on that form?
- 2 A Yes, ma'am.
- 3 Q And, does it pertain to Mr. Barclay's blood draw?
- 4 A Yes, ma'am, it did.
- 5 Q How do you know?
- 6 A I'm sorry?
- 7 Q Does it have identifying information on it?
- 8 A Yes, it has his name and address and all.
- 9 Q And, is that your handwriting on the top where you
- 10 filled that out?
- 11 A Yes, ma'am.
- 12 Q And, the -- is that a form that you have to verbally
- 13 go over with him or is this a form you fill out? Did you
- 14 ever read this form verbatim to him or do you just fill it
- 15 out?
- 16 A I'm sorry, say the question again.
- 17 Q Is this one of the forms that you have to read to him
- 18 verbatim or is it a form that you fill out?
- 19 A This is a form that we fill out.
- 20 Q Okay. And, are you the one that filled it out,
- 21 identifier top portion, called the identifying
- 22 information?
- 23 A Yes, ma'am, I did.
- 24 Q Mr. Barclay's address, the arresting officer, that's
- 25 your handwriting?

1 A Yes, ma'am.

2 Q And, underneath that it says check the following.

3 What two boxes did you check?

4 A The first two.

5 Q Go ahead and read them?

6 A Okay. Subject was under arrest for section

7 56-5-2930, 56-5-2933, 56-5-2945.

8 Q And, it says statute?

9 A And, a set of statutes or is in violation of

10 56-5-2945, South Carolina Code of laws---

11 *THE COURT REPORTER:* I'm sorry, could you repeat

12 that?

13 *THE WITNESS:* Okay. 56-5-2945.

14 By Ms. Kinzeler:

15 A And, subject has been advised writing of his/her

16 implied consent rights.

17 Q Is that your handwriting that check marked those two
18 boxes?

19 A Yes, ma'am.

20 Q And, while you're reading him his Miranda rights, and

21 implied consent rights, and then filling out this form, is

22 their team already starting to draw blood or do you wait

23 until the process has been completed as far as the

24 advisement of rights?

25 A I wait until the advisement of rights is done.

1 Q So, the nurses isn't starting to draw blood while
2 you're still---

3 A --no---

4 Q --okay. And, underneath that, there is some other
5 handwriting that's not yours, is that right?

6 A Right.

7 Q Do you know whose handwriting that is?

8 A That's the nurse, Mr. Heath.

9 Q And, underneath that is final check for law
10 enforcement officer. Are those your check marks?

11 A Yes, ma'am, that is.

12 Q And, what does those say?

13 A It says sample collection was under my direct
14 supervision. The sample container is properly with the
15 subject's name and time of collection. Sample is properly
16 sealed and ready to transport.

17 Q The sample is properly labeled with the subject's
18 name and time of collection. By checking that box, is
19 that an indication that you had confirmed the proper name
20 to make sure the name on the label is the same person?

21 A Yes.

22 Q So you confirmed that that specimen had his name on
23 it?

24 A Yes, ma'am.

25 Q And, the person you were dealing with was, in fact,

1 Mr. Barclay?

2 A Yes, ma'am.

3 Q And, then is that your signature below?

4 A Yes, ma'am, it is.

5 Q And, is that your handwriting with the date?

6 A Yes, ma'am.

7 Q Underneath that it looks like someone else's
8 signature, is that you?

9 A No, ma'am, it was not.

10 Q Who -- when you're with Mr. Barclay, you didn't ask
11 him to sign any forms? He didn't sign anything when he
12 was with you?

13 A No, ma'am, not that I recall.

14 MS. KINZELER: And, I would move that in as Court's
15 Exhibit 11.

16 THE COURT: Show it to Mr. Mason?

17 MS. KINZELER: Before I gave it to Deputy Martin.
18 Do you need to see it again?

19 THE COURT: Any objection?

20 MR. MASON: No.

21 THE COURT: Marked and admitted without objection.

22 (WHEREUPON, Court's Exhibit No. 11 was marked
23 for identification and received into evidence.)

24 MR. MASON: May it please the Court, yesterday I
25 put on the record obviously that the exhibits were used in

1 the pretrial motions for purposes of the motion. I'm not
2 objecting -- I mean, I may object when we get to Court and
3 she tries to put it in, but I'm not objecting for the
4 purpose of the pretrial proceedings.

5 *THE COURT:* I think that goes without saying.

6 *MR. MASON:* Thank you.

7 *MS. KINZELER:* May I approach, Your Honor?

8 *THE COURT:* Yes.

9 By Ms. Kinzeler:

10 Q Those policy that Deputy -- I mean Mr. Mason was
11 reading to you, what policy is that? What does that say
12 at the top?

13 A It says South Carolina Law Enforcement Division
14 Implied Consent Administration of Breath Alcohol Test.

15 Q And, the test that you were observing was that a
16 breath test or blood test?

17 A It was a blood test.

18 Q And, the advisement of rights, the implied consent
19 rights form that we already read and it was entered as an
20 exhibit---

21 *MS. KINZELER:* May I approach?

22 *THE COURT:* Yes.

23 By Ms. Kinzeler:

24 Q You're familiar with that form?

25 A Yes, ma'am.

1 Q Underneath Mr. Barclay's signature what -- what's on
2 that form? What does it say underneath that line right
3 there?

4 A Right under his signature?

5 Q Uh-huh.

6 A It says date and time.

7 Q Under the signature line? What signature line is it
8 that he signed? It says...

9 A It says subject signature receipt copy.

10 Q Okay. And, Deputy Martin, when you started reading
11 him his Miranda rights and implied consent rights, you
12 testified you're not the arresting officer?

13 A Right.

14 Q And, you didn't put him in handcuffs or anything at
15 that point?

16 A No, ma'am, I didn't.

17 Q When you read him his Miranda rights and his implied
18 consent rights from that point forward, was he free to
19 leave?

20 A No.

21 Q Pardon?

22 A No, he was not.

23 Q And before you left, Deputy Brinson and Burrell
24 arrived?

25 A I'm sorry, say that -- I didn't understand you.

1 Q Deputy Brinson and Burrell arrived when you were
2 still there?

3 A Yes, ma'am.

4 Q And when you left apart from not being free to leave,
5 was Mr. Barclay still in the ER?

6 A Yes, ma'am, he was.

7 Q Okay.

8 A Before I left he was still there.

9 MS. KINZELER: I think that's all I have. Thank
10 you.

11 THE COURT: Any objection to the witness being
12 excused subject to being recalled?

13 MR. MASON: Your Honor, I had one more on
14 recross---

15 THE COURT: Briefly.

16 RECROSS-EXAMINATION BY MR. MASON:

17 Q Deputy Martin, you just testified about the South
18 Carolina Law Enforcement Division Urine Blood Collection
19 Report, and you indicated that you checked the box that
20 says subject is under arrest?

21 MR. MASON: May I approach?

22 THE COURT: You may.

23 By Mr. Mason:

24 A Yes, sir, I did.

25 Q Okay. And, we have already gone over Mr. Barclay was

1 not arrested until after you left and that took place by
2 the arresting Officer Brinson, isn't that correct?

3 A Yes, sir.

4 MR. MASON: Thank you.

5 THE COURT: Any further questions of the witness?

6 MS. KINZELER: Nothing from the State, Your Honor.

7 THE COURT: Any objection to the witness being
8 excused subject to being recalled?

9 MR. MASON: No, Your Honor.

10 THE COURT: From the State?

11 MS. KINZELER: No, Your Honor.

12 THE COURT: Sir, you're excused.

13 THE WITNESS: Thank you.

14 THE COURT: You're welcome. You may call your next
15 witness?

16 MS. KINZELER: We'll call Deputy Brinson.

17 THE COURT: Sir, if you will come to the stand to
18 be sworn.

19 WILLIAM BRINSON, after being duly sworn,
20 testified as follows:

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

23 THE WITNESS: William E. Brinson, B-R-I-N-S-O-N.

24 THE COURT: You may proceed.

25 DIRECT EXAMINATION BY MS.KINZELER:

1 Q Deputy Brinson, tell the Court a little bit about
2 your background when you joined law enforcement?

3 A I started with the North Charleston Police Department
4 in sometime in 1999. I went through the Police Academy it
5 was nine weeks at that time. About 2003, I came over to
6 the Charleston County Sheriff's Office and I am currently
7 working in the Traffic Division at the Sheriff's Office.

8 Q Are you on the DUI team?

9 A Yes, ma'am.

10 Q Do you recall being called out to an incident that
11 occurred on December 8, of '08 on Edisto?

12 A Yes, ma'am.

13 Q And when you arrived on scene, was the Defendant, Mr.
14 Barclay, still there?

15 A No, ma'am.

16 Q And as part of your investigation while you were on
17 the scene, did you learn anything about the Defendant's
18 condition at the time of the accident?

19 A Yes, ma'am, from other EMS, rescue workers, and the
20 initial officers that responded to the scene, I was
21 informed that he had the odor of alcohol and he had -- his
22 eye were fairly blood -- were bloodshot looking, the
23 speech was slurred when he was talking to the EMS and
24 rescue workers, and that he just looked disheveled.

25 Q These are not your direct observations?

1 A No, this was related to me from the people at the
2 scene when I arrived.

3 Q And, is it -- who was at the hospital while you were
4 at the scene?

5 A Deputy Martin.

6 Q And, why was he sent there?

7 A Because I -- he was sent there to find out -- to meet
8 with Mr. Barclay and to, you know, observe and do a
9 further investigation of what took place in the wreck or
10 if he was under the influence of alcohol.

11 Q At some point while you were on the scene, did you
12 have a conversation or did you learn of conversations, or
13 were a part of a conversation with Deputy Martin over the
14 phone?

15 A It was through Deputy Burrell who was at the scene
16 with me, he was actually on the phone with Deputy Martin
17 and so I guess through Deputy Burrell we -- the three of
18 us discussed what was taking place at the hospital and
19 Deputy Burrell and I discussed what was happening at the
20 scene coupled with what was at the hospital.

21 Q Did you -- through -- were you standing there as the
22 conversation occurred?

23 A Yes, ma'am.

24 Q Did you and Sergeant Burrell relay to Deputy Martin
25 what the observations of the scene were?

1 A Yes, ma'am.

2 Q And, did he relay to you his observations from the
3 emergency room?

4 A Yes, ma'am.

5 Q And, based on those things that you testified to,
6 those observations, did you make a determination as to Mr.
7 Barclay's status as far as whether or not you believed he
8 committed a Felony DUI?

9 A Yes, ma'am.

10 Q And, tell the Court about that?

11 A Based on the observations of what was reported to us,
12 what we had at the scene as far as evidence and other
13 stuff and Deputy Martin's observations, I being the case
14 agent for this case, decided that to have blood drawn from
15 him and charge him with Felony DUI for the accident.

16 Q And, were you using the evidence at scene or crash
17 cars of the deceased---

18 A --correct---

19 Q ---still there? So, did you directly observe the
20 scene as far as cars from the scene the driver of the Geo?

21 A Correct, everything was in -- at it's final resting
22 point whenever we arrived on scene to the best of our
23 knowledge.

24 Q So based on those conversations with Deputy Martin at
25 the hospital and those collective conversations, are you

1 the one that determined blood needed to be drawn?

2 A Yes, ma'am.

3 Q From Mr. Barclay?

4 A That's correct.

5 Q And, who did you relay that to?

6 A To Deputy -- Sergeant Burrell was a Deputy at the
7 time who was on the phone with Deputy Martin.

8 Q To relay that direction?

9 A Correct, to Deputy Burrell.

10 Q And at some point you finished your investigation at
11 the scene, and you drove to the hospital?

12 A Yes, ma'am.

13 Q Is Deputy Martin still there when you get there?

14 A Yes, ma'am.

15 Q And, did you receive custody of the blood kit from
16 Deputy Martin?

17 A I did.

18 Q There are a lot of forms that we have been talking
19 about and let me show you Court's Exhibit No. 9, Felony
20 DUI advisement. Do you recognize your handwriting on that
21 page?

22 A Yes, ma'am.

23 Q And, the blood collection report Court's Exhibit No.
24 11, none of your handwriting on that page is it?

25 A One spot.

1 Q And where is that?

2 A The date down here at the very bottom.

3 Q The date next to Mr. Barclay's name?

4 A Correct.

5 Q And, are you familiar with this form Court's Exhibit
6 No. 10?

7 A Yes, ma'am.

8 Q How are you familiar with it?

9 A It's the -- it's a collection of the forms that come
10 in the SLED blood urine collection kit.

11 Q Explain to the Court the significance of Mr.
12 Barclay's signature on the Felony DUI advisement of
13 rights?

14 A Well---

15 Q Let me -- I'll withdraw that question. Let me go
16 back. Who gave the forms to Mr. Barclay to sign?

17 A I did.

18 Q And, this was after Deputy Martin has already left?

19 A Yes, ma'am.

20 Q And, at some point you also -- did Deputy Martin
21 relay anything to you as to whether or not he has been
22 advised of his Miranda rights?

23 A That's correct. When I took custody of the blood
24 which includes all of these forms and the blood and I took
25 custody of all of that together. It was all on the table,

1 you know, together. He advised me that he had read and
2 given -- he had read him a copy of his implied consent
3 rights which the Defendant acknowledged at the time that
4 he understood. And, that he had advised him of his rights
5 and filled out, you know, that he went ahead and filled
6 out some of these other forms for me to get started on it.

7 Q And, what happened after that? Did you advise him of
8 his Miranda rights again?

9 A I did. I asked him if Deputy Martin said he had
10 advised him of his Miranda rights prior to the implied
11 consent. I asked him if he filled out the written version
12 of the Miranda form that we are not necessarily required
13 to do, but it's something that I like to do so it's in
14 writing. He advised me that he didn't. So, I
15 re-administered the advisement of rights to him, the
16 Miranda rights.

17 Q In written form?

18 A In a writing form. I read the complete form to him
19 and made sure that he understood what I was telling him.

20 MS. KINZELER: May I approach, Your Honor?

21 THE COURT: You may.

22 By Ms. Kinzeler:

23 Q Do you recognize this form?

24 A Yes, ma'am, it's the advisement of Miranda rights
25 form that I read to Mr. Barclay.

1 Q Is that your handwriting on the form?

2 A Everything but his signature.

3 Q And, you indicate his signature is on the bottom?

4 A Yes, ma'am.

5 Q Under the fully understand each of these rights?

6 A As they have been explained to me, yes, ma'am.

7 Q It says Deputy Martin has advised me. Why is Deputy
8 Martin's name there and your handwriting, can you explain
9 that?

10 A Because Deputy Martin is the one that actually
11 advised him of his rights prior to the implied consent and
12 the blood being drawn. I just wanted formal written
13 documentation that it was done.

14 Q And, he didn't sign the bottom underneath the waiver,
15 is that right?

16 A No, ma'am.

17 Q At that point, did Mr. Barclay invoke his right to
18 remain silent and his right to an attorney?

19 A Yes, ma'am.

20 Q After that point and time, did you initiate any
21 interrogation questioning or attempt to obtain any
22 statements from him?

23 A No, ma'am, nothing other than what I needed to fill
24 out paperwork.

25 Q Was Sergeant Burrell also in the room?

1 A Yes, ma'am.

2 Q Were there any other Deputies?

3 A No, ma'am.

4 Q Was there a lot of doctors, a few doctors, do you
5 recall?

6 A I believe the ER was busy that night, but I don't
7 recall exactly how many people were in there.

8 Q He was in handcuffs?

9 A No, ma'am.

10 Q Where were you in relation to where his bed is?

11 A Directly at the foot of it. There is a table or
12 counter, how I would describe it. And, once he invoked
13 his rights, I was sitting there finishing filling out
14 these forms.

15 Q And, the bottom of the implied consent rights, the
16 Felony DUI advise consent rights, that date and time line
17 is blank. Can you tell the Court about anything why that
18 line is blank?

19 A No, ma'am. I don't recall directly why it was left
20 blank. When Mr. Mason showed up in the emergency room, I
21 was filling out the paperwork and it turned kind of
22 chaotic and I can only assume that it -- that I forgot to
23 do it.

24 Q And, similarly on the sticker that I showed you on
25 the Court's Exhibit for the blood kit, you didn't write on

1 that sticker that you had gotten the blood kit from Deputy
2 Martin?

3 A Correct.

4 Q Did you include that information in your report?

5 A Yes, ma'am, I did.

6 Q At some point, do you recall Mr. Barclay making any
7 statements?

8 A I believe he had conversations with Deputy Burrell
9 while I was filling out the paperwork.

10 Q Do you recall the conversation specifically?

11 A Mr. Barclay was sleeping I guess you would say. He
12 had passed out or fell asleep, I'm not sure what he
13 actually did. While we were filling out the paperwork, he
14 came to or woke up and starting wanting to know where he
15 was. You know, what happened? Why am I here? So, we
16 were explaining that to him. That he had been involved in
17 an accident. He was telling us---

18 Q Were you explaining to him or is Deputy Burrell
19 explaining to him?

20 A Deputy Burrell.

21 Q And continue with telling the Court how that
22 conversation went?

23 A Deputy Burrell explained that he was involved in an
24 accident. He told him that no, he wasn't. I believe that
25 Deputy Burrell told him, you know, you were involved in an

1 accident, somebody died in it, that started a little bit
2 of laughter or chuckle from him and it just -- the
3 conversation was just a general conversation that he was
4 asking questions and we were trying to answer them.

5 Q Did you hear Deputy Burrell ask him any questions?

6 A Uh---

7 Q Well, let me -- before this conversation started, did
8 Deputy Burrell ask him any questions?

9 A No, ma'am.

10 Q When the conversation began, did you hear Deputy
11 Burrell ask him any questions?

12 A Yes, ma'am.

13 Q And, what were they?

14 A I believe he asked him did you know what you were
15 doing or do you know where you were coming from something
16 of that nature, I don't recall the exact wording of his
17 question. Mr. Barclay answered that he had been working
18 at his farm and that he was heading home.

19 Q Do you recall anything else about that conversation?

20 A No, ma'am.

21 Q And, were you also -- at some point, did you provide
22 a statement provided to the defense a failure to provide
23 video affidavit?

24 A Yes, ma'am.

25 Q And, in fact, did you do two--

1 A ---yes--

2 Q ---or make an addition to another?

3 A Correct.

4 MS. KINZELER: May I approach, Your Honor?

5 THE COURT: You may.

6 By Ms. Kinzeler:

7 Q Deputy Brinson, do you recognize these forms?

8 A Yes, ma'am.

9 Q The first form the one with the initials up at the
10 date, what is that form?

11 A It's an affidavit for failure to produce a video
12 recording for -- at the -- it was impossible to produce a
13 video recording of the time of the arrest and probable
14 cause determination.

15 Q That's the affidavit?

16 A Yes, ma'am.

17 Q Did you sign that form?

18 A I did.

19 Q Did you put a date?

20 A I did.

21 Q What date is that?

22 A September 15th.

23 Q Did you have that form notarized the same time you
24 filled it out?

25 A Yes, ma'am.

1 Q What date did the notary put on the form?

2 A September 16th.

3 Q Did you fill out this form and have it notarized on
4 the same date?

5 A I did.

6 Q So, explain the date discrepancy?

7 A Just a human error. I wrote the 15th on it, it was
8 done on the 16th and I apparently -- I was still stuck on
9 the date before.

10 Q And, at some point---

11 A I caught the mistake and drew a line through it,
12 write the correct date and initial it.

13 Q But that addition, that date wasn't notarized?

14 A Correct.

15 MS. KINZELER: I would move to admit this as
16 Court's Exhibit No. 12 and 13.

17 THE COURT: Any objection?

18 MR. MASON: No, Your Honor.

19 THE COURT: Marked and admitted without objection.

20 (WHEREUPON, Court's Exhibit No. 12 was marked
21 for identification and received into evidence.)

22 (WHEREUPON, Court's Exhibit No. 13 was marked
23 for identification and received into evidence.)

24 COURT REPORTER: The failure to produce video is
25 12, Your Honor, and then the amended one is 13.

1 MS. KINZELER: I think that's all I have. Answer
2 any questions that they may have for you.

3 THE COURT: Any cross of this witness?

4 MR. MASON: Yes, Your Honor.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION BY MR. MASON:

7 Q Good afternoon, Deputy Brinson?

8 A Good afternoon.

9 Q Was I at the hospital at the time you got Mr. Barclay
10 to sign the advisement of rights?

11 A I believe you walked in just as we were completing
12 the paperwork.

13 Q Now, do you recall giving sworn testimony in this
14 matter at the Preliminary Hearing?

15 A I do.

16 Q Have you had a chance to review any transcript from
17 that testimony before you testified today?

18 A I have looked over it.

19 Q You did not take any statements of Doug Barclay in
20 this matter, correct?

21 A Written statements?

22 Q Yes, sir.

23 A No, sir.

24 Q Okay. You did not interrogate him, is that correct?

25 A That's correct.

1 Q And, when you did talk to him, did you understand
2 that at least originally he had invoked his right to
3 remain silent?

4 A When I talked to him about what?

5 Q Anything?

6 A Yeah, I said he invoked his right when I gave him the
7 advisement of rights form.

8 Q And, did he also invoke his right to have an attorney
9 present?

10 A He told me he didn't want to talk to me. That was
11 his exact words.

12 Q Okay. And, your understanding when he told you that,
13 you were bound to then not question him?

14 A That's correct.

15 Q And did he, in fact, get an attorney present in the
16 form of my showing up at some point?

17 A You showed up.

18 Q And, you were still finishing the paperwork when I
19 got there, is that correct?

20 A The best of my recollection you came when I was
21 finishing up.

22 Q And, it was right around that time that you believe
23 that you got Mr. Barclay to sign the advisement of the
24 consent of rights, isn't that correct?

25 A That is correct.

1 Q Now, you've been asked the question about the Miranda
2 form that you wanted to use in order to make sure you have
3 something in writing. There is a place on that form where
4 Mr. Barclay would want to agree to talk with you, he could
5 specifically sign indicating that he was waiving his
6 rights, isn't that correct at the bottom of the form?

7 A There is a place for him to sign, that's correct.

8 Q And it's blank, is that correct?

9 A That is correct.

10 Q In other words, he didn't waive his right at least in
11 writing?

12 A As we discussed, yes, sir.

13 Q And, you -- the paperwork you prepared in this matter
14 doesn't it reflect that you overheard Mr. Barclay say
15 anything or that he made any statements, isn't that
16 correct?

17 A I don't have all the paperwork in front of me, sir.
18 I'm not sure what you're referring to.

19 Q You did not observe Mr. Barclay joking and laughing
20 at the hospital, isn't that correct?

21 A That is not correct.

22 Q Well, describe for me what it is you say you
23 observed?

24 A I described this earlier that whenever we advised him
25 that there was a death involved in the wreck, that that

1 sparked a chuckle or a laugh from him.

2 Q And, was I there when that took place?

3 A I really don't recall, sir. I mean, I don't know
4 exactly when you were there and what took place. When you
5 came in, it kind of went crazy, so I really don't know
6 what was done at some point.

7 Q I mean, I was respectful to you and I did not
8 interfere with the process in anyway, isn't that correct,
9 sir?

10 A In your opinion, yes, sir.

11 Q Well, I mean---

12 MS. KINZELER: Objection, relevance.

13 THE COURT: I'll give him a little latitude.
14 Overruled.

15 By Mr. Mason:

16 Q I'm asking you whether I, in anyway, interfered with
17 the process?

18 A We were ready to leave to go to the jail and we were
19 not able to because of the process that you were trying to
20 do. So, I guess in that aspect, yes, you did interfere
21 with that process.

22 Q By meeting with my client?

23 A I didn't -- I mean, we were ready to go to the jail
24 and we couldn't leave. I mean, you're asking me did you
25 affect my process, yes, you affected my process.

1 Q Other than that, I didn't?

2 A No, sir.

3 Q Now, when you left with Mr. Barclay, he walked out of
4 the emergency room?

5 A With our assistance, yes, sir.

6 Q Your testimony is that you assisted him? Is that
7 your testimony, sir?

8 A With our assistance, he walked out of the emergency
9 room.

10 Q And, by your assistance, do you mean placing your
11 hands on him in some way to assist him in walking?

12 A Yes, we walked -- he walked between myself and Deputy
13 Burrell.

14 Q So---

15 A ---I'm getting to it and I'm not going to say that I
16 had my hand on him, grasping him the entire way to the
17 vehicle. But, as we went down the ramp and off the curb
18 and stuff, yes, we did have to help him down the curb and
19 stuff so he didn't tumble and fall.

20 Q When is it that you stood outside you and Deputy
21 Burrell with Mr. Barclay unhandcuffed and smoked a
22 cigarette?

23 A When we got to our vehicle and we propped him up
24 against the rear fender and allowed him to smoke a
25 cigarette before we put him in handcuffs.

1 Q Did you and Deputy -- did you and/or Deputy Burrell
2 also smoke a cigarette at that time?

3 A I don't smoke, sir.

4 Q Well, then that question is related to did Deputy
5 Burrell smoke a cigarette at that time as well?

6 A That would be beyond my recollection. I couldn't
7 tell you if he smoked one or not.

8 Q And, was that the time in which you placed Mr.
9 Barclay under arrest?

10 A That is the time at which I put Mr. Barclay in
11 handcuffs, that's correct.

12 Q Okay. And, was it before where you referenced that
13 you and Deputy Burrell parked side by side facing outward
14 in front of the emergency room?

15 A I have no idea, sir.

16 Q Both of your cars were equipped with video cameras,
17 is that correct?

18 A I believe so at that time.

19 Q And, they are mounted on the front windshield right
20 in front of where you positioned Mr. Barclay before he was
21 placed in handcuffs, isn't that correct?

22 A No, sir. I actually said we propped him against the
23 rear fender.

24 Q Your testimony is the rear fender?

25 A Twice, yes, sir.

1 Q Okay. So, were your cars parked facing in or facing
2 out?

3 A Sir, I have no idea where my car was parked other
4 than it was in the parking lot at One West at MUSC.

5 Q But, if it's the rear fender then that would be what
6 you would come to first as you approached---

7 A Not necessarily. If there is three parking places
8 open prior to getting into my car, then it's a direct line
9 to the rear fender. It's not out by the front where
10 vehicles travel to the parking lot, so it's a safer place
11 to prop him up if that's how my car is parked.

12 Q Okay. If your car was parked facing out, you would
13 have to walk past the cars and then prop him up between
14 the curb where there is the grassy landscape area and the
15 rear part, you wouldn't do that?

16 A I'm not sure what it looked like in 2008. Right now
17 there is no curb down there because it is all
18 construction. I mean, I didn't notate the way my car was
19 oriented in the parking lot because I park one hundred
20 (100) times a day and I have no idea how it was parked.

21 Q You didn't notate that a cigarette was smoked with
22 Mr. Barclay out of handcuffs before he was placed under
23 arrest either, did you?

24 A I notated that he smoked a cigarette before he was
25 placed into handcuffs, that's correct.

1 Q Now, at the time of arrest, you did not do a
2 videotape of Mr. Barclay, is that correct?

3 A Okay, yes, sir.

4 Q And, again, we're talking about the time frame in
5 which I had delayed you from leaving the hospital, is that
6 correct?

7 A If that's what you say. In your opinion.

8 Q And, in that video -- I'm sorry, Mr. Barclay appeared
9 at that time just before you placed him in the car, to
10 have extremely bloodshot eyes, is that correct?

11 A Yes, sir.

12 Q He had slurred speech, is that correct?

13 A I believe that's what notated, yes, sir.

14 Q He had a strong odor of alcohol, is that correct?

15 A Yes, sir.

16 Q His clothes was disheveled, is that correct?

17 A I believe he was in a hospital gown at that point,
18 but I couldn't again swear to it.

19 Q He looked, at that time when you placed him in the
20 car, to be very, very, very, intoxicated, isn't that
21 correct?

22 A Yes, sir.

23 Q In fact, he was so intoxicated that he had trouble
24 walking out of the hospital, isn't that correct?

25 A He had trouble walking down the ramp and off the curb

1 as I stated, yes, sir.

2 Q He had just told you he didn't even know he was just
3 in an accident, isn't that correct?

4 A Sometime prior to that. I don't know if just is the
5 proper word, but prior to that at some point he did
6 mention that, yes.

7 Q But, it was right around the time that I arrived,
8 isn't that correct?

9 A I don't recall, sir.

10 Q All right. I believe you said that you were just
11 finishing the paperwork when I got there. You said you
12 Mirandized him just before I got there? So, was the
13 statement made just after you Mirandized him?

14 A No, I think I stated earlier as I was finishing up
15 paperwork and after I did the Miranda and had him signed
16 the stuff, that he went to sleep or passed out, I wasn't
17 sure what he did. And, as I was filling out the paperwork
18 is when he woke up, came to, however you want to call it
19 and started asking where he was, and what had happened.

20 Q And, that's when you placed him under arrest?

21 A Not necessary. He was placed into handcuffs and he
22 was taken out to our car.

23 Q I understand.

24 A We don't normally handcuff people in the hospital in
25 a hospital bed in the ER.

1 Q Thank you, sir. Now, you've reference the situation
2 at the scene where you received -- you didn't see Mr.
3 Barclay at the scene, but you indicated that you received
4 information from people at the scene, is that correct?

5 A That is correct.

6 Q Okay. And, you have the officer that is the first
7 responder, Charleston County Sheriff's Office first
8 responder is a Dustin J. Luckadoo(sp), is that correct?

9 A He was the first officer on the scene.

10 Q Okay. Did Dustin J. Luckadoo(sp) indicate to you
11 anything about Mr. Barclay's sobriety?

12 A Yes, he indicated what I said earlier that his eyes
13 were bloodshot, that he smelled of alcohol, and that he
14 had a slurred speech while he was talking to the EMS and
15 fire workers.

16 Q Did Deputy Luckadoo(sp) relate to you any other thing
17 about Mr. Barclay's alleged behavior or conduct at the
18 scene of this accident?

19 A He said that he was, I guess, getting -- he was
20 upset, started getting upset and was yelling things out.

21 Q Like what?

22 A He was yelling out racial stuff to the other victim
23 in the vehicle.

24 Q Like what?

25 THE COURT: Is there a reason you're eliciting this

1 when you've asked that it not be admissible?

2 *THE WITNESS:* ---do you want me to say it or---

3 *MR. MASON:* ---yes, Your Honor?

4 *THE COURT:* For what?

5 *MR. MASON:* Potential credibility.

6 *THE COURT:* How would it be relevant to
7 credibility?

8 *MR. MASON:* This witness' statement is inconsistent
9 with another witness---

10 *THE COURT:* That's pitting, so that's not
11 inconsistent. You wouldn't be able to ask him to comment
12 on the veracity of another witness' statement. I am
13 trying to -- you know, we have a minimal amount of time
14 and we need to maximize it. You've specifically asked
15 that any racial slurs be excluded that the State does not
16 intent to admit them. So, I don't understand what purpose
17 it will serve for this Court to have to -- it just doesn't
18 serve me -- it doesn't serve any purpose in terms of
19 relevance.

20 *MR. MASON:* I'll move on, Your Honor.

21 By Mr. Mason:

22 Q Deputy, did Deputy Luckadoo(sp) relate to you that
23 Mr. Barclay was yelling -- I don't care about what it was
24 that he was yelling about, but that he was yelling in some
25 way at the scene of this accident?

1 A Yes, sir.

2 Q And, did this -- who else did you believe to be on
3 the scene at the time this yelling took place?

4 A Other than Deputy Luckadoo(sp), I don't know. There
5 were other EMS or fire workers there. Who they were, I
6 cannot tell you.

7 Q You recall a Brian Woods---

8 A ---yes, sir---

9 Q ---giving you a name as first responder and you
10 noting that in your handwritten papers?

11 A I recall speaking to a Brian Woods prior -- within
12 probably ten minutes of me leaving the scene of the
13 accident which is well after I arrived at the scene. And
14 he came up and advised that he was looking for a dog that
15 was in the truck with Mr. Barclay. We actually helped him
16 look in the woods for a few minutes for a dog and I took
17 his number down in case we found the dog or someone called
18 about it. That's the extent of my conversation with Mr.
19 Woods.

20 Q And you indicated that the dog was in the car -- that
21 it was believed that the dog was in the car with Mr.
22 Barclay at the time of the collusion, isn't that indicated
23 on your fatality report?

24 A That Mr. Woods said that, that's correct.

25 Q And, you indicated that the dog may have been a

1 distraction in the car at the time of the accident, isn't
2 that correct?

3 A I don't have my fatality report in front of me. If
4 you say I do or you can bring it so I can look at it.

5 Q I just want to make sure I am real clear on this one
6 point. Did Deputy Burrell specifically question Mr.
7 Barclay in the hospital?

8 A No, sir.

9 Q So, it's your testimony that all the statements that
10 were made by Mr. Barclay at the hospital were just
11 volunteered or blurted out in some way? They weren't in
12 response to any questions, is that a fair statement?

13 A Well, you're trying to play on the word specific.
14 Apparently, I mean, Deputy Burrell did not interrogate Mr.
15 Barclay. Mr. Barclay initiated a conversation with Deputy
16 Burrell and, yes, they had a normal conversation which
17 includes two people speaking back and forth, that is
18 correct.

19 Q Okay. So, Deputy Burrell did ask Mr. Barclay
20 questions?

21 A Normal questions, yes, sir.

22 Q When is the first time you ever saw any written
23 documentation about the statements Mr. Barclay alleged to
24 have made or volunteered, however you want to refer to it,
25 at the hospital? When was that recorded in anyway as far

1 as you know?

2 A I have no idea. I mean, this happened three years
3 ago. I can't tell you what dates and times things were
4 recorded.

5 Q Wouldn't you expect there to be a written report, a
6 supplement, a note of some kind so that two years and ten
7 (10) months the specifics of those discussions would be
8 actually what you recall?

9 A I don't understand what you're asking.

10 Q Yeah, you did testify to all of these things that you
11 say you overheard Mr. Barclay say?

12 A Correct.

13 Q He was coming from his farm, that he didn't realize
14 that he was in an accident, that he cussed a few times,
15 that he made jovial remarks about people dying after
16 having been so informed by Deputy Burrell, my question is
17 would you expect those statements and that conduct to be
18 documented in someway, in some incident report, some
19 supplemental report, some writing of some kind?

20 A I did not personally document it, that's correct.

21 Q To your knowledge being the prosecuting officer in
22 this case, were they documented in anyway by Deputy
23 Burrell?

24 A I believe they were, but I -- I believe they were.

25 Q Would you expect them to have been so that he can

1 recall?

2 A I have already said that I don't -- I mean, I don't
3 have expectations for other people. I don't know what you
4 want me to say about that. I did not personally document
5 them and I believe they are documented somewhere. Short
6 of having my case file, I can't tell you what date and
7 time or what form they are documented on.

8 Q When did you first learn that that had taken place?

9 A I---

10 MS. KINZELER: Your Honor, I am going to object at
11 this point. I don't know what's the relevance about when
12 he first learned that this had happened.

13 THE COURT: Repeat the question, please?

14 MR. MASON: The question is when he -- when did you
15 first learn that Deputy Burrell claimed that Mr. Barclay
16 had said these things?

17 THE COURT: It really is a mischaracterization of
18 the testimony. His testimony said that he was sitting
19 there and it took place. So, you need to rephrase the
20 question.

21 By Mr. Mason:

22 Q Either you or Deputy Burrell questioned Mr. Barclay,
23 isn't that correct at MUSC?

24 A You are back to playing on words again. I told you
25 that there were questions asked during the conversation,

1 normal conversation that Deputy Burrell and Mr. Barclay
2 had. Why am I here? You were in a wreck. Do you know
3 what happened?

4 MR. MASON: Your Honor, may I approach?

5 THE COURT: You need to prove that for impeachment
6 purposes? What exactly are you asking him and that you're
7 claiming that he is answering inconsistently. And, I need
8 to know why it's relevant? You're asking him about
9 someone else's statement and what someone else did. You
10 really need to ask that person what they did and what they
11 said. At this point, the only thing that has been shown
12 is that there was a spontaneous conversation that was
13 precipitated and initiated by your client.

14 MR. MASON: Your Honor---

15 THE COURT: After invoking several -- if there is a
16 relevant question, you need to ask it. Give him the
17 opportunity and comply with the rules and then we'll see
18 if impeachment is appropriate.

19 By Mr. Mason:

20 Q As soon as you walked into MUSC, did Mr. Barclay
21 notify you that he did not want to talk to you and that he
22 wanted to talk to his attorney, yes or no?

23 A No.

24 MR. MASON: Your Honor, may I approach?

25 THE COURT: You may.

1 MS. KINZELER: May I see what that is?

2 THE COURT: Yes.

3 MS. KINZELER: I don't know what that is?

4 THE COURT: I assume it's the Preliminary Hearing?

5 MR. MASON: Yes, Your Honor.

6 (WHEREUPON, Court's Exhibit No. 14 was marked
7 for identification and received into evidence.)

8 THE COURT REPORTER: Marked as Court's 14, Your
9 Honor.

10 By Mr. Mason:

11 Q Deputy Burrell, I hand you what's been marked it
12 looks like---

13 A ---Brinson---

14 Q ---I'm sorry. Deputy Brinson, I hand you what's been
15 marked as Court's Exhibit which is the sworn testimony you
16 gave at the Preliminary Hearing in this matter and it
17 starts on page four at line twenty (20). The Court ask
18 you, State your case to the Court. Do, you see that lines
19 twenty (20) and twenty (21)?

20 A Yes, sir.

21 Q Okay. Now please turn to page six beginning at line
22 seventeen (17). Did you testify that after we got done
23 cleaning the scene up, myself and Deputy Burrell went down
24 to MUSC to speak to Mr. Barclay who notified me as soon as
25 I walked in he didn't want to talk to me, he wanted to

1 talk to his attorney. He was not questioned and he was
2 taken into custody and transported to the Detention Center
3 for Felony DUI. Have I read that correctly from your
4 testimony?

5 A Yeah, you read correctly.

6 Q Okay. To your knowledge, did Deputy Luckaboo(sp)
7 ever give you a supplemental report in this case?

8 A To my knowledge, I do not know. He is supposed to
9 have done one, I have not seen it personally.

10 Q Do you expect Deputy Luckaboo(sp) to do some type of
11 supplemental report in this case, isn't that correct?

12 A A deputy normally does a supplemental report, that's
13 correct.

14 Q Do you know at what time it was that you instructed
15 Deputy Martin to have the nurse draw the blood?

16 A I would assume it was just prior to the time the
17 blood was drawn and a certain amount of reasonable
18 minutes.

19 Q Sure.

20 A I'm at the accident scene, I don't know -- it's kind
21 of hard to know.

22 Q And, what did you do with the blood draw kit after
23 you received it?

24 A I finished filling out the paperwork and put it in
25 the kit like it needed to be done, sealed the kit. When

1 we left the hospital, I took it with me, put it on the
2 passenger front seat of my car. And, the crime scene
3 officer, Deputy Gellen(sp) met me at the sallyport of the
4 Charleston County Detention Center to take possession of
5 it.

6 Q Did Deputy Burrell remain with you from the hospital
7 to the jail with Mr. Barclay?

8 MS. KINZELER: Your Honor, I don't know if that
9 line of questioning is relevant.

10 THE COURT: What is the question that you just
11 said, Mr. Mason?

12 MR. MASON: Whether -- when they left -- I'm trying
13 to explore whether---

14 THE COURT: I need you to ask -- restate the
15 question you asked.

16 By Mr. Mason:

17 Q Was Deputy Burrell also with you when you left MUSC
18 to transport Mr. Barclay to the jail?

19 A We were in separate vehicles.

20 Q Other than the statements you just referenced were
21 made by Mr. Barclay at MUSC Hospital, are there any other
22 statements you now recall him making other than as you
23 have testified to just now?

24 A No, sir.

25 Q In other words, he didn't make any statements in the

1 car on the way there?

2 A He wasn't in my car, sir.

3 Q He was in Deputy Burrell's---

4 A ---car---

5 Q ---car?

6 A Yes, sir.

7 Q And, when he got to the jail, he didn't make any
8 statements to the jail unit or anything like that?

9 A No, when we got to the jail is when he passed out and
10 we had to take him back to the hospital.

11 Q When you were at the hospital, did you overhear the
12 nurse or any of the doctors attending to Mr. Barclay have
13 any discussion where you heard something that Mr. Barclay
14 said to his medical care providers?

15 MS. KINZELER: Objection, relevance?

16 THE COURT: It's been asked and answered.

17 By Mr. Mason:

18 Q Did any medical care providers whether it was the
19 medic at the scene or a nurse at MUSC hospital or doctor,
20 tell you they believed Mr. Barclay was intoxicated?

21 THE COURT: That's -- how would that be admissible?

22 MR. MASON: It was raised by the wreck. He's a
23 party testifying that that was part of his probable cause
24 that other people told him---

25 THE COURT: His probable cause was a continuum of

1 an investigation at the scene with officers.

2 MR. MASON: He said it involved contact---

3 THE COURT: He's talking about EMS folks.

4 MR. MASON: Right.

5 THE COURT: Then you need to confine it to that, to
6 that scope.

7 MR. MASON: Okay.

8 By Mr. Mason:

9 Q Did an EMS person tell you that they observed Mr.
10 Barclay intoxicated?

11 A At the scene?

12 Q At the scene?

13 A No, sir.

14 Q Did a fire department personnel advise you they
15 observed Mr. Barclay intoxicated at the scene?

16 A I couldn't tell -- say who they worked for.

17 Q I'm sorry?

18 A I couldn't say who they worked for.

19 Q Okay. Well, without regard for who they worked for,
20 did anybody appearing to be a fire -- volunteer firemen
21 advised you that they had seen Mr. Barclay at the scene
22 and he appeared to be intoxicated?

23 A I believe so.

24 Q You don't know the person's name who you just
25 described. Can you describe or reference what it is they

1 looked like?

2 A It's a human being and they had on fire apparatus.
3 It could be from the rescue squad, fire department out
4 there. I don't know who they are.

5 Q But, you specifically recall them being in a fire
6 department apparatus?

7 MS. KINZELER: Objection, that has been asked and
8 answered.

9 THE COURT: Sustained.

10 By Mr. Mason:

11 Q So, in fact, someone died sparked laughter in Mr.
12 Barclay, is that your testimony?

13 A That is what I said.

14 Q Now, is there any reason you didn't do a videotape of
15 Mr. Barclay when you placed him under arrest in the
16 vicinity of your patrol car?

17 A Because I have stated---

18 MS. KINZELER: Objection, Your Honor.

19 THE COURT: Basis.

20 MS. KINZELER: He submitted an affidavit and
21 testified to why he didn't. It's been asked and answered.

22 THE COURT: He can ask him, he can explore on
23 cross. Sir, you may answer the question.

24 By Mr. Mason:

25 A Because I have already stated that he was placed

1 under arrest in a hospital bed and there is not -- th
2 is no video cameras inside a hospital that I have access
3 to.

4 Q But my question is this, you told me that he walked
5 out without being helped. That he got to the vicinity of
6 your car that was equipped with a video camera, is there a
7 reason why that, at that time before the cuffs were put on
8 him after he smoked the cigarette, that he was not
9 videotaped?

10 A Yes, sir, because it was -- we were going to the car
11 to get in the car to leave. He begged, if you want to use
12 that word, to smoke a cigarette before he went to jail, so
13 we allowed him to smoke a cigarette. So, there was no
14 intention of being there long enough to turn on a video
15 camera until he wanted to smoke a cigarette and we allowed
16 him to do that.

17 Q So, that the reason you didn't video him at around
18 the time he smoked the cigarette was because there was no
19 time?

20 A Because it wasn't practical because we were getting
21 in the car to leave.

22 Q There is no traffic in that area of the parking lot,
23 isn't that correct?

24 A Yeah, the EMS trucks coming and going regularly
25 through there.

1 Q You could have stood Mr. Barclay up in front of your
2 patrol car---

3 A ---which would have put him in the roadway---

4 Q ---is that your testimony?

5 A That's what you said earlier by the way I was parked.
6 I didn't -- I didn't know how I was parked. You alluded
7 to the fact that I was backed in, I could have stood him
8 in the front of the camera, that he would be standing in
9 the roadway if that's the way it is.

10 Q He would be in the parking lot, isn't that correct?

11 A In the roadway of a parking lot, that is correct.

12 Q So, you stand up people all the time on the side of
13 the road---

14 MS. KINZELER: Objection, Your Honor, it's been
15 asked and answered.

16 THE COURT: Sustained. Move on.

17 By Mr. Mason:

18 Q This video which -- a video which you didn't make
19 would have shown all the things you testified to about how
20 he appears, is that correct?

21 A There is no video, so I don't know what it would have
22 shown.

23 Q It should be an accurate record of what you
24 describe---

25 MS. KINZELER: Objection, Your Honor---

1 *THE COURT:* Sustained. Move on, Mr. Mason.

2 By Mr. Mason:

3 Q Isn't it a fair statement that you instructed that
4 Mr. Barclay be placed under -- the blood be drawn before
5 you had fully completed your investigation?

6 A No, sir, it's not.

7 Q What time was the investigation completed?

8 A I'm not sure what you're calling the investigation?

9 A A probable cause to make an arrest was complete when I
10 instructed to have his blood drawn, that is correct. An
11 investigation of the accident was not complete. The
12 probable cause for the blood to be drawn was complete.

13 Q Okay. What time was the investigation of the
14 accident complete---

15 *MS. KINZELER:* Objection, Your Honor, it has been
16 asked and answered.

17 *THE COURT:* Sustained. It has been asked and
18 answered, Mr. Mason.

19 By Mr. Mason:

20 Q Did you ever go back as far as the investigator in
21 this case to the scene of the accident after the
22 indictment in this Court?

23 *MS. KINZELER:* Objection, Your Honor, that's
24 irrelevant.

25 *THE COURT:* Basis of the objection?

1 MS. KINZELER: Relevance.

2 MR. MASON: Your Honor---

3 THE COURT: What's the relevance, Mr. Mason?

4 MR. MASON: If he determined that there was
5 probable cause and what he had in his mind at the time is
6 relevant that has a lot to do with whose fault this
7 accident was. So---

8 THE COURT: The fault of the accident has nothing
9 to do with probable cause. Probable cause to arrest would
10 have been established by a fatality irregardless of the
11 fault and alcohol involvement.

12 MR. MASON: Your Honor, if I may---

13 THE COURT: Sustained, relevance. Argument is to
14 assist the Court and if I don't need argument, there is to
15 be none. An objection has been sustained on relevance,
16 ask your next question.

17 By Mr. Mason:

18 Q Do you believe that before you could ask for blood to
19 be taken from Mr. Barclay on a Felony DUI case, that you
20 had to reach a conclusion that the accident was in someway
21 his fault as a result of a violation of some traffic
22 law---

23 MS. KINZELER: Objection, Your Honor.

24 THE COURT: Basis?

25 MS. KINZELER: It's outside of the Court of what

1 we're doing for any motion that's pending before this
2 Court this afternoon.

3 THE COURT: That's an interesting objection. It is
4 outside the scope. This motion is not for discovery.

5 MS. KINZELER: And, they don't have to prove every
6 element.

7 MR. MASON: Your Honor, there is a motion that
8 there was no probable cause---

9 THE COURT: ---no, no---

10 MR. MASON: ---to draw the blood---

11 THE COURT: ---that is not what the basis of your
12 motion is. Your motion on the informed consent is that he
13 was not appropriately advised and that there was not
14 compliance of the statute. And, actually we have covered
15 now partially now number eleven (11) which is DUI
16 reporting requirement which was your motion number eleven
17 (11). And, your motion to suppress we'll deal with that
18 with the blood results.

19 But, the motion that we're actually dealing with
20 now is your Motion in Limine to exclude statements
21 allegedly made by Defendant in response to post Miranda
22 questioning after the Defendant asserts his right to
23 remain silent and his right to legal counsel. That is the
24 motion that we're dealing with right now.

25 MR. MASON: I'm sorry---

1 THE COURT: And, then we crossed over and started
2 dealing with the chain as well as number eleven (11) which
3 is the DUI video.

4 MR. MASON: I thought we were dealing with Number
5 ten (10) wherein paragraph three---

6 THE COURT: Defendant's motion to exclude---

7 MR. MASON: ---yes---

8 THE COURT: ---results favorable Felony DUI
9 advisement of rights and exclude blood test by reasonable
10 legal seizure of Defendant's blood without warrant. That
11 is---

12 MR. MASON: ---yes---

13 THE COURT: ---I'm going to give you a little bit
14 of latitude, but you really need to stay on topic and get
15 to the heart of it. It's five after four and we've got
16 about five more witnesses that we have to finish.

17 By Mr. Mason:

18 Q Do you believe that before you could instruct that
19 blood be taken from Mr. Barclay in a Felony DUI case, you
20 had to make at least an initial determination that he had
21 violated some traffic law that caused the accident in
22 question?

23 A That is correct. That doesn't mean that the
24 investigation was finalized. There was evidence at the
25 scene that dictates how the accident took place.

1 Q I am going to move on. I just want to know, when was
2 the investigation finalized?

3 MS. KINZELER: Objection, asked and answered?

4 MR. MASON: It hasn't been, Your Honor---

5 THE COURT: I didn't ask for argument. You may
6 answer the question, sir, then you need to move on, Mr.
7 Mason.

8 By Mr. Mason:

9 A I do not know when the investigation was finalized.
10 It was a continuing investigation from that night at 10:30
11 at night or whatever time it was when we were out there.
12 It continues on until we are finished with what we need
13 from the case. I can't tell you an exact time that the
14 investigation was finalized. My probable cause
15 determination was finalized prior to giving Deputy Martin
16 the order or the order to draw blood from the Defendant
17 which the stuff at the scene dictates fault and where the
18 vehicles were. The other stuff dictates that there is
19 probable cause for alcohol involved in it. So, that was
20 completed prior to that.

21 THE COURT: Hold on one minute before you ask you
22 next question. Do you need to switch files?

23 COURT REPORTER: That's all I need to do.

24 THE COURT: Do that.

25 COURT REPORTER: It will take me about seconds.

1 MS. KINZELER: And, Your Honor---

2 THE COURT: No, you can't talk while she is --
3 wait, you can't talk while she is doing that.

4 MS. KINZELER: Okay.

5 COURT REPORTER: Okay, Judge, I'm ready.

6 THE COURT: Okay. Next question.

7 By Mr. Mason:

8 Q So, you did not go back to the scene after you left
9 there and when you went to MUSC, isn't that correct?

10 A Apparently I missed the question when we stopped.

11 Q Okay.

12 A What was the question?

13 Q The question is, after December 8, 2008, you did not
14 return to the scene as part of your investigation, isn't
15 that correct?

16 MS. KINZELER: Objection, relevance.

17 THE COURT: I am going to give him a little
18 latitude. Sir, you may answer the question then you need
19 to move on.

20 By Mr. Mason:

21 A That's correct.

22 Q Did you hear Mr. Barclay say anything about having
23 drink any alcoholic beverages?

24 A I believe so.

25 Q What was it that he said?

1 A That he had had a few while he was working on his
2 farm.

3 Q You specifically heard that?

4 A I overheard that.

5 Q Who was it being said to?

6 A It was in the hospital. I don't know if it was a
7 nurse or -- the medical personnel were asking him if he
8 had alcohol or whatever before they treated him or before
9 they put injections or whatever they were doing to him. I
10 don't know. I'm not a medical person.

11 Q But, you believe he had been injected with some stuff
12 before you or while you were there observing?

13 A I believe that I think he had an IV, but I couldn't
14 swear to it. I'm sure the medical report...

15 MR. MASON: Thank you, Your Honor, that's all I
16 have.

17 THE COURT: Any redirect?

18 MS. KINZELER: No, ma'am.

19 THE COURT: Any objection to the witness being
20 excused?

21 MS. KINZELER: No, ma'am.

22 MR. MASON: No, ma'am.

23 THE COURT: Sir, you may step down. Are there any
24 further witnesses on behalf of the State?

25 MS. KINZELER: Your Honor, the witness on the video

1 issue -- I'm sorry.

2 *THE COURT:* Would the State be seeking to introduce
3 any of these statements? I guess I should have really
4 asked that question before---

5 *MS. KINZELER:* Yes, Your Honor, if you weren't, I
6 would have mentioned that to the Court earlier. We are
7 seeking to admit statements he made to Deputy Burrell in
8 the conversation at the hospital.

9 *THE COURT:* And for what purpose would you be
10 offering it?

11 *MS. KINZELER:* It's an admission that he consumed
12 alcohol and establish where he was traveling from when the
13 accident occurred.

14 *THE COURT:* You need to tell me exactly the
15 statement that would establish that because I haven't
16 heard anything up to this point that would establish it.

17 *MS. KINZELER:* The person that he actually made the
18 statements to is in the hall to testify. The statement
19 would be I was coming home from my farm, I had a couple of
20 beers, and he hadn't been in any expletive crash---

21 *THE COURT:* Oh, I got you. Call your next witness.

22 *MS. KINZELER:* Do you want this before?

23 *THE COURT:* No, I want to finish this now. I
24 didn't expect to take this long to finish this. We are
25 going to take a brief break to go to the restroom for the

1 Court Reporter because she has been going since 2:00
2 o'clock.

3 (Whereupon, there was a break.)

4 *THE COURT:* All right.

5 *MS. KINZELER:* The State calls Sergeant Burrell.

6 **MICHAEL BURRELL, after being duly sworn,**
7 **testified as follows:**

8 *THE CLERK:* State your full name and spell your last
9 name?

10 *THE WITNESS:* Michael Burrell, B-U-R-R-E-L-L.

11 *THE COURT:* You may proceed.

12 **DIRECT EXAMINATION BY MS. KINZELER:**

13 Q Sergeant Burrell, in December 8, 2008, were you at
14 the -- would have been Deputy Burrell at that time?

15 A Yes, ma'am.

16 Q And, Deputy Brinson was your partner?

17 A Yes, ma'am.

18 Q Were you with him at the collusion on December 8,
19 2008?

20 A I was.

21 Q And, you traveled with him to the hospital where the
22 Defendant, Mr. Barclay, was?

23 A Yes, ma'am.

24 Q And, when you arrived at the hospital room, who was
25 there?

1 A Deputy Martin was there. Mr. Barclay was there.

2 There may have been some emergency personnel, hospital
3 staff, I'm not real sure.

4 Q As far as officers go, you and Brinson arrived
5 together.

6 A Yes, ma'am.

7 Q And, Deputy Martin was the only one as far as an
8 officer was concerned that was present?

9 A Yes, ma'am.

10 Q And, at some point Deputy Martin leaves. Do you
11 recall whether or not Mr. Barclay invoked his right to
12 remain silent or have an attorney present at any point?

13 A No, ma'am.

14 Q And, you didn't -- are you saying that you didn't
15 hear him say that or didn't know if he did?

16 A I think that paperwork was given to him, copies of
17 maybe Miranda warnings and---

18 Q To your knowledge, did he sign a waiver of rights?

19 A Yes.

20 Q Let me show you---

21 A I think.

22 Q Are you familiar with the case file?

23 A Maybe signed---

24 Q The advisement of rights form, is that what you're
25 talking about? You believed he signed the advisement of

1 rights form?

2 A I believe so.

3 Q Okay. Do you recognize this form?

4 A Yes, ma'am.

5 Q And, on that form Mr. Barclay's signature appears
6 under the I understand my rights portion?

7 A Yes, ma'am.

8 Q Underneath that the waiver of rights, there is no
9 signature?

10 A No, there is not.

11 Q Okay. While you're in the hospital area which it
12 wasn't really a room, did you and Deputy Brinson engage in
13 any interrogation or questioning regarding the accident
14 when you first got there?

15 A No, ma'am.

16 Q At some point, did Mr. Barclay initiate a
17 conversation with you?

18 A Yes, ma'am.

19 Q Prior to that point and time, had you asked him
20 anything?

21 A No, ma'am.

22 Q And, Your Honor, this may be a point of whether or
23 not -- was it your understanding at this point and time as
24 to whether or not he had invoked his right to remain
25 silent?

1 A That he did not invoke his right.

2 Q Okay.

3 A His general conversation.

4 Q Okay. So, he initiates a conversation. Tell the

5 Court---

6 MR. MASON: Your Honor, I object to the leading at
7 this point.

8 THE COURT: I'm going to give her a little
9 latitude. It's 4:25 and we need to go through this, okay.
10 By Ms. Kinzeler:

11 Q Tell the Court about the conversations that Mr.
12 Barclay initiated with you?

13 A Mr. Barclay -- I'm not sure if he was asleep, passed
14 out, I'm not sure. But he woke up, Deputy Brinson was
15 doing some paperwork near his bedside, and Mr. Barclay
16 woke up and said, what am I doing here? I said, you've
17 been in a crash. And, he said in so many words with some
18 curse words, I haven't been in a crash. I said, yes, you
19 were and I said, and somebody died. I didn't kill
20 anybody, he said.

21 And, he goes, I don't understand why I'm here.
22 I said, well, do you know where you were coming from or
23 what you were doing this evening? And, he said, he told
24 me he was coming from his farm. And, that's when I asked
25 him had he been drinking this evening because it was

1 apparent that he was highly intoxicated on the bed, on the
2 hospital bed. I could smell alcohol. His speech was
3 extremely slurred. His eyes were extremely bloodshot.

4 Q Is this all a part of the same conversation?

5 A All part of the same conversation.

6 Q And, who started that conversation?

7 A Mr. Barclay.

8 Q And, was it some point after these forms were signed
9 that he didn't sign the waiver -- were the forms completed
10 by the time these conversations started to occur?

11 A Yes.

12 Q And, did you promise him anything?

13 A No, ma'am.

14 Q Did you coerce him in anyway?

15 A No, ma'am.

16 Q You didn't threaten him in anyway?

17 A No, ma'am.

18 Q Did you ask him anything else in the hospital?

19 A I asked him if he had been drinking.

20 Q After that?

21 A No.

22 Q And, what was his answer to that?

23 A I was drinking at the farm and I was heading home.

24 Q And, he rode with you to the Detention Center?

25 MR. MASON: Objection, leading.

1 *THE COURT:* I told you I was going to give her some
2 latitude and move the testimony along in light of the time
3 that we expended on the other witnesses.

4 By Ms. Kinzeler:

5 Q Who did he ride with to the jail?

6 A I transported him to the jail.

7 Q And during that ride, did he say anything else to
8 you?

9 A No, he just kept saying that he was tired.

10 Q Did you ask him anything else for the duration of
11 your time together that night until he went into the
12 Detention Center?

13 A I asked him questions to complete the rest of the
14 booking report.

15 Q As far as address, birth dates, things of that
16 nature?

17 A Yes, ma'am.

18 Q Did you ask him anything else the entire length that
19 you're with him about the investigation or the accident,
20 or where he had been or anything of that nature?

21 A No, ma'am.

22 *MS. KINZELER:* That's all I have. If you will
23 answer Mr. Mason's question.

24 *THE WITNESS:* Sure.

25 *THE COURT:* You may proceed.

1 MR. MASON: Thank you.

2 CROSS-EXAMINATION BY MR. MASON:

3 Q Good afternoon, Sergeant Burrell. Now, you and
4 Deputy Brinson were driving separate patrol cars on
5 December 8, 2008?

6 A Yes, sir.

7 Q Those equipped with video cameras, is that correct?

8 A Yes, sir.

9 Q You got to the scene of the accident after Mr.
10 Barclay had already been transported, isn't that correct?

11 A That is correct.

12 Q Now, when you got to the scene of the accident, did
13 you speak with any other Charleston County Sheriff's
14 Deputy or EMS medical or firemen who told you anything
15 about Mr. Barclay's condition before he had been taken
16 from the scene in an ambulance?

17 A We spoke to Deputy Luckadoo(sp).

18 Q Do you recall what Deputy Luckadoo(sp) told you?

19 A That he appeared intoxicated. He smelled of alcohol.
20 He was slurring his speech.

21 Q Did he say anything else?

22 A Eyes were bloodshot.

23 Q Anything else?

24 A Not that I recall, sir.

25 Q Did Deputy Luckadoo(sp) tell you that Mr. Barclay was

1 yelling and screaming anything like racial slurs or just
2 yelling or screaming at someone?

3 MS. KINZELER: Objection, relevance.

4 THE COURT: Sustained. Relevance. Move on, Mr.
5 Mason, they have already indicated that's not going to be
6 admitted.

7 By Mr. Mason:

8 Q Did Deputy Luckadoo(sp) tell you about any yelling by
9 Mr. Barclay?

10 MS. KINZELER: Objection, relevance?

11 THE COURT: Why is it relevant?

12 MR. MASON: Your Honor, we are still invoked these
13 motions dealing with the whole issue of---

14 THE COURT: I'm familiar what we're covering. I
15 need to know why it's relevant to any of it?

16 MR. MASON: I'll withdraw it.

17 THE COURT: I'll give you some latitude, but move
18 on.

19 By Mr. Mason:

20 Q Did Deputy Luckadoo(sp) say anything to you about Mr.
21 Barclay yelling at the scene of the accident?

22 A Not that I recall at that time.

23 Q Now, once you got to the hospital, you understood
24 that Mr. Barclay had asserted his right to remain silent,
25 isn't that correct?

1 A I believe so, yes, sir.

2 Q You had been shown the Miranda form where he did not
3 waive those rights, isn't that correct?

4 A Correct.

5 Q And, then you thought at first when you began
6 testifying that he had, if I had heard you correctly had
7 quote, signed the waiver of rights and then Assistance
8 Solicitor Kinzeler showed it to you where that, in fact,
9 wasn't signed, did that refresh your recollection?

10 A Yes, sir.

11 Q So, knowing that he didn't, in fact, waive his rights
12 and that, in fact, he inserted those rights, you would not
13 have questioned him had you known that he had not waived
14 it, isn't that correct?

15 A I didn't question him at all that night.

16 Q You, as I understood, you asked him where he was
17 coming from, is that correct?

18 A When he woke up and asked me where he was and why he
19 was there.

20 Q And, did you then ask him where he was coming from,
21 is that correct?

22 A Yes, sir.

23 Q Okay. To which you said he responded his family
24 farm, is that correct?

25 A Yes, sir.

1 Q You asked him if he had been drinking, is that
2 correct?

3 A Yes, sir.

4 Q To which he responded a couple?

5 A He said that he had been drinking at the farm and was
6 on his way home as I recall.

7 Q And, you recall him saying that he had not been in --
8 that he used a cuss word, crashed, is that correct?

9 A Correct, that's what he told me.

10 Q And, he said that he did not kill anybody, is that
11 correct?

12 A In a jovial manner, yes, sir.

13 Q As if he thought it was funny that someone died?

14 A Exactly.

15 Q Okay. I mean, all of this is to the point where you
16 thought it was outrageous?

17 A That I thought it was outrageous?

18 Q Yes, for him to think it was funny that somebody had
19 died?

20 A No, sir.

21 Q You described -- do you remember when I got to the
22 hospital?

23 A Yes sir.

24 Q Okay. And, when I got there was Mr. Barclay highly
25 intoxicated?

1 A Yes, sir.

2 Q Were his eyes extremely bloodshot?

3 A Well, once you got there, I didn't have anymore
4 conversation with Mr. Barclay.

5 Q I'm not asking you about the conversation. I'm
6 asking you about that time. Were his eyes extremely
7 bloodshot?

8 A They were still bloodshot, yes, sir.

9 Q Was his speech still slurred?

10 MS. KINZELER: Objection, asked and answered?

11 MR. MASON: I haven't asked that question.

12 THE COURT: Don't respond to opposing counsel.

13 Basis of the objection.

14 MS. KINZELER: I believe the questioned was asked
15 and answered.

16 THE COURT: I believe it's been asked and answered
17 as well. But, I am going to give him some latitude. Sir,
18 you may answer the question. Please be mindful of the
19 questions you've already asked, Mr. Mason.

20 By Mr. Mason:

21 Q When I was there -- when I got to the hospital, was
22 Mr. Barclay's speech still extremely slurred?

23 A I don't believe I was close enough to hear him
24 talking to you, sir.

25 Q Had you completed the paperwork in relation to Mr.

1 Barclay's case specifically the DUI advisement of rights
2 before I got there?

3 A I didn't do the advisement of rights.

4 Q Did you witness Mr. Barclay sign any documents
5 throughout this process?

6 A Not that I recall.

7 Q Do you know who handled getting Mr. Barclay to sign
8 any advisement of rights documents?

9 A Say that question one more time?

10 Q Yeah. Do you recall who actually got Mr. Barclay to
11 sign any advisement of rights documents?

12 A Deputy Brinson.

13 Q So, you don't recall when it was that that took
14 place?

15 A Time wise or exact -- soon after we arrived at the
16 emergency room.

17 Q Okay. And, do you recall walking out of the hospital
18 with Mr. Barclay?

19 A Yes, sir.

20 Q And, did he walk out of the hospital on his own two
21 feet?

22 MS. KINZELER: Objection, relevance.

23 THE COURT: I guess I am trying to figure out why
24 is it relevant, too?

25 MR. MASON: I'm just getting to the -- when they

1 get in front of the car.

2 THE COURT: You've already asked him that. He has
3 already said---

4 MR. MASON: I haven't asked this witness, Your
5 Honor.

6 THE COURT: I might---

7 MR. MASON: The other witness I did, but not this
8 witness.

9 THE COURT: You may continue. I apologize, I
10 thought you had already asked that question.

11 By Mr. Mason:

12 Q Deputy Burrell, did Mr. Barclay walk out of the
13 hospital on his own two feet?

14 A He walked with me helping him.

15 Q Did you---

16 A Or assisting him.

17 Q Did you actually put your hand on him to keep him
18 upright?

19 A Yes, sir.

20 Q All right. When you got outside to the parking lot
21 of the MUSC emergency room, did you smoke a cigarette with
22 Mr. Barclay in the parking lot with him being
23 unhandcuffed, not having handcuffs on at the time?

24 A I don't remember if he was handcuffed yet or not.

25 Q But, in any event, did you and Mr. Barclay smoke a

1 cigarette before he was placed into the patrol car?

2 A Yes, sir, he had asked me if he could bum a smoke and
3 I said, sure, we'll have one before we go.

4 Q I understand. But, did you and he both smoke one
5 before you and he left?

6 A I don't remember if I did or not.

7 Q But, you are a smoker and have cigarettes to give
8 him?

9 MS. KINZELER: Objection, relevance.

10 THE COURT: Why is that relevant?

11 MR. MASON: I'm getting ready to ask him about the
12 video and the car---

13 THE COURT: Yeah, but why is it relevant whether
14 they have a cigarette or not? I mean, it's uncontroverted
15 that they allowed him to have a cigarette before they went
16 to the jail. Move on.

17 By Mr. Mason:

18 Q Now, when you and Deputy Brinson parked your cars
19 over there at the MUSC Emergency Room Department, you
20 parked -- you backed it in facing out so you could leave
21 if you had to quickly, is that a fair statement?

22 A Yes, sir.

23 Q That's how you usually do it?

24 A That's how I always park, yes, sir.

25 Q Always, okay. And, your patrol car was equipped with

1 a video camera, isn't that correct?

2 A It is.

3 Q Okay. And, where you and Mr. Barclay stood as Mr.
4 Barclay was allowed to smoke a cigarette, was it in the
5 vicinity of the front of your patrol car, isn't that
6 correct?

7 A I believe we let him lean on the car on the driver
8 side front fender.

9 Q Lean on the car on the driver side front fender. As
10 I understand it, your video camera is actually physically
11 mounted you're facing the car to the front just to the
12 left of the rear view mirror, isn't that correct?

13 A It's located on the passenger side windshield.

14 Q Passenger side windshield. So, Mr. Barclay, before
15 he was handcuffed and before he was put in the car, he was
16 within would you say five feet of where he could have been
17 in view of the video camera?

18 A I don't believe at that angle the camera would have
19 captured him.

20 Q No, I understand. But, if you had repositioned him
21 four or five feet to have him in front of the camera, he
22 could have been in front of the camera, is that correct?

23 A Yes, sir.

24 Q Just a matter of feet, isn't that correct?

25 A Yes, sir.

1 Q Okay. And, he had not yet been actually put in cuffs
2 to be placed in the patrol car, isn't that correct?

3 A I'm not -- I don't recall whether he was handcuffed
4 at the time or not.

5 Q But, if you're smoking a cigarette, I guess you can
6 do it with handcuffs on, but that would be---

7 MS. KINZELER: Objection, asked and answered.

8 THE COURT: I guess I am trying to figure out why
9 is it relevant how he smoked it, whether he had cuffs on
10 or not? What's the---

11 MR. MASON: Let me...

12 By Mr. Mason:

13 Q You did not do a videotape of Mr. Barclay at the time
14 he was placed under arrest before he was transported to
15 the jail, isn't that correct?

16 A That's correct.

17 Q Okay. And, it wasn't because you didn't have enough
18 time to do it, there had been -- there would have been
19 enough time to do it had you decided that it was something
20 that needed to be done, isn't that correct?

21 A I would agree.

22 Q And, do you recognize -- and you've made a DUI arrest
23 before, isn't that correct?

24 A Yes, sir.

25 Q Okay. And isn't one of the things you do is if it's

1 possible under the circumstances, to record the actual
2 arrest?

3 A Yes, sir.

4 Q And, that was not done in this case, is that correct?

5 A Not to my recollection.

6 MR. MASON: Your Honor, that's all I have.

7 THE COURT: Any redirect of this witness?

8 MS. KINZELER: No, ma'am.

9 THE COURT: Any objection to the witness being
10 excused subject to being recalled from the State?

11 MS. KINZELER: No, ma'am.

12 THE COURT: From the Defense?

13 MR. MASON: No, Your Honor.

14 THE COURT: Sir, you're excused. Okay. Are there
15 any further witnesses from the State. I think basically
16 it's covered through these witnesses a portion of number
17 one, we have covered numbered two which is the Jackson
18 versus Denno, and number eleven (11) which is the video
19 and number ten (10). Are there any further witnesses from
20 the State on any of those issues?

21 MS. KINZELER: No, ma'am, I don't believe so. The
22 only other witnesses we have are the chain witnesses.

23 THE COURT: Which is number one?

24 MS. KINZELER: Right.

25 THE COURT: Any witnesses from the Defense?

1 MR. MASON: Your Honor, we just have the State's
2 response to our Rule five and three which we would like to
3 have marked as the Court exhibit which the Assistant
4 Solicitor Kinzeler relates what the statements are that
5 are going to be testified to the statements that were made
6 in response to this question that we have been taking
7 testimony about. We would like to make the discovery
8 response part of the record in regards to this hearing.

9 THE COURT: Any exception?

10 MS. KINZELER: I have no idea why this would need
11 to be a part of the record.

12 THE COURT: I'm going to look at it?

13 MR. MASON: May I approach?

14 MS. KINZELER: I mean, I don't object to this being
15 a part of the record for---

16 THE COURT: What are you submitting it for---

17 MR. MASON: That's the only purpose I'll submitting
18 it.

19 THE COURT: For what purpose are you submitting it?

20 MR. MASON: Well, again, one of the motions was
21 whether these statements that are related in this response
22 are admissible or not admissible---

23 THE COURT: So, why are any of these relevant?

24 MR. MASON: Well, it's not an email. It says she
25 is responding -- she just did it by email.

1 *THE COURT:* That's not my question. Whether it's
2 email or letter, why is the response relevant?

3 *MR. MASON:* Because it's the State's discovery
4 production to me without the substance of the statements
5 intends to introduce and it says that it's in response to
6 my discovery motions and pursuant to Brady versus---

7 *THE COURT:* You still haven't answered my question.
8 You're answering the question you want to answer. The
9 question is, why is it relevant?

10 *MR. MASON:* Because these are the statement you
11 have to decide whether they should come in or not.

12 *THE COURT:* The statements I am going to decide
13 whether they come in or not are the statements the Officer
14 just testified to because that is what she is going to
15 introduce in her case and chief and she is putting you on
16 notice by their testimony that that is what she intends to
17 introduce. So, any other statements will not be relevant
18 or germane because the State does not seek to introduce
19 them. So, it really doesn't matter. I don't have to --
20 do what?

21 *MR. MASON:* Well, they're inconsistent with the
22 testimony about---

23 *THE COURT:* ---she cannot -- when you respond in
24 discovery, unless she had the actual written statement
25 from them which says what they were going to say, that's

1 one thing, but if it's her summary of what they are going
2 to say, that's not inconsistent because she can't testify,
3 she is not a witness.

4 MR. MASON: Well, the inconsistency, Your Honor, is
5 that she said that Burrell asked your client and Burrell
6 asked your client -- after meeting with them, she stated
7 that---

8 THE COURT: ---that's not what's going to come into
9 evidence. She is not a witness.

10 MR. MASON: I understand, but---

11 THE COURT: ---her response to your discovery is a
12 summary. It is a notice document just to put you on
13 notice of what the substance of the statements would be.
14 What I have to make a decision about is what are the
15 statements these officers are going to testify to at trial
16 and that is what they just testified to. The real
17 critical issue is one whether he was Mirandized and
18 whether he made any spontaneous statements to the officer
19 after the booking, that's really the issue.

20 MR. MASON: Your Honor---

21 THE COURT: ---that's the issue the Court has to
22 decide.

23 MR. MASON: I understand.

24 THE COURT: What he says unless there is some
25 relevance objection and I don't know what basis they would

1 be, because she would be construed of admissions against
2 his interest, so the only -- they are relevant to -- I
3 guess you -- to the interest in terms of his denying
4 culpability for the death, but what I decide is very low
5 burden. I only decide by preponderance of the evidence
6 whether he was Mirandized or not. Whether he invoked --
7 whether he was questioned after that, whether he was in
8 custodial interrogation subjected to Miranda, whether his
9 freedom was restrained all that -- the rest -- I'm not the
10 fact finder, I'm just the...

11 And, then they have to -- if I determined that they
12 have met their burden by the preponderance of the evidence
13 one that he was Mirandized, that the statements were free
14 and voluntary, or spontaneous or otherwise, or if there
15 was no violation of Miranda, then they have to prove
16 beyond a reasonable doubt that the statements were
17 actually made, that's the question for the jury. The jury
18 decides whether the statements were actually made or not
19 and what weight they are to be given.

20 I only look at it from a preponderance of evidence
21 -- from a legal standard of whether the legal requirements
22 of due process were met.

23 MR. MASON: Well, Your Honor, you don't have to
24 consider it if you don't want to, all I'm saying is I get
25 a formal response from discovery from the State and the

1 State tells me that my client made statements in response
2 to questioning and all I want to do is make -- if you
3 don't want to consider it -- I mean, you're going to
4 decide anything anyway---

5 THE COURT: ---I'm telling you what the legal
6 standard for the Court. Ms. Kinzeler is not a witness.

7 MR. MASON: I understand. But, when I get a
8 discovery---

9 THE COURT: When discovery responses goes -- if
10 there is a violation of the discovery response and that's
11 really the nature of email. I think all of you have
12 gotten way to comfortable with email because what happens
13 is you get an email and then you shoot an email back and
14 you really don't think about the substance of what you're
15 saying. And, then it all, you know -- then everybody
16 saying -- but the bottom line is, she's not a witness.
17 She responded to a discovery response.

18 That would be like in a wreck case you -- your
19 client being bound by you responding to a discovery
20 response and saying this is the summary of what I think my
21 client is going to say, and then your client gets on the
22 stand and says something else, and then the other lawyer
23 saying your client can't say that because you told me your
24 client is going to say this, that's not how it works.

25 MR. MASON: I'm not saying that. But, when the

1 State meets with the prosecuting witness and the
2 prosecuting witness tells the State that he questioned my
3 client and then it's provided to me in a written response
4 to discovery, for whatever weight that the Court may or
5 may not want to give it, this is the issue and I just want
6 to make it part of the record and whether you want---

7 THE COURT: ---is that your representation -- the
8 only thing I'm going to make a decision on is the
9 testimony I've heard.

10 MR. MASON: I understand. It's not to exclude the
11 testimony, but---

12 MS. KINZELER: ---Your Honor---

13 MR. MASON: ---it addresses the question of whether
14 the statements were in response to being asked questions,
15 that's really the core of this. There is no issue but
16 that he invoked -- that he asserted his right to remain
17 silent---

18 THE COURT: ---well, that remains to be seen. The
19 Court is going to have to make a decision about exactly
20 what happened.

21 MR. MASON: I understand. Yes, Your Honor.

22 THE COURT: But, you're going to make Ms. Kinzeler
23 a witness and she is not.

24 MR. MASON: I don't want to make her a witness, I
25 just---

1 *THE COURT:* ---well, I thought you wanted me to
2 consider what she said.

3 *MR. MASON:* I thought that the discovery responses
4 had some value for whatever reason---

5 *THE COURT:* ---discovery responses only deal with
6 whether you did not get information, whether the
7 prosecutor acted in bad faith, whether somehow somebody
8 didn't given you something exculpatory that you were
9 entitled to, whether somehow your client was prejudiced
10 because the last minute something you were entitled to
11 receive you didn't receive, that's really -- you know,
12 really criminal trials in South Carolina is still by
13 ambush. We really don't have any discovery.

14 *MR. MASON:* Except for when the rules apply---

15 *THE COURT:* ---well, under rule---

16 *MR. MASON:* ---statement of my client, they have to
17 tell me what it is---

18 *THE COURT:* ---yeah, they do.

19 *MR. MASON:* ---and, that's what the---

20 *THE COURT:* ---they have to tell you the general
21 substance of what it is. But, it's not unusual for people
22 to come in and then not to be moralized in writing or them
23 to be substantially different than what was memorialized
24 in writing it all becomes a weight issue. But, for me to
25 consider what your talking about, makes her a witness in

1 this case.

2 MR. MASON: I don't want to do that, Your Honor,
3 but I just---

4 THE COURT: ---I am going to make a decision based
5 on what I believe to be the credibility of these witnesses
6 who testified. So, if you have witnesses that you want to
7 present, you need to do that.

8 MR. MASON: I don't have any more witnesses, Your
9 Honor.

10 THE COURT: But, the question still remains, do you
11 have any objection to the admission of these emails?

12 MS. KINZELER: I do, Your Honor. I am not
13 interested in making that email apart of the record. This
14 is -- it is undisputed that Deputy Burrell asked him two
15 questions. He said on the witness stand that he asked him
16 two questions, so I don't think that that email needs to
17 come into the record. His testimony is already in the
18 record.

19 THE COURT: Just for the record, I don't want to
20 make Ms. Kinzeler a witness, but it doesn't appear to me
21 that her emails are inconsistent with the testimony. It
22 is uncontroverted that Deputy Burrell had a conversation
23 with Mr. Barclay. That he asked him where he had been and
24 if he had -- and, I'm paraphrasing. Don't -- he asked
25 him, what were you doing this evening and had he been

1 drinking? Those are the substance of the two questions
2 that he asked him. I don't think there is any conflict or
3 intentionally he did not ask him those two questions. The
4 question still remains, do you have any witnesses, Mr.
5 Mason, that you wish to introduce for purposes of this
6 inquiry?

7 MR. MASON: No, Your Honor.

8 THE COURT: Okay. I will be glad to hear your
9 argument on -- and please don't read your briefs to me
10 because I have already read them. I need you to hit the
11 highlights. And, I don't need you to summarize the
12 testimony for me because I've heard it. I've been here
13 present in Court. I need to know if there is any
14 additional argument other than what has already been
15 placed on your memoranda on number two which is Motion and
16 Limine to exclude statements allegedly made by Defendant
17 in response to post Miranda questioning after the
18 Defendant asserted his right to remain silent and his
19 right to legal counsel.

20 Let's see and number ten (10) which is motion to
21 exclude blood result test -- exclude results of blood test
22 or failure of States to comply with Felony DUI advisement
23 of rights and exclude blood test for unreasonable illegal
24 seizure of Defendant's blood without a warrant, and number
25 eleven (11) which is a motion to dismiss for failure to

1 comply with DUI video or recording requirements. Is there
2 anything further from the State in terms of arguments?

3 *MS. KINZELER:* Argument, yes. I haven't presented
4 any arguments yet, but may I now?

5 *THE COURT:* Yes. I'm asking you if you wanted to.

6 *MS. KINZELER:* The first thing, Your Honor, I'll go
7 to number two first regarding the statements. We agree
8 with -- well, he was read his Miranda rights one, he was
9 read and given -- he signed a written document indicated
10 he understood those rights again. At no point did anyone
11 ask him anything having to do with what happened that
12 night until he reinitiate the conversation with the
13 Deputies to which Burrell responded.

14 The law states that once indication of these rights
15 have occurred, and I don't agree that the failure to sign
16 a waiver form is -- nonetheless Deputy Brinson understood
17 that he had invoked his rights to remain silent and had no
18 further questioning. At that point and time, nothing else
19 was asked.

20 The law states because I am sure you are well
21 aware, Your Honor, that a law enforcement officer may not
22 ask further clarifying questions or interrogate further
23 unless the suspect himself initiates the questioning and
24 that is State -vs- Kennedy and Edwards versus Arizona.

25 In addition to that, Your Honor, the fact that he

1 made a statement a few hours or an hour or however long it
2 may have been after he was read his Miranda rights and
3 then again in writing, what's clear here is he engaged in
4 a course of conduct indicating a waiver. He may have
5 invoked his rights, but he also waived them.

6 He was told that he could stop any question any
7 time, he reinitiated the conversation. I think the law is
8 very clear on reinitiating the conversation with officers.
9 It wasn't a standard, can I go to the bathroom or may I
10 have some water, it had to do with what happened that
11 night and for us questions in response to his initiation
12 to that conversation. I don't think there has been any
13 Miranda violation whatsoever on that issue, Your Honor. I
14 don't know if you want me to keep going or if you---

15 *THE COURT:* Hit the highlights, cover your full
16 argument on every issue.

17 *MS. KINZELER:* On number ten (10), the compliance
18 with the Felony DUI advisement of rights form, the statute
19 that we've been talking about 2946 incorporates by
20 reference 2950 which is how this all comes into play.

21 What that statute requires and I believe I gave
22 Your Honor a copy of it yesterday. Do you have that, Your
23 Honor?

24 *THE COURT:* I have all the statutes on this case.

25 *MS. KINZELER:* What the law says on that issue is

1 that before any samples are taken, the Defendant must be
2 verbally informed and given a copy in writing which he
3 was. There is no such thing as the Defendant consenting
4 to give a blood draw in a Felony DUI. The statute says
5 you must, 2946.

6 His signature is on those forms, every single one
7 of them is not whether or not he agrees. It's his
8 acknowledgment he received a copy. As far as advisement
9 of the implied consent right for concern, what's required
10 is that he be told -- well, I understand he was read those
11 advisement of rights as a far as the Felony DUI advisement
12 of rights, but he was read those rights before the blood
13 draw and I -- the fact that different officers signed the
14 forms, it just goes back to our argument yesterday, Your
15 Honor.

16 There is nothing in any statute in the entire
17 criminal code or case law that has been presented by the
18 Defense either that says those forms must be signed by the
19 individual who read the rights. Deputy Brinson signed the
20 form to acknowledge that the rights had been read as well
21 as Mr. Barclay, he received a copy of those rights.

22 It is just really that simple, Your Honor. They
23 were read to him. They were given to him. He signed for
24 a copy of them later. He doesn't have to sign for the
25 copy before the blood is drawn. There is no law that says

1 that.

2 And, as far as without a warrant, that's the State
3 -vs- Williams because of the evidentiary nature of blood,
4 they don't have to get a search warrant first. This is
5 based on Deputy Brinson's probable cause determination
6 from the scene based on the totality of the circumstances
7 and facts he had at that time. He had probable cause to
8 believe that Mr. Barclay committed Felony DUI.

9 And the statute and the advisement of rights and
10 the blood collection report all say that the blood must be
11 drawn when a law enforcement officer has probable cause to
12 believe. Deputy Brinson was a law enforcement officer
13 with probable cause to believe that he committed Felony
14 DUI.

15 It's not about who the arresting officer is or when
16 he was put in handcuffs. He was not free to leave when
17 Brinson said we need to get the blood based on his
18 observations at the time. That was his probable cause
19 determination that he wasn't free to leave and we needed
20 to get the blood. And, at that point because of the
21 exigent circumstances and the evidentiary nature of the
22 blood, there is no need for a warrant.

23 With regards to the DUI video recording
24 requirements, the statute clearly states that failure by
25 the arresting officer is -- this is 2953 -- failure by the

1 arresting officer to produce a video is not alone for
2 dismissal if, the reference is the emergency treatment
3 exception, this is an incident site video recording. This
4 is no incident site video recording.

5 Deputy Luckadoo(sp) was at the scene and I know
6 this was an issue that Mr. Mason made in his motion,
7 Deputy Luckadoo(sp) is not the arresting officer. And, to
8 the extent he could have recorded anything, he couldn't
9 have because the scene was blocked by fire trucks and
10 ambulance, and his car was used to block off the scene.
11 It wasn't -- it's completely impracticable to think he
12 would drive his car through this emergency scene and back
13 it up to wherever Mr. Barclay was sitting on the ground
14 with his in car camera. It's not a hand held camera he
15 walks around with to video record whatever twenty (20)
16 minutes he may have been there with -- he may have been
17 with him there.

18 So, when the statute says failure by the arresting
19 officer to produce a video, obviously he's not the
20 arresting officer that would be Deputy Brinson which is
21 why Brinson supplied the affidavit and now referring to
22 the one with the different dates not the under advisement
23 forms with the initials. And, then different dates being
24 made may occur on the same dates, he just thought Friday
25 was the 15th.

1 Once they get to the hospital, that's not the
2 incident site anymore. It doesn't matter what happened.
3 That's not the incident site. There is nothing in the law
4 at all that requires reporting at MUSC. And, the probable
5 cause determination happened in the hospital room where
6 there wasn't no camera obviously there were no recordings.
7 So, I think that our affidavits have sufficiently complied
8 with what's required by the statute. I think I have
9 addressed all three of those, Your Honor.

10 *THE COURT:* Thank you. Mr. Mason.

11 *MR. MASON:* We stand on our argument, Your Honor.

12 *THE COURT:* I will go in probably the opposite
13 order. As with regards to number eleven (11) which is the
14 Defendant's motion to dismiss for failure of the State to
15 comply with DUI video recording requirements, citing
16 56-5-2953, it is the Defendant's contention that the
17 arrest should have been videotaped and as a result of it
18 not being videotaped, the charges should be dismissed.
19 The Court finds in that regard that that is a
20 misinterpretation of the statute and it a misapprehension
21 of it's plain and ordinary unambiguous terms and therefore
22 the motion is denied.

23 This statute in and of itself first preliminarily
24 states very clearly that the failure by the arresting
25 officer to produce a videotape required by this state does

1 not alone a grounds for dismissal of any charge made
2 pursuant to section 56-5-2930, 56-5-2933 or 56-5-2945 and
3 that is the applicable section for us which is driving
4 under the -- dealing with driving offenses where alcohol
5 is involved.

6 And, the statute goes on to state if the arresting
7 officer submits a sworn affidavit certifying one of
8 several things, the applicable provision in this case
9 would be that it was physically impossible to produce the
10 videotape because the person needed emergency medical
11 treatment or exigent circumstances existed.

12 The uncontroverted evidence in this record is that
13 there was an accident, that it was significant enough so
14 that one person was air lifted, one person was taken by
15 ground ambulance, and one person died. So, clearly the
16 Defendant in this case was in need of emergency medical
17 treatment and exigent circumstances very clearly existed.

18 The purpose of this statute and what this statute
19 contemplates is at the time that an officer initiates an
20 arrest from his vehicle, meaning at the time that he turns
21 his lights on, that his camera be activated. And that,
22 for example, field sobriety test, the actual stop itself,
23 and the actual arrest be reported for contemporaneous
24 reporting of what actually took place.

25 Here clearly there are exceptions in the statute

1 and they are carved out for a reason. There are
2 circumstances where that is not possible especially in
3 circumstances such as this where an accident happens, it
4 is clear that alcohol is involved, the parties have been
5 taken away from the scene to preserve their health and
6 their life, and it is just not physically practicable to
7 have that type of video situation.

8 The statute does not contemplate in any manner
9 whatsoever once someone has been arrested, you standing
10 them in front of a vehicle and videotaping them. It is
11 just not practicable. And, I find the testimony of the
12 officer credible that being -- misuse his title -- or
13 misstate his title. I will say Officer Burrell where he
14 indicated that if he were to do that, he would have been
15 placing Mr. Barclay in the lane of travel of emergency
16 medical vehicles which would have been impractical and
17 would not really have served the purpose or the public
18 policy of the statute nor it's mandate.

19 And, in addition to that, it is clear based on both
20 officer's testimony that he was not steady on his feet.
21 That he was -- really had to be assisted and was really in
22 no condition to have been propped up basically in front of
23 a vehicle to be videotaped.

24 In addition to that, Officer Burrell also testified
25 that the angle Mr. Mason questioned him regarding it, that

1 it would not have been possible to have recorded him
2 anyway. It would not have been visible. So, based on
3 those observations as well as the clear ordinary meaning
4 of the statute, it is not ambiguous in it's requirements.
5 The fact that the parties needed emergency medical
6 treatment and exigent circumstances clearly existed.

7 The exception to the statute is met and therefore
8 to dismiss on that basis as the statute says, that that is
9 not the basis, the sole basis for dismissal. That motion
10 is denied.

11 As regards to number ten (10), which is Defendant's
12 motion to exclude result of a blood test, for failure of
13 State to comply with Felony DUI advisement of rights and
14 to exclude blood test by reason of illegal seizure of
15 Defendant's blood without a warrant, there are several
16 issues involved in that statutory as well as issues
17 dealing with constitutional rights for a warrantless
18 search that being the drawing of the Defendant's blood.
19 I'll deal with them in opposite order.

20 And, for purposes of the record, I am looking at
21 the statutes as they existed at the time of this offense,
22 not in their current version. So, I have the versions
23 that were available in -- that were in place in 2003.

24 Clearly probable cause existed for a warrantless
25 search that means the taking of the Defendant's blood.

1 Our case law is very clear that of the South Carolina
2 Supreme Court as well as the United States Supreme Court
3 that whenever there is a -- when you're looking at the
4 constitutional validity of a warrantless search or arrest,
5 that when you're making a probable cause determination of
6 that magnitude, that all is required is that whether at
7 that moment the facts and circumstances within the
8 officer's knowledge and of which he or she had reasonably
9 trustworthy information, were sufficient a prudent man to
10 believe being that the Defendant had committed an offense.

11 And, our law is also supported that there can also
12 be probable cause for an arrest when a person is never
13 even charged with what they were originally arrested for.
14 But, in more simplistic terms, we often look at probable
15 cause for a probable cause determination in very normal
16 terms which is that the officer had a reasonable and
17 articulable suspicion that criminal activity was afoot.
18 And, clearly there was probable cause for an arrest for
19 Felony DUI in this case.

20 It is not required than an officer complete a full
21 investigation to make a probable cause determination. The
22 fact that it was relayed that there was an automobile
23 accident on what appeared to be only two cars on the
24 highway. That there were -- that at the scene the
25 Defendant had bloodshot eyes, was slurred in speech, was

1 clearly had the smell of alcohol about him, the fact that
2 a fatality was involved in that incident, as well as the
3 fact that he was injured and a passenger -- an immediate
4 passenger, the deceased person was injured, and the fact
5 that that was communicated was more than sufficient
6 probable cause for -- to trigger the statute for the draw
7 of the blood, as well as to trigger probable cause for an
8 arrest, as well as trigger probable cause for the
9 warrantless search that being the taking of the blood or
10 even a warrantless arrest.

11 But, when we look at the other portion of the
12 Defendant's argument which deals with section 56-5-2950
13 and again I'm referring to the 2003 version not the
14 version that is now in place---

15 MS. KINZELER: Your Honor, I think we clarified the
16 2008 version was different than the 2003 version.

17 THE COURT: It is.

18 MS. KINZELER: You said 2003.

19 THE COURT: I'm relating -- relying on the one that
20 was in place at the time of this incident because that
21 would be applicable.

22 MS. KINZELER: Okay.

23 THE COURT: And, really it isn't that different.
24 It's just that they really provided a clarification of
25 terms of -- it's really about the same. And, just

1 backtracking a little, dealing with probable cause which
2 is 56-5-2946 which is for the submission the testing for
3 alcohol and drugs and I said there was probable cause that
4 triggered the statute, I was referring to the first part
5 of statute says, notwithstanding any other provision of
6 law, a person must submit to either one or a combination
7 of chemical test of his breath, blood, or urine for the
8 purpose of determining the presence of alcohol, drugs or a
9 combination of alcohol and drugs. If there is probable
10 cause to believe that the person violated or is under
11 arrest for a violation of section 56-5-2945.

12 Now, referring back to 56-5-2950, the statute
13 simply requires and it reads as follows, Blood and urine
14 samples must be obtained by physicians licensed -- well,
15 that part really isn't applicable to us. But, it says
16 blood and urine samples must be obtained and handled in
17 accordance with procedures approved by SLED. No test may
18 be administered or samples obtained unless the person has
19 been informed in writing.

20 The only thing the statute requires is that he be
21 informed in writing. It does not say that he has to --
22 that anything has to be signed under the newer portion of
23 the statute. The modification of 2950 requires that no
24 test maybe administered or samples obtained, et cetera, et
25 cetera, unless the person has been given a written copy of

1 and verbally informed. That's really the only language
2 that was included which is a verbally informed portion of
3 the statute.

4 But, without belaboring the hour, I find the
5 testimony of Officer Brinson, the testimony of Martin to
6 be dispositive on this issue. I find them to be credible
7 and I am referring more specifically to that of Officer
8 Martin. It is clear from his testimony that he was
9 dispatched as part of the team investigating this matter
10 after there was an indication that the accident involved a
11 fatality and alcohol.

12 He was dispatched to the Medical University to
13 check on the condition of the Defendant and he was at that
14 time advised that there was going to be a charge of Felony
15 DUI and to supervise the blood draw so to speak and to
16 advise the Defendant of his rights pursuant to the
17 statute. I find credible and believable that he did
18 Mirandized the Defendant verbally from his Miranda card
19 and there is no requirement that an advisement of rights
20 be done in writing.

21 Most times advisements of rights are only done in
22 writing when you're in a formal interrogation in a police
23 station and even then sometimes they don't do that. But,
24 I do find it credible that he did Mirandized him. That he
25 understood those rights and he did not invoke at that

1 time. And, that he didn't make any attempts however to
2 ask him any further questions. I find it credible at that
3 point, he did read the Defendant the implied consent that
4 both of them, according to his testimony, had copies of
5 the form and the Defendant appeared to be reading the form
6 as he -- following along with him and reading the form as
7 he read it to him and that he understood what was going
8 on.

9 As well as the other forms that he dealt with
10 involving circling blood for the draw, advising the
11 Defendant per the statute that he was under arrest, and
12 that samples were being taken for testing.

13 I find Officer Brinson's testimony credible that he
14 again then Mirandized the Defendant when he arrived. That
15 it was his preference to have it in written form. And,
16 that he did that and I find him credible on that point as
17 well.

18 There does not appear from this record to have been
19 any violation of code section 56-5-2950. The State has
20 met it's burden by the preponderance of the evidence that
21 the statute was complied with. That no test were
22 administered or samples obtained until the Defendant had
23 been informed in writing of his specific rights which were
24 enumerated in subsection 135.

25 And, I find Officer Martin's testimony credible

1 that the blood was not drawn by the nurse or the qualified
2 medical professional until those forms had been completed
3 and then afterwards those samples were completed they were
4 then placed in his custody and he signed the transfer of
5 the chain of custody documents when he received those from
6 the nurse.

7 Therefore, the Court finds that the State had met
8 it's burden by a preponderance of the evidence. That they
9 have complied with the Felony DUI advisement of rights in
10 relation to exclude the blood test by reason of an illegal
11 seizure without a warrant and therefore that motion is
12 denied which is number ten (10).

13 Now, there have been a lot of issues raised by the
14 Defendant about who signed the form, when it was signed,
15 or otherwise, the critical issue and what is dispositive
16 of this issue regarding the statute and whether there was
17 compliance, is whether he was informed in writing and that
18 was accomplished. Now, all of these other issues are
19 issues of weight to be decided by the fact finder.

20 I'm not the fact finder, I only decide things by
21 the preponderance of the evidence. And, it's up to the
22 fact finder to decide whether, in fact, it was done,
23 whether it wasn't done, and whether the State has met
24 their burden by -- beyond a reasonable doubt that, in
25 fact, whether the result can be relied upon so to speak.

1 But, clearly there has been compliance in the
2 statute and there would be no basis to exclude the draw --
3 or there was no legal -- there was no constitutional
4 violation or statutory violation by the State in drawing
5 Mr. Barclay's blood for purpose of testing for Felony DUI.

6 In addition to that, it is not usual in a
7 circumstances such as this for several officers to be
8 involved and other officers to start the process for
9 another officer and for the arresting officer to actually
10 be the person who signs the forms. So, clearly there has
11 been no violation of the statute, therefore that motion is
12 denied.

13 As it regards number two, which is the motion --
14 Defendant's Motion in Limine to exclude statements
15 allegedly made by the Defendant in response to post
16 Miranda questioning after the Defendant asserted his right
17 to remain silent. Basically, it's a Jackson -vs- Denno
18 hearing whether certain statements -- whether the State
19 has met it's burden by the preponderance of the evidence
20 that the Defendant was appropriately Mirandized.

21 And, again, without belaboring the hour, I do find
22 it credible that Officer Martin Mirandized the Defendant.
23 That he understood his Miranda rights. That Officer
24 Martin made no attempts to question or to interrogate him
25 other than -- and the law allows officers to ask typical

1 identifying information even if a person invokes after the
2 Miranda. They are still entitled to ask them their name,
3 their age, their weight, their race, their driver's
4 license number, things like that identifying information
5 that they need to fill out forms.

6 For example, on the Miranda form such as their
7 educational level, things like that. They are entitled to
8 ask them things that deal with their health, preserving
9 their life if necessary to get them the appropriate
10 medical treatment. But, of course, they are not entitled
11 if a person invokes to interrogate. That is not
12 appropriate once someone says I want a lawyer, and I want
13 to stop questioning.

14 And, I'm getting ahead of myself, but it's clear
15 that Officer Martin Mirandized him. That he understood
16 his rights. And, that Officer Martin did not ask him any
17 further questions.

18 I do find the testimony of Officer Brinson
19 credible. That he did then Mirandized him a second time
20 upon his arrival. That he preferred to do it in written
21 form and that he did that. And, that the Defendant signed
22 that form understanding his rights and he did not waive
23 his Miranda rights. So, at that point he invoked and said
24 that he wanted to have a lawyer present for any further
25 questioning.

1 And, I do find him credible that at that point, he
2 did not make any attempt to further question or
3 interrogate the Defendant. That at that time he meant --
4 as he indicated, sat somewhere near the foot of the
5 Defendant's bed where there was a table of some sort or
6 some place where he could continue to fill out paperwork.

7 Of course, Officer Burrell was with him. They both
8 testified and I find credible, they don't know whether the
9 Defendant passed out or whether he went to sleep, they are
10 not certain, but at some point he awoke and spontaneously
11 initiated a conversation with them.

12 There is nothing in Miranda that requires them to
13 tell somebody to keep quite. You've invoked your rights.
14 I can't talk to you. Once someone has invoked, if they
15 initiate a conversation with law enforcement, law
16 enforcement is entitled to continue to talk to them. And,
17 because at that point they are allowed to assume that the
18 person voluntarily wants to engaged in a conversation.

19 And, it appears whether he was impaired or not,
20 whether he was still under the influence of intoxicants,
21 it appears that he was sufficiently maybe still impaired
22 as a result of them having to help him leave the hospital,
23 apparently he was sufficiently steady to be able to smoke
24 a cigarette, or to ask to smoke a cigarette to be a
25 presence of mind to be able to make that request and to

1 ask for that.

2 But, according to Officer Burrell and Officer
3 Brinson, he spontaneously asked, where was he? He was of
4 jovial mind at the time and then a certain conversation
5 took place regarding what the State would characterize as
6 certain admissions regarding the incident.

7 Clearly the requirements of Miranda were met.
8 While the Defendant invoked, he spontaneously began a
9 conversation with the officer which the officer engaged in
10 and I don't think the officer once it is -- the officer
11 cannot initiate a conversation. That is not appropriate.
12 But, once the Defendant spontaneously initiates a
13 conversation with an officer, they don't have to -- at
14 least I'm not aware of a case law that says that -- if I
15 am wrong, I stand corrected and I'll probably have to
16 research it some more over the weekend.

17 But, it is my understanding of black letter
18 precedent that once the -- it is no different than when
19 you have the Defendant invoke and the police officer leave
20 the room and they say, listen, go get an officer for me, I
21 want to talk. The officer is not required to say, I can't
22 talk to you because you invoked and you told me you want a
23 lawyer. They can sit in that room and talk to them.
24 Because by virtue of them reinitiating contact with law
25 enforcement, they have indicated a willingness to enter

1 into a conversation.

2 Now, what weight those statements maybe given,
3 whether the State can prove beyond a reasonable doubt that
4 they were actually made, that's a different issue. That's
5 not within ambling of this Court's decision. I'm only
6 required to see if by preponderance of the evidence the
7 State has met their burden. If he was Mirandized?
8 Whether he invoked? Or whether he initiated additional
9 conversation with the police?

10 There is no indication in the record that they
11 initiated conversation with him once he invoked. I don't
12 know -- and again, it would be what the Court would
13 instruct the jury is that, it's up to you whether you --
14 the conversation took place or not. It's up to you
15 whether you believe it took place. What weight, if any,
16 you give it. And, whether you -- whether the State has
17 proven beyond a reasonable doubt he made the statements
18 and that he was Mirandized. And, this Court is only
19 required to look at it at a preponderance of the evidence
20 standard.

21 Now, in terms of the relevance of the statement, I
22 don't -- that has not been raised before the Court. The
23 only thing that has been raised is a Miranda issue and I
24 will have to deal with that if, in fact, it is raised
25 contemporaneous with the State seeking to admit statements

1 because I don't know the case as well as you all and I
2 really don't have a point of reference to determine within
3 the confines of the case if it -- whether it rises to the
4 level of an admission.

5 But at this juncture, the State has met their
6 burden by a preponderance of evidence that they did not
7 violate his constitutional rights and that he was
8 appropriately Mirandized and he reinitiated the contact
9 with law enforcement. So, that motion is denied as well.

10 That leaves us with the reminder of the witnesses
11 on the chain which is number one, is that correct?

12 MR. MASON: Yes, Your Honor.

13 THE COURT: Are those witnesses ready?

14 MS. KINZELER: They are, Your Honor. I am just
15 seeking a point of clarification. Your Honor, I do have
16 Nurse Heath who drew the blood here. At this point my
17 understanding of what's at issue before us at this point
18 is just the SLED portion, but I wanted to confirm what
19 issues we're dealing with at this point so I don't release
20 him if I need him. I don't know what issues we're
21 discussing?

22 THE COURT: I thought the big issue was this gap
23 that Mr. Forsberg has claimed was present?

24 MS. KINZELER: The SLED part is my understanding of
25 the issue?

1 an accurate list?

2 MS. KINZELER: Your Honor, I might have to make
3 some changes to it. I don't believe it will be additions
4 maybe some subtractions, but it's pretty accurate. And I
5 have---

6 THE COURT: ---well, if you make your changes and
7 email it to us to make sure we have it on Monday morning
8 along with your voir dire.

9 MS. KINZELER: Yes, Your Honor.

10 THE COURT: Mr. Mason, if you would likewise make
11 sure that we have your witness list and your voir dire.

12 MR. MASON: Certainly.

13 THE COURT: By Monday morning as well. Are there
14 any other motions that we will need to take up -- I did
15 this to make sure that we have covered all the outstanding
16 motion prior to beginning trial so that we won't have to
17 send the jury in and our other wise, and so that you all
18 can prepare for trial. But, I need to know now if there
19 are any other motions of a pretrial nature that we have
20 not yet covered?

21 MS. KINZELER: Nothing from the State, Your Honor.

22 THE COURT: Anything from the Defense?

23 MR. MASON: Not that I know of at this time, Your
24 Honor.

25 THE COURT: Well, I need you to be more specific

1 than that. You have given me eleven (11) motions, the
2 State had two. You told me that you were working
3 exhaustively on it and that you had covered the issues, so
4 other than those issues that I assume would come up
5 contemporaneously with -- I'm not talking about trial, I'm
6 talking about pretrial---

7 MR. MASON: Nothing that---

8 THE COURT: I anticipate there -- yeah, I
9 anticipate there are going to be contemporaneous
10 objections and we'll have to take those up, I am not
11 expecting you to anticipate that. I'm talking about
12 pretrial stuff that affects your ability to prepare?

13 MR. MASON: No, Your Honor.

14 THE COURT: Okay. Now, just so you all know, I do
15 not take speaking objections, and what I expect you to do
16 to have a clean record, if there is an objection, I expect
17 you to stand and say you have objection. I will ask you
18 the basis of the objection which I do not take speaking
19 objections, so you will need to know the rules. You will
20 need to be able to state whether it's leading, pitting,
21 relevance, you know, because I'm -- juries are very
22 peculiar. They take our lead, they read our faces, and I
23 don't like extraneous comments being made in their
24 presence that affect their fact finding ability. I don't
25 think that is good for the State and it can also be

1 extremely prejudicial to a Defendant, and I don't like it.

2 So, I'm not the only person that does that. And, we
3 do it for very specific reasons and also limit how much
4 the Court has to talk. Because again juries take our lead
5 and they look for approval for the Court in other words
6 how they handle cases. I don't have an opinion about the
7 facts of the case, so I would not ever want anything that
8 I would say in ruling on an objection to influence their
9 fact finding factors. So, I like to be able to simply say
10 overruled or sustain and that's why I do it that way
11 because I don't want them trying to extrapolate anything
12 about what I am saying that I have any position about the
13 case.

14 So, I will expect you all -- if you have an
15 objection to stand. I will ask you for the basis of it?
16 If I need argument, I have mics at my bench. Everything
17 is recorded, but if you need to have a more protracted
18 argument, I will send the jury out. But, if I don't need
19 argument, I won't ask for. And the rules, of course,
20 provide that argument is to aide the Court in making a
21 decision. And most things, relevance and other stuff, if
22 I need clarity I'll ask you, but otherwise I'll try to
23 make a quick ruling so that we can keep the case moving
24 with some momentum.

25 Now, I can't remember who my Court Reporter is on

1 Monday and my secretary told me, but if I told you I
2 remembered it, I'd be dishonest with you. But, if you
3 could come -- I don't have to qualify on Monday, but I
4 have asked that we get to pick first. The strikes are
5 five and five. So, I think though that we probably will
6 need two alternates.

7 I know that Civil has a week long construction case
8 of some type, but I think that subs had already started
9 settling out, but once that starts happening you know the
10 case will generally settle or they will be down to one,
11 Defendant probably. But, if you all have any exhibits, I
12 asked the Court Reporter to get here by 9:30. Usually
13 role -- well, she might be here by 9:00 though, I'm
14 thinking.

15 But, if you all need to mark any exhibits or you
16 have exhibits that you want to try to get marked before
17 trial, let Chanda or Hope know so that we can arrange to
18 have you in the courtroom -- we are going to be here on
19 Monday so that you can get as many things premarked as
20 possible and that will also make things go a whole lot
21 more smoothly because as you know the Court Reporter can't
22 talk, write and type.

23 They like that better, too, so that they can make a
24 detailed list of exhibits and that helps them in making
25 sure that they have a complete record. So, to the extent

1 that you all might be able to talk about exhibits and talk
2 about things that you all can agree to admitting, that
3 also helps because at the beginning we can go ahead and
4 indicate those things that have been admitted by agreement
5 and those things that are in contest so that -- it just
6 gives the Court Reporter a much better handle on it.

7 And, generally role call will begin about 9:30 so
8 if you want to try and get anything marked, you are going
9 to need to come before then. The jury, I think, is
10 supposed to report at 9:00, is that right? But, they
11 usually don't start role call until about 9:30. Yeah,
12 9:30 is about role call -- when role call starts. And,
13 that usually takes about what thirty (30) minutes, maybe
14 fifteen (15), thirty (30) minutes?

15 So, you all might want to, if you can, come a
16 little earlier and get your exhibits marked, okay. Is
17 there anything else that we need to take up before we
18 adjourn for the evening from the State?

19 MS. KINZELER: No, ma'am.

20 THE COURT: From the Defense?

21 MR. MASON: No, Your Honor.

22 THE COURT: Y'all have a good weekend. Try not to
23 work to hard and I'll see y'all Monday.

24 MS. KINZELER: Thank you.

25 THE COURT: You're welcome.

1 So Number 200 will lead and sit at the alternate seat,
2 and Number 23 will be a part of the main panel. And bring
3 in Number 18 as the alternate -- I mean as the foreperson.
4 I'm sorry.

5 I can remind you. Just go ahead and bring them all in.

6 THE CLERK OF COURT: Okay.

7 THE COURT: And then I will read it.

8 (WHEREUPON, the jury entered the courtroom at
9 approximately 2:10 p.m.)

10 THE COURT: Number 18, I am going to need you to come
11 back and sit in this first chair for me. I would like you
12 to do that before you have to step over anybody.

13 And Number 23 will be seated as a main part of the
14 panel. And Number 200 will be seated as the alternate. You
15 all can take your seats.

16 Number 200 is the alternate, correct?

17 THE CLERK OF COURT: Two forty -- 240 is the alternate.

18 THE COURT: Number 23 is now part of the panel, so she
19 will be seated there. And our alternate, slip down to the
20 last chair. And our foreperson will be seated in the first
21 chair. Thank you. And if we can pass out the notebooks and
22 pens for me.

23 Ladies and gentlemen, there is a sticker on the front
24 of those notebooks. If you would write your juror number on
25 that sticker so that you will be able to identify which

1 notebook belongs to you.

2 During the course of this trial you will be given the
3 opportunity to take notes. And I will give you some
4 additional instructions regarding that near the conclusion
5 of this introductory instruction to you.

6 Does everybody have a pen, or do we need to pass some
7 more pens?

8 Ladies and gentlemen, you have been selected for the
9 case of the State of South Carolina versus Walter Douglas
10 Barclay.

11 What I will now say is intended to serve as an
12 introduction to the trial of this case. These remarks are
13 not a charge on the law of this case.

14 And for those of you, just by way of explanation,
15 charge is a legal term of art which means instruction. So
16 when you hear me use the word charge, that simply means
17 instruction. And I will often use those terms
18 interchangeably.

19 I will instruct you on the law applicable to this case
20 at the end of the trial before you retire to consider your
21 verdict.

22 This is merely an explanation of the procedure that we
23 will follow in the trial of this case so that you may better
24 understand what is happening.

25 The defendant is charged by two indictments filed in

1 this case, filed in this court, with the crimes of felony
2 DUI, the elements of which I will explain to you at the
3 conclusion of the case after closing arguments. At that
4 time I will instruct you on the elements of that offense.

5 The indictment, ladies and gentlemen, is simply the
6 charge by which a case is brought into this court. And it
7 is not in any sense evidence of any of the allegations it
8 may contain.

9 The defendant has pled not guilty to the indictments.
10 The State therefore has the burden of proving each of the
11 elements of the indictments beyond a reasonable doubt. And
12 it will be your duty, ladies and gentlemen, to decide
13 whether the State has met that burden or not.

14 Your purpose as jurors is to find and determine the
15 facts. You are the sole judges of the facts. If at any
16 time I make any comment regarding the facts, you must
17 disregard it.

18 You are to determine the facts from the testimony you
19 hear and the other evidence that will be introduced during
20 the course of these proceedings. It is up to you to
21 determine the inferences which you feel may be properly
22 found from the evidence.

23 It is especially important that you perform your duty
24 of determining the facts diligently and conscientiously.
25 Because ordinarily there is no way to correct an erroneous

1 determination of facts made by a trial jury.

2 On the other hand and with equal emphasis, the same law
3 that makes you the judges of the facts makes me the judge of
4 the law.

5 The law as given by the court is the only law you may
6 consider. You must accept and follow it even though you may
7 disagree with it.

8 The court cannot tell you what the facts are, and you
9 cannot disagree with the court about what the law is or what
10 the law should be.

11 Your responsibility, ladies and gentlemen, is to take
12 the law as I instruct it and apply it to the facts as you
13 find from the testimony of the witnesses and the other
14 evidence that is introduced.

15 After doing that, will render your verdict, a true and
16 just verdict under the solemn oath that you have taken as
17 jurors in this case.

18 Until I advise you to begin your deliberations you must
19 not discuss this case with anyone. That includes your
20 fellow jurors, your friends, your family members or anyone
21 involved in the case. After the case is submitted to you,
22 you must discuss it only in the jury room with your fellow
23 jurors.

24 The attorneys and the parties have been advised that
25 they should not speak with you at all. So if you should see

1 them around about the courthouse even in the garage or in
2 the elevators or even at a local restaurant while you were
3 eating lunch and they don't speak with you, please don't
4 think they are being unfriendly or untoward. They are
5 simply strictly following the court's instructions. Again,
6 we would not want an innocent conversation to be observed
7 and misinterpreted.

8 During the trial you are not to read, listen to or
9 watch any news reports about this case. That includes
10 anything that could be in the newspaper, radio, television
11 or Internet.

12 And you are not to do any independent research of any
13 type regarding any issue or matter involved in this case on
14 the Internet. That includes any medical terms that may be
15 used, any sort of issue that may be raised, even something
16 as simple as going to Google Earth and looking up an
17 intersection or a street location would be inappropriate.
18 So you are strictly instructed that you are not to do any
19 independent research of any type on the Internet.

20 You must not consider anything that you may have read
21 or heard about this case outside the courtroom, whether
22 before or during the trial.

23 It is important and essential that you maintain and
24 keep an open mind and not decide any issue in this case
25 until all of the evidence has been presented, the parties

1 have made their closing arguments, and I have instructed you
2 on the law of this case.

3 It is your solemn responsibility to determine the guilt
4 or innocence of the defendant. And your verdict must be
5 based solely on the evidence as it is presented to you in
6 this trial and on the law as I will instruct you during and
7 at the close of this trial.

8 In just a moment the solicitor will make an opening
9 argument in which they will outline to you what they believe
10 the issues to be in this case, or as we often refer to it,
11 what they believe the evidence will show in this case.

12 The attorneys for the defendant may also make an
13 opening statement, although they are not required to do so.

14 Keep in mind, ladies and gentlemen, that what the
15 attorneys say during their opening arguments is only their
16 contention as to what they believe the evidence in this case
17 will show.

18 And be reminded that their opening statements are not
19 evidence in this case. It is only their contention as to
20 what they believe the issues are.

21 The evidence in this case will be presented to you by
22 the testimony of sworn witnesses from the witness stand
23 and/or by exhibits that may be introduced into evidence.

24 From time to time during the trial you may hear one of
25 the attorneys say Your Honor I object. Just as in sports,

1 business or any other structured activity, there are certain
2 rules that we must obey in the presentation of evidence.
3 These rules ensure that you receive the most trustworthy and
4 reliable evidence available.

5 An objection is the procedure that an attorney uses to
6 call a possible violation of these rules to my attention as
7 the judge of this court. And for this reason you should
8 never hold an attorney's objection against them nor should
9 you conclude from the court overruling while sustaining an
10 objection that I favor one side or the other.

11 Also from time to time you may hear one of the
12 attorneys say Your Honor we have -- we believe we have a
13 question of law or a matter of law to discuss or they may
14 ask to approach the bench or I may ask them to approach the
15 bench. Or it might be necessary for us to excuse you from
16 the courtroom for a short while while we discuss matters of
17 law.

18 The reason we do this is because you are the finders of
19 the facts and sometimes when we are discussing matters of
20 law it might be necessary for me to make some comment about
21 the facts in connection with ruling whether a statute or
22 evidentiary rule or a procedural rule applies. And for this
23 reason we exclude you from the courtroom so that in no way
24 will you be influenced by anything that the court may say or
25 do in connection with the facts.

1 And when we have bench conferences you will hear this
2 noise.

3 (WHEREUPON, a demonstration of the noise was played).

4 THE COURT: It is directly over your ears. It is
5 designed to interfere with your hearing. I tell you that
6 because I had a juror one time we were having a bench
7 conference and he raised his hand and I said yes, sir, and
8 he said I can't hear you. And I said you are not supposed
9 to hear us.

10 We do bench conferences lots of times because as you
11 all know that hallway behind us is about a city block long.
12 This building sits pretty much square on a block. And so to
13 send you all the way back down to the court -- to your jury
14 room and back is a pretty long walk for you.

15 So sometimes if we know a discussion is going to be
16 relatively short, to minimize time and your inconvenience of
17 getting up and down, we will have bench conferences.

18 So know that we do that to protect your impartiality
19 and so that you will not be influenced by anything that we
20 may say or do in connection with the facts of the case.

21 In determining what the true facts are in this case you
22 must decide whether or not the testimony of the witness or
23 witnesses is believable.

24 It is my responsibility to rule as a matter of law as
25 to whether certain testimony is admissible at all or not.

1 But once it is admitted, whether or not you believe it is
2 solely a matter for you to determine.

3 In deciding whether to believe a witness you have the
4 right to consider the interest of any witness, the bias of
5 any witness, the prejudice of any witness, the opportunity
6 for the witness to have seen the matters and things about
7 which the witness may testify, and the way the witness acts
8 on the witness stand, something we commonly refer to as
9 demeanor.

10 You have a right, ladies and gentlemen, to consider
11 anything that is in the record that will help you evaluate
12 the testimony of the witnesses.

13 That means that it is your duty to pay close attention
14 to them, to listen to them, and to listen to the attorneys
15 in the court.

16 Although I know it is very difficult sometimes not to
17 allow your thoughts to wander, especially in a room that
18 doesn't have any windows, we would ask that you give strict
19 attention to the testimony and the evidence so that at the
20 end of the testimony after the arguments of the attorneys
21 and the charge on the law is given by the court you will
22 then be in a position to determine what the true facts are
23 and apply the law to those facts and thus render a true and
24 just verdict in this case.

25 During the course of this trial you will be given the

1 opportunity to take notes. Note taking is a privilege that
2 you may choose to exercise or choose not to exercise.

3 Please do not feel you are required to take notes. Not
4 everyone finds note taking helpful to them. If you should
5 decide to take notes, please don't try to record everything
6 that is said. It is really physically impossible.

7 Even an average speaker speaks at the rate of 200 words
8 a minute. So as you can well imagine it would be physically
9 impossible to take down something verbatim.

10 Even if you thought you were doing it correctly if you
11 were to go back and listen to it -- I know sometimes I put
12 the end of a sentence at the beginning of a sentence. And
13 we tend to process information the way we hear it, and we
14 tend to process it the way we would speak. And so even if
15 you thought you were taking it down verbatim you would be
16 surprised that you were not.

17 And in addition to that, as the fact finders it is
18 absolutely essential that you rely on your powers of
19 observation.

20 So we would not want note taking to become a
21 distraction to you and to dilute your ability to observe the
22 witnesses and to watch them as they testify so that you can
23 make the appropriate determinations regarding their
24 credibility.

25 You may want to keep an outline of the main points that

1 are being made and the main arguments that are being made so
2 that when you retire to deliberate regarding this case you
3 will be able to allow those notes to refresh your memory.

4 Please be reminded that your notes are for your
5 specific and your individual purposes. They are only to be
6 used to refresh your own memory. They are not to be shared
7 with anyone else.

8 And also please be reminded that your notes should not
9 be considered any more reliable than someone else's memory.
10 Someone else's memory should be considered just as reliable
11 as notes that may have been taken by another juror.

12 Also during breaks and recesses we will leave your
13 notes in your seats. And we do that so that there is no
14 temptation to prematurely discuss any matter that you may
15 have heard prior to a break.

16 And please rest assured that during the evening
17 recesses your notes are under lock and key and your privacy
18 will be protected. In other words, no one will have the
19 ability to look at your notes or otherwise.

20 Madame Fore Lady, it is your responsibility to fill out
21 the verdict forms and to write out any notes that the jury
22 may have during deliberations. But I will give you further
23 instructions regarding that at the conclusion of the case.

24 Ladies and gentlemen, the foreperson is a completely
25 random process that the court employs to make sure that a

1 cross section of the community is represented.

2 That person does not have any greater vote or voice
3 than you do. It is simply an administrative function. They
4 fill out the verdict form and they write out any questions
5 that you may have during deliberations.

6 And again, I emphasize that that person does not have
7 any greater vote or voice than any other juror.

8 In order to preserve everyone's rights I am going to
9 give the attorneys an opportunity to take exception to
10 anything that the court has said by way of opening
11 instructions. Are there any exceptions from the State?

12 MS. KINZELER: Nothing from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. MASON: No, Your Honor.

15 THE COURT: You may be proceed. Ladies and gentlemen,
16 I would ask that you give the attorneys your undivided
17 attention.

18 MS. KINZELER: May it please the court.

19 THE COURT: Yes, ma'am.

20 **OPENING BY MS. KINZELER:**

21 December 8th, 2008 is a day that most people don't
22 remember from any other day unless it's your birthday or an
23 anniversary.

24 Alvaro Garcia, his family and his three kids and his
25 wife, they remember that day. Jose Devila, he remembers

Opening by Ms. Kinzeler

1 that day.

2 That is the day that the defendant chose to drink and
3 drive ultimately leading to the death of Alvaro Garcia and
4 nearly killing Jose Devila.

5 On that date, December 8th, 2008 in Edisto Island the
6 defendant was out at his farm drinking alcohol. Around six
7 o'clock in the afternoon he decided to pack it up and go
8 back to his house a couple of miles down the road.

9 When he is traveling down Point of Pines Road a little
10 bit after 6:00 p.m. in his big Chevy Silverado pickup
11 truck -- and he is not the only one on Point of Pines Road
12 that night. Alvaro driving his Geo Prizm with his passenger
13 Jose, and his friend that he spends every day with for five
14 years, were also going down Point of Pines Road.

15 They had just turned on Point of Pines Road from
16 Highway 174 coming home from work that day. And no sooner
17 did they turn and travel a little ways down Point of Pines
18 Road when Jose sees this big truck with all these lights
19 coming into their lane.

20 And it is too late for him to warn his friend. Before
21 they know it this big Chevy Silverado hits this little
22 Geo Prizm with Alvaro as the driver head-on offset - not
23 head-on, head-on - but head-on offset killing Alvaro within
24 minutes. Jose had to be airlifted to MUSC to be able to
25 save his life.

1 Pay attention today and throughout the week to what you
2 hear. And pay attention to what you don't hear. Pay
3 attention to promises that are made and promises that are
4 broken.

5 And I am promising you to present all the evidence we
6 have from this witness stand through photos, exhibits,
7 tests.

8 You are going to hear from several witnesses throughout
9 the week. Sometimes you might be thinking I don't know why
10 we have to listen to all of this. You may not understand
11 it. But at the end it will all come together.

12 You are going to hear from witnesses that were out
13 there at the scene who got there within minutes. You are
14 going to hear from firemen, EMS workers, what they saw, what
15 they heard, what the scene looked like, about their
16 interactions with the defendant, what he smelled like, what
17 he talked like, what he acted like.

18 You are going to hear from some medical personnel. You
19 are going to hear about Jose's injuries. You are going to
20 hear about the defendant's, the cut on his head.

21 You are going to hear from people who handle evidence.
22 You are going to hear from people from SLED, South Carolina
23 Law Enforcement Division, about these tests, what was done
24 with all of this evidence and what it all means.

25 And at the end of the case you are going to be asked to

Opening by Ms. Kinzeler

1 go back to that jury room and deliberate to reach a verdict.
2 And the word verdict literally means truth. In Latin it
3 means truth. You are going to hear a lot about reasonable
4 doubt in this case.

5 As jurors you are here not to look for reasonable
6 doubt. You are here to seek the truth. And in this state,
7 South Carolina, as in every other state when you drive under
8 the influence and you kill somebody and you seriously injure
9 another one to the point where he nearly dies, that is
10 called felony DUI; and that is what he is charged with.

11 And at the end of the State's case I am convinced that
12 y'all are going to go back there and find the truth, one
13 truth in this case, and that is that the defendant is guilty
14 of both charges.

15 THE COURT: You may proceed.

16 MR. MASON: May it please the court, Your Honor.

17 THE COURT: Yes sir.

18 MR. MASON: May I locate the podium ---

19 THE COURT: Yes, sir.

20 MR. MASON: Thank you.

21 **OPENING BY MR. MASON:**

22 The State should not convict Doug Barclay of felony DUI
23 unless they can prove that he caused this accident. He did
24 not cause this accident.

25 This case is about what happens when law enforcement

1 jumps to conclusions in a very chaotic situation.

2 December 8th started out like any other day. Doug got
3 up early. He made his wife breakfast and coffee. It was a
4 working day. It was a Monday. He was going to go to work
5 like any other person does on a Monday. He is a carpenter
6 and a farmer. His day started out at a carpentry shop and
7 then to the farm.

8 While he had the benefit of going to three years of
9 college he chose to work with his hands instead of behind a
10 desk.

11 He met Rebecca who is known as Bec. They have been
12 together for 25 years. They don't have a piece of paper
13 that they are married, but they are committed to one
14 another.

15 They lived in a small town called Bennettsville, South
16 Carolina where Doug farmed and Bec ran a rural family
17 medical practice there.

18 In 1985 they moved to Edisto Island. It was the
19 perfect fit for them. Doug could do his carpentry work and
20 his farming and Rebecca could provide medical services in
21 this small rural community.

22 They loved the coast. Doug built Rebecca a small
23 office just off of Highway 174 behind the bank. They also
24 built a modest house close by. Bec has provided medical
25 care to just about everyone who lives on this small island.

Opening by Mr. Mason

1 Doug and his partner Alan had a cabinet shop and they
2 did trim carpentry work to houses on Edisto Island and
3 Edisto Beach.

4 Doug and Rebecca never had any children. In a way,
5 they made up for this by getting deeply involved in their
6 community. If somebody was sick they went to Rebecca. If
7 somebody needed a helping hand they went to see Doug
8 Barclay.

9 Doug and Rebecca have two mules, a donkey, a horse, a
10 dog. And like many other people they are animal lovers. It
11 is because of that that on Sunday, December 7th, 2008 they
12 sat down and watched a video that instructed Doug on how to
13 install something called an ElectroBraid fence. And
14 ElectroBraid fence is a fence they keeps animals in the
15 pastures without shocking -- without hurting them with
16 barbed wire.

17 In order to install this, fence posts have to be
18 installed and altered with a tractor. Wire insulators have
19 to be installed and wire needs to be pulled. They needed to
20 make sure they did this right. So the night before this
21 accident they watched this video together.

22 After going to the cabinet shop for some early work,
23 Doug got out to the farm about 10:00 a.m. in the morning.
24 He worked all day on the tractor digging holes, planting
25 posts, nailing insulators, pulling and attaching over a

1 thousand feet of ElectroBraid fence.

2 At the end of this day Doug was very proud of his work.
3 He was also tired after a long day at work. You will hear
4 testimony that at about 4:30 to 5:00 Doug called Rebecca's
5 office and talked to her medical assistant, a lady named
6 Barbara Jones, and asked that Rebecca come out to the farm;
7 Dr. Borders, come out to the farm and bring with her some
8 apples to feed the mules.

9 The farm is located on Clark Road. It is about three
10 miles from Rebecca's office, about four miles from the
11 couple's house.

12 Rebecca finished with her patient. And as requested,
13 she got apples for the mules and changed her clothes and she
14 headed out to the farm.

15 When she got there she saw the progress that Doug had
16 made. He was proud. She was impressed. He had put in a
17 thousand feet of fence. They surveyed the work. Doug was
18 hungry. It was about dark. That December day sun set about
19 5:14 p.m.

20 Doug and Rebecca decided to go home probably so to
21 throw some chicken on the grill, steam up some vegetables
22 for dinner; something like that.

23 Rebecca left first. Doug stayed to lock the gate and
24 planned to see her at home in a few minutes. Because of
25 what unfolded just minutes later, to this day Doug thanks

Opening by Mr. Mason

1 God that Rebecca left before he did.

2 Doug made sure the mules were in the barn. He got his
3 dog in the truck. He drove up to the gate. Pointing his
4 headlights to the gate so he could see where he was going he
5 took the chain. He wrapped it around the gate. He locked
6 it. He got back in the truck to head home.

7 He drove down Clark Road, a poorly maintained dirt road
8 that goes through a field like you would expect sometimes in
9 the country to see turkey or deer along this road.

10 As he left the farm Doug was not in a hurry. He was
11 never in a hurry. Like most other folks out there on Edisto
12 they are on what they call Edislow time. You might have
13 seen one of those bumper stickers.

14 He always enjoyed the short trip between the farm and
15 his home, a trip he had made daily for over ten years. He
16 was there daily because when you have animals you have to go
17 feed them. He did not just feed the animals. He and Bec
18 spoiled them with apples and treats.

19 He reached the end of the dirt road where it meets a
20 paved road called Point of Pines Road. Doug knows Point of
21 Pines Road like the back of his hand. He knows every rut,
22 every turn, every beautiful oak tree, every driveway.

23 He knows the people that live in the houses along the
24 way. He knows the cars that he would see passing on that
25 road. This is the beauty of living in the country. This

1 was the beauty of that road.

2 As Doug drove home he was reflecting on the progress he
3 had made that day installing the fence. He had wondered if
4 he'd finish the job the next day. He pondered what Rebecca
5 and he might do that evening. It had been a good day, and
6 he was ready to get home and relax after a hard day's work.

7 December 8th, 2008 probably started off for Alvaro
8 Garcia and Jose Devila just like it did for most folks. You
9 will hear testimony that Mr. Garcia and Mr. Devila lived
10 together and worked together. They lived off Clark Road
11 which is the same road where Doug had his farm.

12 This same morning after Doug had made coffee and
13 probably while Doug was heading to his farm to pull fence
14 Mr. Garcia had driven with Mr. Davila to Legare Road where
15 they parked the Geo in the driveway of their cousin Jose
16 Lecona's house.

17 Mr. Garcia, Mr. Lacona, then walked from Lecona's house
18 towards a neighborhood called Jeremy Cay to do some
19 landscaping work. They walked from Mr. Lacona's house
20 because they couldn't park a car inside of the Jeremy Cay
21 gate.

22 You will hear testimony that Mr. Garcia who did not
23 have a South Carolina's driver's license had to drive that
24 day because his boss did not come to pick him up like usual.
25 He did not usually drive. He did not have experience

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1 driving.

2 Once the men finished their work at around 4:30 or
3 5:00, this is Mr. Garcia and Mr. Davila, they walked a
4 half-mile from Jeremy Cay back to Mr. Lacona's house.

5 The testimony will be that once they got there there
6 was beer and that Mr. Davila took a beer for the road when
7 he left just before this accident, a Bud Light beer.

8 At the time of this accident Mr. Davila had an open can
9 of Bud Light with him in the car, which the police
10 investigation failed to reveal. You will see photographic
11 evidence of this police mistake.

12 You will hear testimony that the men knew that drinking
13 in a car was illegal. You will also hear testimony that Mr.
14 Garcia did not like to drive at night and was uncomfortable
15 doing so.

16 And the reason why he was uncomfortable doing so was
17 that just before this accident he had run his car off the
18 right side of Point of Pines Road 600 feet away from where
19 this fatal accident happened, just months prior.

20 Now when they left Mr. Lacona's house with Mr. Garcia
21 behind the wheel it was dark. The pair proceeded away from
22 the beach on Highway 174 on their trip back to their house
23 on Clark Road while Mr. Davila was drinking the beer.

24 Eventually the Geo reached the intersection of Highway
25 174 and Point of Pines Road where the old Post Office

1 Restaurant is located.

2 Mr. Garcia turned right and began heading east on Point
3 of Pines Road. At the same time, Doug was driving in his
4 lane, driving his truck toward Highway 174.

5 Just before 6:06 on the evening of December 8th, 2008
6 it was a mild 52 degrees. And the sun was gone. Doug had
7 his low beam headlights on.

8 You will hear testimony that Point of Pines Road is a
9 two-lane rural road, one lane in each direction. There are
10 no street lights. In most places it is divided by a double
11 yellow line, which is just fine because there is no need to
12 pass on this road.

13 As Doug approached the slight curve on Point of Pines
14 Road the Geo being operated by Mr. Garcia approached in the
15 opposite direction.

16 There are a few things the evidence will show that you
17 need to know. The truck Doug was driving is a much taller
18 vehicle than a Geo Prizm. Point of Pines is a narrow road.
19 The lanes are ten feet or a little less wide in each
20 direction.

21 Attempts to widen rural roads in places like John's
22 Island, Wadmalaw, and Edisto they have shoulders to make
23 them safer, are often met with protest because this would
24 involve removal of ancient trees. Most of these island
25 roads are narrow without shoulders. And the island

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1 residents like it that way.

2 With the lanes being narrow the cars pass close to each
3 other. Everyone knows that when two cars pass in opposite
4 directions at night their headlights point towards each
5 other, but this is particularly true where the road curves
6 to the left. This is also particularly true where one
7 vehicle is higher than the other.

8 Everyone who has a South Carolina driver's license
9 should be familiar with the South Carolina driver's license
10 manual.

11 This manual states that when two cars approach such
12 that their headlights come toward one another the proper
13 thing to do is to slow down and look to the right to the fog
14 line, which is the white line on the right of the road, and
15 watch the oncoming vehicle in your peripheral vision.

16 You will hear testimony that Jose Devila was sitting in
17 the passenger seat of the Geo, remembers being blinded by
18 the headlights of Doug's truck.

19 He will admit to you that while the beam of light from
20 Doug's higher headlights flooded the interior of the Geo as
21 it rounded the curve rather than doing what the driver's
22 manual said to do Mr. Garcia, an inexperienced unlicensed
23 driver who did not like to drive at night, continued to
24 drive without knowing the exact location of his vehicle in
25 relation to the center line and as he entered the curve on

1 that dark, narrow road he came into Mr. Barclay's lane.

2 I submit to you that the evidence will show that Mr.
3 Garcia's vehicle came into Mr. Barclay's lane before this
4 accident. The evidence will show that neither man had time
5 to react, that is to brake or steer to avoid the accident.

6 You will hear that cars coming toward each other at a
7 speed of 35 to 40 miles an hour are closing the gap at a
8 rate of 180 feet a second. This is more than half a
9 football field each second.

10 This rapid convergence of vehicles created a sudden
11 emergency. A sudden emergency is just that, something
12 unexpectedly suddenly happens and you must react to avoid
13 it.

14 You will hear testimony that a very important thing in
15 determining how an accident happened is to consider how the
16 people involved reacted when they were faced with a sudden
17 emergency.

18 I believe the evidence you will hear will lead you to
19 the conclusion that in this case the sudden emergency was
20 that the Geo came into Mr. Barclay's lane before the
21 accident.

22 Doug had to react, but he didn't have enough time to
23 stop or make a successful evasive action to avoid the
24 collision.

25 Instead there was a terrible accident. The Geo hit the

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1 front side, front driver's side of the truck. The truck
2 being larger and heavier pushed the Geo back and spun it
3 around where it ended up on the left side of the road.

4 As the cars separated from each other Doug's truck went
5 into the hood of the Geo. Doug's truck flipped over. It
6 rolled and skidded sideways until it stopped in the road.
7 During the accident the airbag deployed in Doug's truck.

8 Doug's head was smashed into the rear window and was
9 gashed open by the impact. The airbags in the Geo also
10 deployed.

11 Sadly Mr. Garcia was killed and Mr. Davila was injured.
12 The instant this accident happened changed lives forever.
13 But neither Doug or Mr. Garcia intended for this to happen.
14 It was just an accident.

15 And I submit to you that despite the State's position
16 on how this collision occurred, you will not hear any
17 evidence sufficient for the State to carry its burden beyond
18 a reasonable doubt that Doug caused this accident. Doug is
19 not guilty of felony DUI.

20 As you can imagine the scene of this collision was a
21 mess. There were cars in the road, debris in the road,
22 people from both vehicles injured. You will hear testimony
23 from the very first people to arrive at the scene.

24 Eyewitnesses, Ray Woods and his son Brian, lived on
25 Point of Pines Road. Just after the accident they had left

1 their house headed towards the beach when they came upon the
2 accident. They were the first two to arrive.

3 Edisto is a small community, a tight-knit community.
4 Everybody knows each other. The Woods will tell you they
5 knew Mr. Garcia and Mr. Davila. They also knew Mr. Barclay.

6 The Woods stopped to help. They went to the Geo which
7 was the closest car to them. Brian Woods helped Mr. Davila
8 out of the car.

9 You will hear testimony that while he was doing that he
10 noticed the open beer can on the floorboard of the Geo, the
11 one the police missed, and that Mr. Davila appeared drunk to
12 him.

13 You will hear uncontradicted testimony from Mr. Woods
14 that Mr. Davila's biggest concern was the location of his
15 cell phone at the time.

16 Ray went and helped Doug out of his truck. Doug's head
17 was bleeding. The airbag had deployed. And his truck had
18 rolled over.

19 Doug stayed by his truck. You will hear testimony from
20 Ray Woods that Doug did not appear to be impaired
21 immediately after the accident. Mr. Woods will testify that
22 Doug looked and acted like somebody who had just been in a
23 terrible accident.

24 The next person to arrive was Erika Gatch, an Island
25 resident who used to work at the Enterprise Bank. She

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1 assisted in getting someone to notify Dr. Borders about the
2 accident.

3 She stayed near Doug until the time he was put in the
4 ambulance. She was there when the police officer -- the
5 first police officer arrived. She will testify that Doug
6 did not appear to be under the influence.

7 Next to arrive was a hunter named Lewis Seeds from
8 Wadmalaw Island. You will hear from Mr. Seeds that on
9 December 8th, 2008 his day included some deer hunting at his
10 father-in-law's property on Edisto Island. The driveway to
11 his father-in-law's property is right near where this
12 accident happened.

13 Just before this collision Mr. Seeds was in a tree
14 stand when he heard a terrible crash. He came out of the
15 tree stand, drove down to the end of the driveway to help.
16 He was the fourth person on the scene.

17 Because Doug's truck was closest to the driveway Mr.
18 Seeds who didn't know any of these parties -- he is from
19 Wadmalaw. He didn't know Doug. He didn't know any of the
20 people in the other car.

21 He went up to Doug to see if Doug was all right. Mr.
22 Seed's testimony will be he stood with and talked with Doug,
23 that Doug answered his questions clearly and coherently.
24 Mr. Seed's will also testify that Doug did not smell of
25 alcohol nor did he appear to be under the influence.

1 The fifth person to arrive at the scene and the first
2 law enforcement witness on the scene was Deputy Dustin J.
3 Luckadoo. He is the Charleston County Sheriff's Office
4 deputy that works Edisto Island. He got there at about
5 6:16, about the same time as the first EMS worker.

6 When EMS arrived it was 6:18 and they immediately begin
7 caring for both Mr. Davila and Mr. Barclay, the medic that
8 helped Doug bandage his head while Ray Woods helped.

9 Doug was laid on the ground on a spine board as a
10 standard precaution. His head was secured in blocks. He
11 was triaged by the EMT. Evidence will show that Doug was
12 alert, oriented, and cooperative.

13 During this point Doug asked for someone to call
14 Rebecca. But she could not be reached because she was not
15 home yet.

16 Despite the eyewitness's testimony from the first four
17 non-law-enforcement people on the scene, the people who were
18 with Doug and Mr. Davila, witnesses from the State will
19 testify that Doug appeared to be under the influence. They
20 may even testify that Doug was yelling at the scene.

21 I submit that this testimony will not be consistent
22 with the testimony of other non-law-enforcement eyewitnesses
23 on the scene who saw Doug before he was taken from the scene
24 in an ambulance.

25 Deputy Luckadoo, who knew Mr. Davila, did not detect

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1 the open alcohol in the Geo nor did he note it anywhere in
2 the fact Mr. Davila had been drinking.

3 The evidence will show that a medic named Joshua Simms
4 took care of Mr. Davila. And this is -- this is a critical
5 part of the case. This evidence is that Mr. Davila
6 specifically told Joshua Simms he did not know how the
7 accident happened. And this is written in the incident
8 report Mr. Simms prepared immediately following the
9 accident.

10 EMS carries the computers with them. They either do it
11 right back at their station or right in the truck right at
12 the time of the incident.

13 The evidence will show in this same report that it was
14 recorded that Mr. Davila was walking around, his speech was
15 normal, his pupils reacting normally, he scored perfectly on
16 the coma scale, all indicating to the medic that he was not
17 exhibiting any signs of head trauma that could affect his
18 ability to recall what had happened.

19 The evidence will show that in this report Mr. Simms
20 noted that he smelled alcohol on Mr. Davila. As you listen
21 to the testimony you will need to ask is Mr. Davila unable
22 to recall the events just prior to the accident because he
23 was injured in the accident. Is he unable to recall what
24 happened before the collision because he was not paying
25 attention; was he preoccupied in drinking his beer; was he

1 intoxicated; or maybe he was a passenger and just simply had
2 no reason to pay attention to the driver's actions.

3 Mr. Garcia drifted over into Mr. Barclay's lane. And
4 for whatever reason, Mr. Davila did not know how the
5 accident happened.

6 You will hear the uncontradicted testimony that
7 headlights flooded the cabin of the Geo as it rounded the
8 curb.

9 You should consider that even if Mr. Davila was paying
10 attention to the road in front of the Geo before the
11 accident perhaps he simply did not see the center line
12 immediately before impact due to the headlights.

13 In any event, you will hear testimony from the medic
14 who attended to Mr. Davila in no uncertain terms that he did
15 not know how the accident happened.

16 You will hear testimony that Mr. Davila was not
17 interviewed by any of the investigating officers at the time
18 of the accident or in the days, weeks or years following
19 this accident.

20 In fact, there will be testimony that Mr. Davila was
21 not contacted by anyone from law enforcement about this
22 accident until about a month ago. It happened two years and
23 ten months ago. They kept calling and calling and calling
24 him and telling him he had to come to court and testify.

25 You will hear that it is standard operating procedure

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1 to interview a witness to any automobile collision soon
2 after the collision to ensure their best recollection is
3 recorded before memories fade, not almost three years later.
4 This is especially so in a case where someone has died.

5 Both Mr. Davila and Doug were taken to MUSC. And
6 Charleston County Sheriff's deputies were dispatched to
7 MUSC. Despite that, not a single one of the officers
8 involved spoke to Mr. Davila. Rather, two years and ten
9 months passed since the accident took place.

10 The solicitor's office finally sent an investigator to
11 meet Mr. Davila for the first time in connection with their
12 decision to charge Doug with the crime of felony DUI.

13 You may hear testimony that three years later, almost
14 three years later, Mr. Davila now claims that he saw Doug's
15 car come into Mr. Garcia's lane.

16 He may also claim to have seen other things take place
17 at the accident even though it is recorded in the EMS report
18 that he did not recall how this accident happened. You need
19 to consider whether someone has convinced or pressured Mr.
20 Davila to give this testimony.

21 You will hear evidence that he did not want to testify
22 in this case because he knows this is not an accident that
23 Doug Barclay caused.

24 On December 8th, 2008 Deputy Brinson, the charging
25 officer in this case, he had the day off. He was called

1 away from what he was doing to come down to Edisto Island to
2 investigate a wreck.

3 He arrived at the scene on the collision at 7:30. Doug
4 was already gone. Mr. Davila was gone. In conducting his
5 investigation of this accident he did not speak to either
6 Doug or Mr. Davila. He didn't speak to Brian Woods, Ray
7 Woods, Erika Gatch, Mr. Seeds. He didn't take any
8 statements from emergency personnel, fire fighters, first
9 responders.

10 Instead, we submit that Deputy Brinson quickly jumped
11 to the erroneous conclusion that the accident was Doug's
12 fault. Operating from this initial conclusion Deputy
13 Brinson set out to prove his hunch and to convict a man he
14 now decided was responsible for this accident. After all,
15 when he arrived he had a deceased person, other police on
16 the scene, the smell of alcohol.

17 You will hear evidence that there was a cooler found
18 near the accident scene and that several unopened beer cans
19 had burst when they hit the road and had come out of the bed
20 of the pickup truck.

21 His conclusion as to fault for the accident was reached
22 without a thorough investigation. The evidence will show
23 numerous errors, mistakes, if you will, where each stage of
24 the police investigation evidence was destroyed, evidence
25 was missed. Reports were demonstratively wrong in various

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1 ways.

2 You will hear evidence mistake after mistake after
3 mistake made until the entire pile of mistakes was dumped on
4 Doug Barclay in the form of an indictment.

5 Deputy Brinson is not a certified accident
6 reconstructionist. He didn't see the collision occur. He
7 didn't speak to any of the witnesses involved. He wrongly
8 assumed that Doug's truck crossed over the center line.

9 You will hear the scene was a mess; debris, scratches,
10 gouge marks, and other marks in the road in various places.
11 It is uncontroverted that to this day no scaled drawing or
12 accident reconstruction of this accident has been performed
13 to try to determine in any kind of scientific way the
14 State's claim that Mr. Barclay somehow caused this accident.

15 Most significantly, Deputy Brinson could not determine
16 the initial point of collision between the vehicles. That
17 is where the initial contact took place between the
18 vehicles, and that is one important factor in trying to
19 determine how the accident.

20 Further, Deputy Brinson is unable to determine the path
21 of travel of these vehicles of 300 feet prior to this
22 collision. I submit the State cannot carry its burden of
23 proving Mr. Barclay caused this accident.

24 At 6:37 Doug was taken from the scene in an ambulance.
25 He was strapped to a spine board. Ambulances are in tight

1 quarters. He was being treated by a medic. He was given
2 IV's and medications, and treatments were being administered
3 on the way to the hospital. He was poked and prodded
4 numerous times. His vital signs were taken five times
5 during the trip to the hospital.

6 You will hear that through the entire process he was
7 alert, oriented, and cooperative in the ambulance and at the
8 hospital, notwithstanding that he had been strapped to a
9 spine board for almost two hours there is not a single
10 notation in his medical records about Doug being drunk,
11 intoxicated, belligerent, or acting in any way
12 inappropriate.

13 You will also hear testimony that ER doctors who treat
14 trauma patients are skilled at making assessments as to
15 whether someone is impaired by alcohol and that they
16 regularly make this assessment in order to render proper
17 medical care and prescribe medications.

18 They do this because they need to assess if someone is
19 acting in a strange way because of a head injury or for some
20 other reason.

21 Deputy Herman Martin was sent to the hospital to meet
22 Doug. When he arrived Doug was being attended to for his
23 injuries. He was taken away for CT scans and other tests.

24 You will hear testimony that Doug did not know that
25 someone had died in this accident. He waited for Rebecca to

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1 arrive at the hospital.

2 A medical resident stitched his head. At some point
3 blood was drawn from Doug at the direction of the police.
4 The evidence will show that the procedures for handling his
5 blood were not followed.

6 At some point Deputy Brinson and his partner, Deputy
7 Michael Burrell, arrived at MUSC. Once Doug's medical
8 treatment was completed he was taken to Deputy Morel's
9 police cruiser where he was allowed to stand outside without
10 handcuffs and smoke a cigarette. He was then taken to jail.

11 Listen closely to the testimony that is given by
12 law-enforcement as to how Doug behaved at the hospital. You
13 have to determine if it is true. You might be surprised.

14 During this case there will be a big conflict in
15 testimony about how Doug acted at MUSC, and you will have to
16 determine what actually happened while Doug was at the
17 hospital. How did he appear at that time. You will decide
18 what you believe.

19 An accident happened that Doug will replay for the rest
20 of his life whether he should have done something different.
21 Should he have left the road to the right and run into an
22 oak tree possibly killing himself. In his mind the answer
23 to that question is yes.

24 He has had to live with the fact that an accident took
25 place in which someone else died. And he would rather for

1 that dead person to have been him.

2 Take a close look at him. For over three years he has
3 lived with knowing someone died in an accident that he was
4 involved in.

5 He did not cause this accident, but that does not
6 provide him with any comfort. Doug is troubled every night
7 by the fact that someone died in an accident that he was
8 involved in.

9 Look how skinny he is. It would be a second tragedy if
10 this 60-year-old man were convicted for a traffic collision
11 that was a tragic accident that he did not cause. Again,
12 they have to prove he caused this accident.

13 In this situation it becomes apparent that you do your
14 job and set aside your emotions. If not for the presumption
15 that Doug is innocent until proven guilty beyond a
16 reasonable doubt you could simply hear the terrible
17 allegations being made against him, take a look at him and
18 conclude without considering the evidence that he is guilty.
19 If things worked that way, we wouldn't need a trial.

20 Instead, the law says Doug is presumed innocent and the
21 State must prove his guilt beyond a reasonable doubt. We
22 all have that same right.

23 You will hear a number of witnesses as this trial
24 progresses. You will likely hear conflicting testimony.
25 How do you determine the credibility or believability of a

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1 witness. By using your common sense.

2 The police officers in this case are doing their job.
3 But part of their job when they charge someone with a crime
4 is to try and convict people for criminal activity that they
5 suspect. They are naturally suspicious, and for good
6 reason.

7 They report things they believe they saw or things they
8 think happened. Sometimes people remember things they did
9 not see. Sometimes they remember things that did not
10 happen. Sometimes an investigation is sloppy. Sometimes
11 incorrect assumptions are made. Sometimes there are errors.
12 Sometimes there is a lack of evidence.

13 This case is two years and ten months old. And I
14 submit to you that it is because there is a lack of
15 evidence.

16 Sometimes people try to force a square peg into a round
17 hole. Police must frequently make quick decisions. Police
18 like all of us sometimes reach quick conclusions. Some are
19 right and some are wrong. There is a lot of grey in
20 between.

21 That is why we have a jury system. You are responsible
22 to decide that. It is not up to the police to decide guilt
23 or innocence. If it were up to the police to decide guilt
24 or innocence we would not need the court system. They just
25 decide who gets charged. You get to decide what happened.

1 You get to decide who to believe.

2 As you listen to this testimony think about these
3 questions: If a witness said he did not see something right
4 after the accident and takes the position that he does not
5 want to testify but two years and ten months later after he
6 is contacted multiple times by the solicitor's office he now
7 has total recall, is that witness telling the truth?

8 Ask yourself is a person's testimony consistent with
9 prior statements. Is the testimony of one person consistent
10 with the testimony of another person when they are both
11 standing right near each other at the same place at the same
12 time?

13 Does the witness have a stake in the outcome of this
14 case or are they neutral? The witness in this case had been
15 sequestered. That is why you don't see Rebecca Borders in
16 here, okay. She is Doug's wife. She would be with him here
17 to support him, but she is not allowed to be in this
18 courtroom this week because she is a witness. She has been
19 excluded from the courtroom.

20 But all the witnesses have been excluded from the
21 courtroom. And the reason for this is so no witness can
22 hear any other witnesses testify. And this ensures that
23 each witness's recollection is not tainted by listening to
24 those who testify before them. This way you get to compare
25 the testimony of separate witnesses to see if it is

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1 consistent. They are not allowed to talk with each other
2 after they testify.

3 Of course you can also consider whether you believe the
4 witnesses have all gotten together before the trial started
5 to get their stories straight.

6 Listen to see if different witnesses use the same
7 words, slurred speech, very reddened eyes, jovial attitude.
8 Do the witnesses describe things using the same phrases like
9 they are reading from a script?

10 Watch to see how they react to questions. Watch to
11 do -- see what they do when they are confronted about their
12 conclusions. Are they defensive? Did they claim things --
13 to know things that would be impossible for them to know?
14 Use your common sense to determine what is taking place.

15 During this week in this courtroom we all have
16 different jobs. But you have the hardest job. Your job
17 requires you to put aside human emotion, a task that is
18 almost impossible to do.

19 When someone dies, even a stranger, this brings about
20 sadness and sympathy for the person, their family and their
21 friends. Some people cry when they read about the death of
22 people they don't even know in the newspaper. It is a very
23 common, deep, human emotion.

24 In this case it is your duty to put aside your sympathy
25 and not decide this case based on emotion or passion or

1 prejudice. It has been said that justice is blind. And you
2 must be blind to anything except the facts and the truth.

3 You took an oath as jurors to well -- true -- try this
4 case. It is easier to jump to conclusions or accept the
5 State's position blindly. It is easy to blame the person
6 accused. Doug is relying on you to honor your oath and find
7 truth.

8 If you do that, I submit the evidence will lead to the
9 conclusion that Doug Barclay is not guilty of felony DUI.

10 Everyone in this courtroom right here, right now
11 grieves that is Mr. Garcia's family is due sympathy for a
12 tremendous loss. But that does not translate into guilt.

13 Doug is presumed innocent throughout the entire trial.
14 Even when you get back in the jury room he is innocent. And
15 this is true until the State has removed each and every
16 doubt you have about any fact that they have to prove in
17 this case.

18 At the end of this case you must render a verdict. It
19 must be unanimous. That means each and every one of you
20 have to agree. The truth will determine the fate of this
21 person, Walter Douglas Barclay.

22 THE COURT: Call your first witness.

23 MS. KINZELER: The State calls Michael Sanders.

24 (WHEREUPON, the witness was duly sworn.)

25 THE CLERK OF COURT: Please state your first name and

DIRECT BY MS. KINZELER OF MICHAEL SANDERS

1 spell your last name for the record.

2 MR. SANDERS: My name is Michael Sanders. Last name is
3 S-A-N-D-E-R-S.

4 THE COURT: You may proceed.

5 **DIRECT EXAMINATION BY MS. KINZELER OF MR. SANDERS:**

6 Q Mr. Sanders, where are you currently employed?

7 A With the St. Paul's Fire District.

8 Q How long have you been there?

9 A December it will be five years.

10 Q Do you recall being called out to a traffic fatality on
11 December 8th of '08?

12 A Yes, ma'am.

13 MR. MASON: Objection. Leading.

14 THE COURT: I am going to give her a little latitude.
15 But watch the leading, counselor. You may proceed.

16 BY MS. KINZELER:

17 Q When you got on the scene tell the jury a little bit
18 about what this looked like when you got there.

19 A Upon arrival I found two vehicles in the roadway, one
20 pickup truck and a small car. Both had damage to them. One
21 person was standing outside of the pickup truck. Very loud.

22 Q Tell the jury a little bit more about that person.
23 What did you observe when you saw that person.

24 A He was very loud. He was -- seemed to be angry. He
25 was shouting at the other vehicle. And I went over to calm

1 him down. As I went over to calm him down I treated him for
2 a cut to his head.

3 Q Did you bandage that cut or do you know who did?

4 A Yes, ma'am. At that point I placed a 4x4 bandage on
5 his head and applied direct pressure. And then after
6 bandaging his head I used a pressure bandage to wrap it up
7 and asked him to sit down so that me and a fellow
8 firefighter could go and make contact with the other vehicle
9 and check them for injuries as well.

10 Q Do you recall what time it was when you got there
11 roughly?

12 A It was around 6:12 in the evening.

13 Q After you checked on the driver of the truck what did
14 you do next?

15 A I made my way with a fellow firefighter to the other
16 vehicle to assess them for injuries. As we approached the
17 vehicle he went to the passenger side and I made my way to
18 the driver's side.

19 Upon approaching the vehicle there was extreme, heavy
20 damage to the front. As I walked to the pass- -- to the
21 driver's side of the vehicle I noticed the steering wheel
22 was up against the driver.

23 The dash was smushed into his legs. As I leaned in to
24 check for a pulse, I found none. And at that time I looked
25 over to the passenger who was starting to get upset.

1 Q Was the passenger still in the car at this point?

2 A Yes, ma'am. He was still inside the vehicle. My
3 fellow firefighter was carrying a medical bag. He sat the
4 bag down and leaned in to assess the patient.

5 The wind started to blow and airbag dust -- when an
6 airbag deploys, dust comes out. It is inside to keep the
7 airbag from degrading over time. And the airbag dust was
8 all over the dash.

9 Well, I remember the passenger starting to get upset
10 and he thought that that was smoke and that the car was
11 going to catch fire.

12 And so when we were trying to explain to him we were
13 going to cut the vehicle open to get him out and his -- the
14 driver, he climbed out of the passenger window.

15 Q Did anybody help him get out the window?

16 A No, ma'am. He climbed out before we could even
17 assess -- get a good assessment on him.

18 Q What did he do next?

19 A He fell to the ground because of his injuries.

20 Q Tell the jury a little bit more about the scene when
21 you got there. Did you notice anything else other than the
22 two cars? Did you see any other people out there?

23 A No, ma'am. When we arrived a vehicle had met me at the
24 intersection of Point of Pines and 174.

25 Q What kind of car was that?

1 A I believe it was a smaller pickup truck.

2 Q What happened with that person? Tell them what
3 happened next.

4 A He had mentioned that he had called 911 and there
5 was -- he had come across the vehicle accident. And so I
6 said was it right behind you. And he said yeah, it is on
7 down a little ways. So I drove past him and made my way to
8 the scene. But I never saw him ---

9 Q Did that person -- I'm sorry. I didn't mean to
10 interrupt you. Did that person stay there with you?

11 A No, ma'am. After I got on the scene that was the last
12 I saw of him.

13 Q Did you see anyone else out there other than the
14 parties involved in the collision?

15 A Other than the driver of the pickup truck, the driver
16 of the car, the passenger in the car, myself, my captain,
17 and my firefighter we were the only people on the scene when
18 we arrived.

19 Q Did you notice anything about the defendant's behavior,
20 the driver of the truck?

21 A He was very very loud, very angry. He kept shouting
22 and pointing at the other vehicle.

23 Q Did you notice anything else?

24 A I could smell a strong odor from him. It smelled to be
25 like alcohol. I don't know if it was on him or in him. But

1 it was so strong that after I sat him down I had to move him
2 to the passenger side of his vehicle.

3 After the passenger from the green car had removed
4 himself from his vehicle I had to make my way back to the
5 driver now with one patient DOA, one patient under my other
6 firefighter's care. And I made my way back to the other
7 patient. So we both had a patient.

8 Q So when you refer to these patients which patient were
9 you attending to and which patient was your partner
10 attending to?

11 A After the passenger of the green car came out of the
12 vehicle, my fellow firefighter attended to him as the medic
13 unit was arriving on the scene to package him and get him
14 transported as the primary critical patient.

15 I went back to the driver of the pickup truck to calm
16 him down because he had gotten loud and irate and had come
17 back from around his -- the passenger side of his truck and
18 started shouting and yelling at the other vehicle.

19 Q After that, what did you do? Did you assist in helping
20 the driver of the Geo?

21 A After we transported the passenger of the Geo we then
22 transported the driver of the pickup truck and then we went
23 back to the driver of the green Geo. Because EMS had
24 declared that he was DOA and at that point ---

25 Q What does DOA mean? I don't know if they know what

1 that means.

2 A DOA is dead upon arrival. After that has been declared
3 the scene becomes a crime scene. And we are not allowed to
4 extricate that person from the vehicle until the coroner has
5 arrived and taken photos.

6 Q After all of that happened, what did you do; did you
7 stay?

8 A Yes, ma'am. I was -- I was one of the last people to
9 actually leave that scene.

10 Q And do you recall there being any witnesses at any
11 point while you are out there coming up to you?

12 A No, ma'am, other than the deputies that arrived on the
13 scene, the additional EMS personnel. And we were the only
14 ones that I saw on the scene.

15 Q When you said we took one patient and we took another
16 patient are you ---

17 MR. MASON: Objection. Leading.

18 THE COURT: I haven't heard the whole question.

19 Q Are you the one who transported any of these patients?

20 A No, ma'am. I don't transport people. My primary job
21 on the scene is to assess for injuries and establish what
22 kind of precautions are going to need to be taken and
23 additional resources needed and properly maintain this
24 person's well-being, be it do they need a helicopter, do
25 they need to go to the hospital or do we need way more

1 people to help do what we need to do.

2 Q Did you have an opportunity to interact with Jose at
3 all, the passenger of the Geo?

4 A Not very much, ma'am. I can say whenever I arrived on
5 the scene there was a language barrier between the two of
6 us.

7 And I tried to explain to him the severity of his
8 injuries and that he needed to allow me to extricate him
9 from his vehicle, which is cut the car away from the
10 patient.

11 In doing so, he I guess you would say got worried when
12 he saw the smoke -- or the dust. And that is when he
13 climbed out of the car.

14 But other than trying to cross that language barrier
15 after he came out of the vehicle we stabilized him for his
16 neck, C-spine precautions to make sure that he didn't
17 further injure himself, and treated what injuries he did
18 have that we could take care of. But Medic 8 arrived on the
19 scene pretty close to us.

20 Q What is Medic 8?

21 A Medic 8 is the ambulance service that runs off of
22 Edisto Island. And they have about a two-minute response
23 time behind us. They are about two minutes away from us.

24 Q Do you have any other observations about Jose?

25 A No, ma'am. My -- the other fellow firefighter he was

1 mainly his caregiver at the scene.

2 MS. KINZELER: If you will answer any questions for Mr.
3 Mason.

4 THE COURT: You may proceed.

5 MR. MASON: Thank you, Your Honor.

6 THE COURT: You are welcome.

7 **CROSS-EXAMINATION BY MR. MASON OF MR. SANDERS:**

8 Q Now Mr. Sanders, tell me how many times you have met
9 recently or talked recently with the prosecutor's office in
10 this case.

11 MS. KINZELER: Objection.

12 THE COURT: Basis?

13 MS. KINZELER: Relevance.

14 THE COURT: Overruled. You may answer the question,
15 sir.

16 A I have met her once.

17 Q Okay. And when was that?

18 A That was two weeks ago.

19 Q Okay. So as I understand it, this action happened on
20 December 8th, 2008 but you are not even really sure of the
21 date; isn't that a fair statement?

22 A Yes, sir, I have seen our reports and it is December
23 8th, 2008.

24 Q Okay. And that was two years and ten months ago; is
25 that correct?

1 A Yes, sir.

2 Q And then it is just recently that you have talked with
3 the State about what it is you say you remember; is that
4 correct?

5 A Yes, sir.

6 Q Okay. And in the report that is prepared you said you
7 have looked at it; is that correct?

8 A Yes, sir.

9 Q And it doesn't say anything other than -- or let me ask
10 you do you recall what it says?

11 A I do not have it on hand, sir.

12 MR. MASON: Your Honor, may I approach?

13 THE COURT: You may.

14 MR. MASON: Your Honor, may I approach?

15 THE COURT: You may.

16 (WHEREUPON, a document was presented to the witness.)

17 BY MR. MASON:

18 Q Does this appear to be a copy of the report?

19 A Yes, sir.

20 Q Thank you. And there is a narrative portion; is that
21 correct -- or I guess you call it remarks?

22 A Yes, sir.

23 Q Okay. And just tell me if I have read correctly from
24 the report: Upon arrival two cars upright in the road with
25 heavy front damage, three patients, patient that was

1 confirmed 79 was trapped, and the other two patients the
2 patient was transferred to EMS. Have I read it correctly?

3 A Yes, sir.

4 Q There is no notation in here about any of the events
5 you related to the jury about people yelling or anything
6 like that; is that a fair statement?

7 A Yes, sir.

8 Q And is it your clear recollection that the passenger in
9 the Geo was transported before the driver of the truck?

10 A Yes, sir.

11 Q Do you clearly recall that?

12 A Yes, sir. Well -- yes, sir.

13 Q Now I want to make sure I understand your testimony
14 that there wasn't anybody else at this scene, so I'm going
15 to ask you some real specific questions. The first question
16 is did you see Erika Gatch at the scene?

17 A Who, sir?

18 Q Erika Gatch. She is the young lady who used to work at
19 Enterprise Bank who cleans homes on Edisto Island.

20 A No, sir.

21 Q Okay. You mentioned seeing a person in a truck as you
22 turn down Point of Pines. Can you describe the physical
23 appearance of this person?

24 A The person that was in the truck was a tall, white
25 male. He was over six feet tall, was slender to average

1 build, maybe late 40's, middle to late 40's.

2 Q Okay. Did he appear to have been deer hunting?

3 A He wasn't -- I don't remember if he was wearing
4 camouflage, sir. But I don't recall having the thought that
5 he may have been deer hunting.

6 Q And with regard to Ryan -- Brian and Ray Woods do you
7 know who those people are; in other words, from being at St.
8 Paul's do you know who those people are?

9 A The names ---

10 Q Yes.

11 A --- ring a bell.

12 Q Okay. Well, you said a small pickup truck. Would it
13 have been a small, white pickup truck?

14 A It possibly could have been.

15 Q Okay. And you are absolutely clear on the fact that
16 that person had seen the accident before you did; is that a
17 fair statement?

18 A Yes, sir.

19 Q Okay. And so if it ends up that Brian or Ray Wood --
20 Woods has a white pickup truck you wouldn't dispute that
21 they were at the scene before you; is that a fair statement?

22 A Yes, sir.

23 Q Okay. And do you remember it being a father and son?

24 A I like I do not remember who was in the pickup truck.

25 I do remember that it was a male that spoke with us through

1 a window. But two minutes prior I had been sitting at my
2 station on a couch.

3 Q I understand that is how it works.

4 A Yes, sir.

5 Q For what you do, yes, sir. But if -- again, do you
6 know if that white truck if the father, Ray Woods, dropped
7 off his son Brian down there at the corner and turned around
8 and came right back to assist?

9 MS. KINZELER: Objection.

10 THE COURT: Basis?

11 MS. KINZELER: Facts not in evidence.

12 THE COURT: Rephrase.

13 Q Do you know -- you said you saw the white truck and you
14 had a conversation with the driver; is that correct?

15 A Just a matter of seconds.

16 Q Right, a matter of seconds. Was there one person in
17 the vehicle or two, if you recall?

18 A I can't recall.

19 Q Okay. Well, one or two?

20 A I wasn't the driver of the apparatus. I was on the
21 passenger side.

22 Q Right.

23 A My captain spoke with ---

24 Q Okay.

25 A I don't know what was spoken really even.

1 Q So you couldn't see if there was one vehicle or two
2 persons in the white, small pickup truck?

3 A No, sir.

4 Q Okay. And do you know whether or not that white, small
5 pickup truck then spun around after they told you where to
6 go and came also to help?

7 A I wouldn't have noticed, sir, because I was paying
8 attention to what was coming up in front of me.

9 Q That is really what I'm trying to find out from -- Mr.
10 Sanders, because you said nobody else was around at the
11 scene. And I just want to understand how sure you are of
12 that. I mean you were focused on what you were doing.
13 Isn't that a fair statement?

14 A Someone could have came up from behind me. But after I
15 arrive on the scene if I let a civilian touch a patient that
16 is a liability for me.

17 Q Okay. And it is your clear recollection that you were
18 the one who placed the four-by-four bandage on Mr. Barclay's
19 head? And I mean you personally.

20 A Yes, sir. They may have removed it in the EMS
21 transport. Because I did a primary assessment on the
22 patient.

23 Q In other words if he was bleeding through it they could
24 have maybe replaced it or something; is that ---

25 A Or exchanged it. They have a higher level of care than

1 I do. I am trained in a first responder standpoint. The
2 people that responded to me were EMT basics and paramedics.

3 Q Well, let me ask you did a whole -- you know, this is
4 an accident scene. Did -- at some point whether it was 10
5 minutes, 12 minutes or 14 minutes after you got there at
6 some point were there a bunch of people on the scene at some
7 point?

8 A At some point we had three -- or two St. Paul's Fire
9 Department apparatus, one Edisto Beach Fire Department
10 apparatus. We had another fire department apparatus from
11 St. Paul's set up a landing zone on the next street over.

12 We had two ambulances that responded from Charleston
13 County EMS and I believe one Delta chief. I am not aware if
14 she arrived on the scene or if she went directly to the
15 landing.

16 Q But my -- that is the answer as to personnel. I'm
17 talking about just regular people, people that happen to be
18 in the neighborhood, you know, or have to get to their house
19 or coming from their house the question is did those type of
20 people show up in this same timeframe which I will refer to
21 as immediately following the accident?

22 A Well, we had Charleston County Sheriff's office they
23 arrived shortly after we did. They set up barricades -- not
24 barricades. But they block off the road behind us and give
25 detours and things to other people. Because there are other

1 roads to get to the other side of Point of Pines.

2 Q Did you believe that the concerned citizen whoever it
3 was that you saw in that white truck had been to the scene
4 before you did?

5 A He -- he could have been.

6 Q Okay. Thank you.

7 MR. MASON: That's all I have, Your Honor. Thank you.

8 THE COURT: Any redirect?

9 **REDIRECT EXAMINATION BY MS. KINZELER of MR. SANDERS:**

10 Q Mr. Sanders, your testimony today is it to the best of
11 your recollection?

12 MR. MASON: Objection, leading, Your Honor.

13 THE COURT: I will give her a little latitude.

14 Overruled. Sir, you may answer the question. Do you need
15 to repeat it?

16 MR. SANDERS: Yes, ma'am.

17 Q Why ---

18 THE COURT: Please repeat -- did you understand the
19 question or did you need it repeated? I'm sorry, I
20 misunderstood.

21 MR. SANDERS: Yes, ma'am, I understood.

22 THE COURT: Okay. You may continue.

23 Q And your answer was?

24 A Yes.

25 Q Tell the jurors why you remember this wreck in

1 particular, albeit three years ago, what is it that makes
2 you remember this?

3 A I started with St. Paul's December 2006. During my
4 time there I had not seen many vehicle accidents with
5 fatalities. That was one of my first if not the first
6 vehicle accident with a fatality I had responded to. And it
7 was pretty intense.

8 Being on the scene for that extended period of time
9 when it came time to extricate the driver of the car after
10 the coroner had been there, pictures; and traffic had come
11 and marked off where they found this piece of the car and
12 that piece of the car.

13 I was actually allowed to extricate the patient with
14 the coroner and Charleston rescue. So I actually was
15 involved in removing the patient out of that car.

16 Q And did anyone tell you what to say when you came to
17 court today?

18 A No, ma'am.

19 Q That is all I have. Thank you.

20 MR. MASON: Nothing further, Your Honor.

21 THE COURT: Anything -- objection to the witness being
22 excused? From the State?

23 MS. KINZELER: No, Your Honor.

24 THE COURT: From the defense?

25 MR. MASON: No, Your Honor.

DIRECT EXAMINATION BY MS. KINZELER OF DEBRA WINN

1 THE COURT: Sir, you are excused. The State may
2 proceed.

3 MS. KINZELER: The State calls Lieutenant Winn.

4 (WHEREUPON, the witness was duly sworn.)

5 THE CLERK OF COURT: Please state your full name and
6 spell your last name.

7 MS. WINN: My full name is Debra Lee Winn. Last name
8 is W-I-N-N.

9 THE COURT: You may proceed.

10 DEBRA LEE WINN, having been first
11 duly sworn, testifies as follows:

12 **DIRECT EXAMINATION BY MS. KINZELER OF MS. WINN:**

13 Q Ms. Winn, can you introduce yourself a little to the
14 jury.

15 A Yes. I am a shift supervisor with Charleston County
16 EMS. I have been there -- I am working on my 19th year. I
17 have been there since April of 1993. I at the time of this
18 incident I was a district supervisor. And I have been
19 promoted to shift supervisor since.

20 Q In December of 2008 were you a supervisor?

21 A Yes, I was a district supervisor over the South
22 District.

23 Q Are you familiar with the collision that occurred on
24 Point of Pines Road on December 8th of '08?

25 A Yes.

1 Q And is that in Charleston County?

2 A Yes, it is.

3 Q Why -- were you one of the ones that responded to the
4 scene that night?

5 A Yes.

6 Q Do you recall roughly when it was that you got there?

7 A I don't have the exact time that I got there. I got
8 there after the first fire engine or two and after Medic 8
9 got there, the first responding medic unit.

10 Q Were the ambulances still there?

11 A The first medic unit was there. The second medic unit
12 hadn't arrived yet.

13 Q And who was being treated in that first ambulance?

14 A They had Mr. Barclay in the first ambulance.

15 Q Who all was there when you got there if you remember?

16 A St. Paul's Fire Department, Charleston County Sheriff's
17 Department, Charleston County Rescue, myself as a
18 supervisor. And I had Medic 14 come in also. They came
19 shortly behind me.

20 Q Is that another ambulance?

21 A Yes.

22 Q When you first got there what is the first thing that
23 you did? Tell the jurors about that.

24 A As a supervisor the first thing -- the thing that we do
25 on all scenes and especially on accident scene is we do

1 scene management.

2 With multiple patients -- on this particular call in
3 route to the call the fire department arrived prior to me
4 getting there and had already said there was one DOA and two
5 other patients.

6 So prior to me arriving I had launched the helicopter
7 already. Because I am not sure if y'all are familiar with
8 Point of Pines. Point of Pines Road is almost all the way
9 to Edisto Beach. So from where they were to for a truck run
10 to Medical University would take them at least somewhere
11 between 35 and 40 minutes.

12 So in a flight a helicopter flight is about 10 to 12.
13 So transport time would be a lot sooner. So in route to the
14 call I launched -- as a supervisor I can launch the medivac
15 helicopter in route after the -- after the department said
16 there was one DOA and two more patients.

17 Q At that point did you know who if anybody was in need
18 of a helicopter?

19 A No.

20 Q Why as a supervisor were you called out to the scene;
21 any particular reason?

22 A Any entrapments, any severe MDA's, cardiac arrest, any
23 significant calls that they may need scene control on.

24 Which this was going to be scene control, patient control
25 and just ---

1 Q What does scene control mean?

2 A Scene control would be controlling the number of
3 patients, bystanders, assisting with the fire department.
4 Assisting with extrication is a big thing. If someone had
5 to be cut out of the car I would assist with extrication to
6 make sure -- not physically assist but we would be instant
7 command to make sure that they did not do too much or too
8 little to extricate the patient properly to be able to do as
9 least damage to the patient and to get the patient out
10 properly.

11 Q And when you got there do you recall whether or not the
12 driver of the Geo was still alive?

13 A No, he was already deceased. He was deceased -- as
14 soon as the fire department got there they said he was what
15 we call a seven-nine. They called him seven-nine. And that
16 is deceased, DOA.

17 Q Did you have an opportunity to interact with the
18 passenger of the Geo at all?

19 A I interacted with him for a few minutes, and he did not
20 understand English very well. And I don't speak Spanish.
21 So there was a communication problem there so I could
22 not ---

23 Q You didn't talk with him much?

24 A No.

25 Q Did you have an opportunity to observe him, just the

1 general behavior or ---

2 A He was -- they were -- had putting him in C-spine for
3 possibility of a neck or back injury. He had been placed in
4 a spinal immobilization package.

5 Q What does that means? Tell us about that. Is that ---

6 A Spinal mobilization package they had put a C-collar on
7 him, a cervical collar on him. They had laid him -- they
8 actually did what they called a takedown, standing takedown,
9 because he had gotten out of the vehicle.

10 They had stood him up and put a board behind him and
11 laid him flat onto the board to reduce movement of his
12 spine. So they put him on a spine board, strapped him,
13 taped his head in place and waited for the -- he was going
14 by helicopter. He was the one that was deemed to go by
15 helicopter at the time.

16 After they had assessed the patients the crew chief
17 there determined that the second passenger in the smaller
18 vehicle was the one that needed to go by helicopter.

19 Q Did you notice anything else about Jose or any kind of
20 his behavior or anything of that nature?

21 A He didn't speak -- like I said, he didn't speak
22 English. So I didn't -- couldn't understand quite what he
23 was saying.

24 But he was a little bit short of breath. They put him
25 on oxygen. Other than that, nothing -- I don't recall

1 anything else.

2 Q Where were you when you were observing him? Were you
3 nearby or far away?

4 A The ambulance pulled right up -- right up next to
5 the -- his vehicle. It was kind of sideways in the road.

6 Q To the Geo?

7 A Yes, and the ambulance was right there.

8 Q Okay.

9 A So it is not -- it wasn't a big distance. I mean it
10 wasn't -- we weren't right -- I wasn't right next to him.
11 But I was within hearing distance of him.

12 Q Okay.

13 A And of observation like looking at them.

14 Q And while you were out there did you have an
15 opportunity to interact with the defendant?

16 A Yes. Also a supervisor on the scene is ---

17 MR. MASON: Objection, Your Honor.

18 THE COURT: Basis?

19 MR. MASON: Identification, personal knowledge.

20 THE COURT: Approach.

21 (WHEREUPON, a bench conference was had.)

22 THE COURT: You may proceed.

23 Q Lieutenant Winn, did you have an opportunity to
24 interact with or observe the driver of the truck?

25 A Yes. He had been placed in spinal immobilization also

1 and had a bandage on his head. He had a laceration to his
2 head and was bleeding profusely from his head. They were --
3 had a little bit of difficulty controlling it.

4 We had placed him in the back of Medic H unit to wait
5 for Medic 14 to get there and to take him. He was going to
6 go by ground to Medical University.

7 I went in the back of the ambulance and leaned over and
8 spoke to him, was there anyone that I could call for him,
9 did he need me to call his family, was there somebody I
10 could call for him.

11 I don't remember if I called. I do that at every scene
12 if possible if I have time if I am not busy doing something
13 else.

14 We already had all the -- both patients packaged.
15 There was nothing we could do for the driver of the other
16 vehicle. We had -- I don't have the last name on the other
17 gentleman, but Mr. Barclay's is the only name I have.

18 Q Was that the name of the driver of the truck?

19 A The truck, yes. All I have is Jose on the first one,
20 the other person. But we had both of them packaged. We
21 have one -- Josh Simms was taking care of Jose. Paul
22 Guthrie was the crew chief was taking care of Mr. Barclay
23 until the other unit came. And I don't remember who
24 actually made the phone call to his wife.

25 Q So go back a little bit. You asked him if there was

1 anyone ---

2 A We could call for him.

3 MR. MASON: Objection. Leading. Asked and answered.

4 THE COURT: I am giving her a little latitude as for
5 purposes of clarifying the question. You may proceed.

6 A I asked him could someone call someone for him, could I
7 call his wife or his family for him.

8 Q And what did he tell you?

9 A He said yes. And he had a cell phone. And the phone
10 number, either got off his cell phone or was called on his
11 cell phone. I don't re- ---

12 Q Do you know who that person was that he asked ---

13 A I don't remember who called. I don't remember who
14 called. I cannot remember.

15 Q But do you recall who he was asking for?

16 A No, I cannot remember.

17 Q And while you were having this interaction with the
18 defendant did you notice anything about the driver of the
19 truck?

20 A Can I say this -- he ---

21 Q Did he appear to be intoxicated?

22 MR. MASON: Objection. Leading, Your Honor.

23 THE COURT: Sustained. Please don't raise your voice.
24 The objection is sustained.

25 A He had a very strong ---

1 THE COURT: Ma'am, the objection has been sustained.

2 MS. WINN: Oh, I didn't know that. I'm sorry.

3 THE COURT: That is okay.

4 Q Let me rephrase.

5 THE COURT: The question needs to be rephrased.

6 MS. WINN: I don't know what sustained means.

7 THE COURT: That is okay.

8 Q While you are in the back of the ambulance with him
9 tell the jury what else you noticed about the defendant, the
10 driver of the truck.

11 A Actually when

12 Q Just tell them what you saw or what you smelled or what
13 you heard.

14 A Actually when you walked in the back of the ambulance
15 you could smell alcohol. When you -- when I leaned over and
16 spoke to Mr. Barclay he had the smell of alcohol on his
17 breath. But you could smell alcohol when you walked in the
18 back of the ambulance with the door shut.

19 Q Tell the jurors the difference between the alcohol you
20 are talking about and the alcohol you treat patients with.
21 Is it the same kind of rubbing alcohol that you use to treat
22 wounds?

23 A No, alcohol you drink and alcohol you smell smells
24 differently. And we don't carry that large amount of
25 alcohol in the truck for it to be the alcohol in the back of

1 the truck.

2 Q Was there anyone else back there with him?

3 A Paul Guthrie was the crew chief.

4 Q You, Mr. Barclay, and Paul Guthrie?

5 A Yes.

6 Q How long -- do you know anything about the decision to
7 airlift Jose?

8 MR. MASON: Objection. Personal knowledge.

9 A Well, I launched the helicopter -- can I answer?

10 THE COURT: Overruled. The State -- the appropriate
11 foundation has been established as the supervisor on the
12 scene. You may answer the question, ma'am, to the best of
13 your knowledge.

14 A I had launched the helicopter prior to getting there.
15 Because of -- the mechanism of the -- the wreck was a
16 head-on collision was the information we received when
17 dispatched.

18 It was dispatched as a head-on collision. Prior to me
19 getting there was advised over the radio by the fire
20 department there was a death in the car and two more
21 patients. And the fire department advises that over the
22 radio.

23 Q Did you know anything in particular about the extent of
24 Jose's injuries?

25 A They called them Category II. Which Category II to us

1 means they have injuries that could be life-threatening. So
2 when they call them Cat II that is all I know is they may
3 have injuries that may be life-threatening.

4 Q Do you recall how long you were on the scene that
5 night?

6 A I stayed until both patients were gone. But I did not
7 stay for the extrication of the other gentleman out of the
8 car, no.

9 Q While you were out there do you recall there being any
10 other people out there who weren't involved in the
11 collision?

12 A There were rescue people.

13 Q Other than rescue people and police?

14 A I remember one car that tried to come down the road.
15 But they had the road blocked off because it was a crime
16 scene. So the police department had it blocked off. So I
17 don't remember anyone else out there. The other -- people
18 that were with the fire department, the rescue.

19 Q As far as civilians go do you recall anyone out there?

20 A I don't remember any civilians out there.

21 Q I think that's all I have. Thank you.

22 A Okay.

23 THE COURT: Any questions for the witness?

24 MR. MASON: Yes, Your Honor.

25 THE COURT: You may proceed.

1 **CROSS-EXAMINATION BY MR. MASON OF MS. WINN:**

2 Q Supervisor Winn, did you -- when there are reports
3 prepared following an incident like this do you have to
4 approve them or review them or what is your role in that?

5 A Yes, they are reviewed. I don't know that I
6 necessarily reviewed these two. But they are reviewed by
7 certain supervisors, yes, sir.

8 Q Do you have them with you?

9 A I do. I have them.

10 MR. MASON: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 A I have both of them.

13 Q And I believe you said that Joshua Simms assisted Mr.
14 Davila; is that correct?

15 A If that is his last name. Jose. I only have Jose Doe
16 on there.

17 Q Right. But we are going under the assumption ---

18 A Yes.

19 Q --- that that is Mr. Davila?

20 A Yes.

21 Q Okay. Go if you would to the third page, the very last
22 page of Mr. Davila's report.

23 A I have got it right here, yes.

24 Q Okay. And as I understand Joshua Simms used to work in
25 Southern California where he would treat various Spanish

1 speaking individuals and ---

2 A I would not know that.

3 Q But in any event, you didn't prepare this report; ---

4 A No.

5 Q --- Joshua Simms did? You just approved it, right?

6 A I may have or may not have approved this report.

7 Q But it was properly issued in the course of the
8 business of the EMS?

9 A Yes, sir.

10 Q Okay.

11 MS. KINZELER: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. MASON: Okay.

14 Q And ---

15 THE COURT: Foundation.

16 MR. MASON: I will ask -- I will withdraw that
17 question, Your Honor.

18 Q And in regard to the -- Mr. Davila's report ---

19 MS. KINZELER: Objection, Your Honor.

20 Q --- it states ---

21 THE COURT: There is an objection pending. What is the
22 basis of the objection?

23 MS. KINZELER: Foundation.

24 THE COURT: Let me hear the whole question.

25 MR. MASON: Yes.

1 THE COURT: Be careful regarding you will have to
2 establish that she in fact prepared that report, that it's
3 her words and it is not -- it is not someone else's.

4 Q The report -- you know of no reason this report is
5 incorrect; is that a fair statement?

6 A Yes, I know of no reason that it is incorrect.

7 Q Okay. And the report was -- you believe was prepared
8 by Mr. Simms; is that correct?

9 A Correct.

10 MR. MASON: Your Honor, since Mr. Simms is going to
11 testify -- may I approach? Thank you.

12 (WHEREUPON, a bench conference was had.)

13 THE COURT: Proceed.

14 Q There is no question that Mr. Simms prepared his report
15 related to Mr. Davila, correct?

16 A I don't have any questions that he didn't do it, no.

17 Q Okay. And Mr. Throop created the report related to Mr.
18 Barclay; is that ---

19 MS. KINZELER: Objection, Your Honor

20 Q --- correct?

21 THE COURT: I haven't heard the whole question. Please
22 repeat the question.

23 Q Yes. Did Mr. Throop ---

24 A Yes.

25 Q --- prepare the report ---

1 THE COURT: Ma'am, don't answer until he has finished
2 the question so I have ruled on the objection. State the
3 question, Mr. Mason.

4 Q Did Mr. Throop prepare the report that is related to
5 Mr. Barclay?

6 THE COURT: Is there still an objection pending or is
7 the objection withdrawn?

8 MS. KINZELER: I will withdraw the objection.

9 THE COURT: Ma'am, you may answer the question.

10 A Yes, he did.

11 Q Okay. And that report as far as your role as the
12 acting supervisor is that report correct?

13 A Yes ---

14 MS. KINZELER: Objection.

15 THE COURT: Basis of the objection?

16 MS. KINZELER: Personal knowledge.

17 THE COURT: Sustained. Foundation.

18 Q If you are -- if you are the supervisor and there needs
19 to be a correction or an amendment to a report is there a
20 procedure to do that?

21 A Yes.

22 Q Okay. And to your knowledge do both the report on Mr.
23 Davila and the report on Mr. Barclay stand as the reports
24 are that they have not been amended to the best of your
25 knowledge?

1 MS. KINZELER: Objection.

2 THE COURT: Basis?

3 MS. KINZELER: Foundation.

4 THE COURT: Sustained.

5 Q Are the reports you have with you the same as the two I
6 have here?

7 MS. KINZELER: Objection.

8 THE COURT: Basis?

9 MS. KINZELER: Foundation and relevance.

10 THE COURT: You need to approach, Mr. Mason. I have
11 ruled on this. We need to move on. Approach.

12 (WHEREUPON, a bench conference was had.)

13 Q You brought some other documents with you in addition
14 to the report. What are those other documents that you have
15 with you at the witness stand?

16 MS. KINZELER: Objection.

17 THE COURT: Basis?

18 MS. KINZELER: Relevance.

19 THE COURT: I'm going to give him a little latitude.
20 Ma'am, you can answer the question.

21 A I have the two reports. I have the subpoena I received
22 from Ms. Kinzeler. And I have the DOA report. If you don't
23 have that, I have the DOA report. And I have the trauma
24 center criteria for transport by helicopter.

25 Q And did Ms. Kinzeler ask you to get that?

1 A No.

2 Q Okay. When you -- when is it you first talked to her
3 about your testimony in this case?

4 A Today is Monday. Tuesday or Wednesday. Tuesday or
5 Wednesday I believe.

6 Q Of last week?

7 A Yes, sir.

8 Q Okay. So this accident happened two years and ten
9 months ago, and the first time anybody contacted you about
10 what you might have remembered was last week?

11 A Yes, sir.

12 MR. MASON: No further questions.

13 THE COURT: Any redirect?

14 MS. KINZELER: Nothing from the State, Your Honor.

15 THE COURT: Any objection to the witness being excused?
16 From the State?

17 MS. KINZELER: No, Your Honor.

18 THE COURT: From the defense? Any exception from the
19 defense?

20 MR. MASON: No, Your Honor.

21 THE COURT: You are excused, ma'am.

22 MS. WINN: Thank you.

23 THE COURT: You are welcome. You may call your next
24 witness.

25 MS. KINZELER: The State calls Deputy Luckadoo.

1 (WHEREUPON, the witness was sworn.)

2 THE CLERK OF COURT: Please state your full name and
3 spell your last name.

4 MR. LUCKADOO: My name is Dustin Luckadoo,
5 L-U-C-K-A-D-O-O.

6 THE COURT: You may proceed.

7 DUSTIN LUCKADOO, having first been
8 duly sworn testified as follows:

9 **DIRECT EXAMINATION BY MS. KINZELER OF DEPUTY LUCKADOO:**

10 Q Deputy Luckadoo, how long have you been with the
11 Sheriff's Office?

12 A Seven years.

13 Q Do you have any prior law enforcement experience?

14 A I do.

15 Q Where is that?

16 A Two years with the Town of Edisto Beach Police
17 Department.

18 Q Was that your first law-enforcement job?

19 A Yes, ma'am.

20 Q Tell the jury a little bit about your training and
21 about your background in law enforcement.

22 A Basically ---

23 Q You can start with the police academy.

24 A Yeah, the police academy. I did that ---

25 Q How long is that?

1 A Nine weeks.

2 A I started on the road in 2002. In 2004 I came to the
3 Sheriff's Office, and I continued to work the road since
4 2004 with the Sheriff's Office.

5 Q And what does that mean if you are on the road? Tell
6 the jurors about that.

7 A Handling calls, accidents, service calls for duty. And
8 that is pretty much it.

9 Q Do you have any background or experience in the
10 detection of impaired driving?

11 A I do. I have -- I forget what it's called. But it
12 is ---

13 Q Did you go through the standardized field sobriety test
14 training?

15 A I did.

16 Q Did you -- are you certified to operate a data master?

17 A No.

18 Q Did you go through any other training regarding
19 impaired drivers except the one that ---

20 A Just the standard one, yes.

21 Q Okay. What capacity were you working for the Sheriff's
22 Office in back in December of '08?

23 A December of '08 I was on the road patrolling in the
24 South District area; Ravenel, Hollywood and Edisto Island.

25 Q Are you familiar with a collision that occurred on

1 Point of Pines Road in December of '08?

2 A Yes, ma'am.

3 Q Tell the jury how you are familiar with it. What is
4 your first recollection of that event?

5 A Well, at the time of the call I was on Edisto Island
6 when we received a call. And I was the first responding
7 officer to show up on the scene at the collision.

8 Q Who is there when you get there?

9 A When I get there EMS personnel and fire personnel are
10 already on the scene.

11 Q Were you the first law-enforcement officer?

12 A Yes, ma'am, I was the first law-enforcement officer on
13 the scene.

14 Q Other than EMS and fire do you recall there being
15 any -- anyone else out there that wasn't involved in the
16 collision?

17 A Not to my recollection, no.

18 Q Do you recall roughly when you first got there?

19 A I don't know the exact time, but I believe it was in
20 five to ten minutes of receiving the call.

21 Q When you first get there what is the first thing you
22 do?

23 A The first thing I do is pull up on the scene. I could
24 not access the scene due to the fire and EMS -- EMS
25 personnel vehicles already on the scene.

1 So I got out and saw EMS attending to the defendant.
2 And they were asking him questions. And he was responding
3 to them. And ---

4 Q Did you have any communication with him verbally?

5 A I did not, no.

6 Q Did you observe his communication with EMS?

7 A I did observe the communication with EMS.

8 Q And what is your recollection of what you saw that
9 night?

10 A Well, when they would ask him questions he would go off
11 on a ---

12 Q What kind of questions?

13 MR. MASON: Objection, Your Honor.

14 THE COURT: Basis?

15 MR. MASON: He was finishing an answer and she posed
16 another question.

17 THE COURT: I think for very good reason. Let's give
18 her a little latitude on that. Approach for me.

19 (WHEREUPON, a bench conference was had.)

20 THE COURT: You may proceed.

21 Q Deputy Luckadoo, what kinds of things were the EMS
22 workers asking him?

23 A Where he was coming from ---

24 MR. MASON: Objection. Hearsay, Your Honor.

25 THE COURT: Approach.

1 (WHEREUPON, a bench conference was had.)

2 Q Deputy Luckadoo, when you are watching this exchange
3 between EMS and the defendant what did you observe?

4 A I observed Mr. Barclay trying to tell them that he was
5 coming from 174, which couldn't have been the case due to
6 the -- where the vehicles were -- ended up after the
7 collision and him telling them he had not been in a wreck.

8 And the last part I heard was them asking the capacity
9 of his injuries if he was injured. And then I asked one of
10 the EMS personnels where the other party was, and I
11 proceeded to walk down to the other car to check there.

12 Q Did you notice anything else about the defendant while
13 you were out at the scene?

14 A Just that there was a strong smell of alcohol and the
15 speech that he was giving was a little slurred, a little
16 incoherent.

17 Q How far away were you from this exchange?

18 A Five feet.

19 Q Did you notice anything else about the scene?

20 A Yeah, there was beer cans scattered about, a cooler on
21 the side of the road.

22 Q And after that what did you do next?

23 A After I left him I walked down to the other vehicle to
24 see what they had down there.

25 Q What did you find?

1 A EMS personnel was treating the passenger of the vehicle
2 along with fire. And they had him stabilized getting ready
3 to put him on a board. And basically when I finished there
4 I walked back to my car to get the crime scene tape and go
5 ahead and secure the scene.

6 Q So what's your role generally while you are out there
7 that night?

8 A My role is to keep the scene secure.

9 Q And by secure the scene tell the jurors what you mean
10 about that.

11 A Taping off a good area to keep people out to ---

12 Q Why do you want to keep people out?

13 A So nobody can mess with the scene. So it is basically
14 to preserve what we have there.

15 Q And did you do that in this case?

16 A Yes, ma'am.

17 Q What did you do after that?

18 A Waited on more officers to show up to help me keep
19 people out. Because it was a two-way road and I could only
20 be at one place at one time.

21 Q And while you are out there securing the scene do you
22 recall whether any witnesses came forward about what they
23 had seen?

24 A No, I don't.

25 Q To you?

1 A To me, yes.

2 Q At some point did some additional officers arrive?

3 A Yes, ma'am, they did.

4 Q Do you have any recollection of a conversation with
5 Deputies Brinson and Burrell?

6 A I do.

7 Q What was the point of that conversation?

8 A Well, they were not on the scene yet; and they were
9 asking what they had ---

10 MR. MASON: Objection.

11 A --- to look forward to.

12 MR. MASON: Objection. Hearsay, Your Honor.

13 THE COURT: Overruled. But be very careful.

14 Q Without repeating what they said what was the point of
15 this discussion with them?

16 A The point was to let them know what we had on the
17 scene.

18 Q Tell the jurors what you mean by let them know.

19 A What kind of injuries we have, that there was alcohol
20 involved, there was one person dead and one, you know,
21 pretty seriously injured.

22 Q Do you recall whether you relayed any of your
23 observations of the defendant to them?

24 A I do, yes.

25 Q And after that what did you do?

1 A I basically just stayed on scene to help with, you
2 know, filling out paperwork for the tow truck and just ---

3 Q Did you stay until the scene was clear?

4 A I did stay until the scene was cleared, yes.

5 Q Was that the extent of your involvement in this case?

6 A Yes, ma'am, it was.

7 MS. KINZELER: If you will answer any questions for Mr.
8 Mason.

9 THE COURT: You may proceed in cross-examination.

10 **CROSS-EXAMINATION BY MR. MASON OF DEPUTY LUCKADOO:**

11 Q Deputy Luckadoo, you did not prepare a report; is that
12 correct?

13 A Yes, sir, that is correct.

14 Q And this was not your wreck to work; is that correct?

15 A No, sir.

16 Q Okay. And you did not make any field notes; is that
17 correct?

18 A No, sir.

19 Q And the first time anybody from the prosecutor's office
20 contacted you about your testimony in this case was very
21 recently; isn't that correct?

22 A It has been a while, my guess.

23 Q Well, has it been two or three months?

24 A I would say yeah, within two or three months.

25 Q But -- but it has been within the last -- is that -- I

1 mean I don't want to put words in your mouth. Is that an
2 accurate estimate, within the last two or three months?

3 A Yes.

4 Q Okay. And do you recall giving me a statement on
5 February 3rd of 2009 at 10:28 a.m. in the morning?

6 A I do not, sir.

7 Q So you don't even remember talking to me about this
8 wreck?

9 A No, sir.

10 Q Do you remember with regard to this wreck stating
11 previously that you didn't prepare a report or take any
12 photos because it was being worked by Traffic?

13 MS. KINZELER: Objection.

14 THE COURT: Basis?

15 MS. KINZELER: Relevance.

16 THE COURT: Overruled.

17 A Can you rephrase that question?

18 Q Yes. Do you recall ever stating that you did not
19 prepare a supplemental report or take any photos because it
20 was being worked by Traffic?

21 A I remember stating that I did not repair -- prepare a
22 report, yes.

23 Q Okay. And do you remember stating that when you got
24 there Mr. Barclay was already on a spine board being taken
25 care of by EMS?

1 A When I got there ---

2 MS. KINZELER: Objection.

3 A --- he was not.

4 THE COURT: Basis?

5 MS. KINZELER: Foundation.

6 THE COURT: You need to approach for me, Mr. Mason.

7 (WHEREUPON, a bench conference was had.)

8 THE COURT: Proceed.

9 Q Now do you recall that Mr. Barclay had a pretty
10 significant head injury; was that your initial assessment
11 when he saw him in the EMS?

12 A I remember him having like a scratch on his head. It
13 wasn't significant I don't think.

14 Q So you never stated that he had a pretty significant
15 head injury; is that your testimony?

16 MS. KINZELER: Objection.

17 THE COURT: Basis?

18 MS. KINZELER: Asked and answered and foundation.

19 THE COURT: Sustained.

20 Q As I understand your testimony, Mr. Barclay said
21 something to EMS to the effect that he had not been in a
22 wreck; ---

23 A Yes.

24 Q --- is that your testimony? Thank you.

25 THE COURT: Any redirect?

1 MS. KINZELER: No, ma'am.

2 THE COURT: Any objection to the witness being excused?
3 From the State?

4 MR. MASON: No, Your Honor.

5 THE COURT: From the defendant?

6 MS. KINZELER: No, Your Honor. Sorry.

7 THE COURT: Sir, you are excused. Madam Forelady,
8 ladies and gentleman, we are going to take advantage of this
9 break in testimony to give you a brief recess. Y'all have
10 been sitting since about two o'clock.

11 During the break please do not discuss the case.
12 Please leave your notepads in your seats. We will be out
13 about 10 minutes, as long as it takes for y'all to go to the
14 restroom and stretch your legs. If you go with the bailiffs
15 for me.

16 (WHEREUPON, the jury leaves the courtroom at
17 approximately 4:04 p.m.)

18 THE COURT: You may be seated. We will be out until
19 about 4:15. It is 4:04 now. We will be at ease.

20 (WHEREUPON, the court was at recess approx. 4:04 p.m.)

21 THE COURT: Are you ready to?

22 MR. MASON: Yes, Your Honor.

23 THE COURT: Okay. Please bring in the jury when they
24 get down the hallway.

25 (WHEREUPON, the jury returned to the courtroom at

1 approximately 4:25 p.m.)

2 THE BAILIFF: The jury is present, Your Honor.

3 THE COURT: You may be seated. Ladies and gentlemen, I
4 hope you enjoyed your break. We will now proceed with the
5 next witness. The State may proceed.

6 MS. KINZELER: The State calls Deputy Brinson.

7 THE COURT: Sir, if you would come to the witness stand
8 to be sworn.

9 (WHEREUPON, the witness was sworn.)

10 DEPUTY WILLIAM BRINSON, having been
11 first duly sworn, testified as follows:

12 THE CLERK OF COURT: Please state your full name and
13 spell your last name.

14 MR. BRINSON: Deputy William Brinson, B-R-I-N-S-O-N.

15 THE COURT: You may proceed.

16 **DIRECT EXAMINATION BY MS. KINZELER OF DEPUTY BRINSON:**

17 Q Deputy Brinson, what is your current occupation?

18 A I am a deputy with the Charleston County Sheriff's
19 Office assigned to the Traffic Division.

20 Q The Traffic Division?

21 A Yes, ma'am.

22 Q And are you on any other particular team for the
23 Sheriff's Office?

24 A I am on the motorcycle squad and as well as the
25 fatality callout squad.

1 Q A fatality team?

2 A Yes.

3 Q How long have you been with the Sheriff's Office?

4 A I started the Sheriff's Office in 2003.

5 Q And did you work anywhere else as a police officer
6 before that?

7 A I did. I began my career at North Charleston Police
8 Department in 1999.

9 Q Tell the jury a little bit about your background, some
10 of the training that you have had.

11 A I started out at the Criminal Justice Academy in '99
12 which was nine weeks at that time I believe. And since then
13 I have been to several different traffic classes. I have
14 been to at-scene traffic collision investigation which is --
15 there are three phases of traffic accident investigation. I
16 have been to all three phases of them.

17 Q What three phases are there?

18 A The at-scene -- it is called at-scene is the first they
19 use. Technical collision is the second they use. And I
20 can't -- the third phase has a name, but it is -- I can't
21 remember it unfortunately right at this minute.

22 Q Are you a reconstructionist?

23 A Yes, ma'am, from the South Carolina Criminal Justice
24 Academy.

25 Q Is reconstruction one of those phases?

1 A Yes.

2 Q Do you have any -- tell them a little bit about this.
3 Like what are you doing? What is this training? Is it
4 books or on scene?

5 A It is books, and it is classroom stuff. It is on scene
6 out in the parking lot. A lot of stuff out of the roadway
7 where they set up mock accidents and teach you what you see
8 at the scene in those mock accidents.

9 They actually crash two cars in front of you on a
10 controlled driving track at the Academy. And, you know, so
11 you can see what the dynamics of what takes place during an
12 accident. And they teach you how to read that evidence to
13 get back to the beginning of it.

14 Q Do they teach you anything else about measurements or
15 how to interpret them?

16 A Yeah, they teach you how to take measurements, how to
17 lay a scene out, how to put together what you find at the
18 scene. And there are some equations in different math
19 equations that you can use to try and get speed from a
20 vehicle or, you know, different things, the time, and
21 distance that is traveled during the wreck.

22 Q How long are those courses?

23 A The first two phases are two weeks apiece, and the
24 third phase is a one-week course.

25 Q Do you have any experience in your law enforcement

1 career with impaired drivers?

2 A Yes, I am -- I have arrested several DUI's throughout
3 my career.

4 Q As far as training and experience go?

5 A I have been through the S -- the SFST class which is
6 standard field sobriety training, data master, certified
7 data master operator.

8 Q These -- this three-phase traffic collision
9 investigation training you went through is there some kind
10 of certification that you get for that?

11 A There is -- for those three phases you get what is
12 called an accident reconstruction investigator
13 certification.

14 The Academy teaches a group of classes which is the
15 field sobriety class for DUI, the data master, those three
16 phases, accident reconstruction. And once you have all of
17 those classes then you get a certification as a traffic
18 safety officer for the State of South Carolina.

19 Q Do these classes involve any testing, either written or
20 out in the field?

21 A Yes, ma'am. Both. For all of them.

22 Q Do you have to pass those tests before you can be
23 certified?

24 A Yes, ma'am.

25 Q How long have you been a certified traffic collision

1 investigator?

2 A Since 2005.

3 Q Roughly how many traffic fatalities had you
4 investigated prior to December of '08?

5 A Actual accidents that involved a death I would say
6 approximately between 35 and 40.

7 Q And subsequent to that how many had you done roughly?

8 A Serious accidents probably in the hundreds with major
9 injuries.

10 Q Were you on a fatality team in December of '08?

11 A Yes, ma'am.

12 MS. KINZELER: Your Honor, at this time I am going to
13 move to have Deputy Brinson admitted as an expert in traffic
14 fatality investigation. Or I can go further to establish
15 its relevancy to this case if I need to.

16 THE COURT: Questions or objections?

17 MR. MASON: Objection.

18 THE COURT: Approach.

19 (WHEREUPON, a bench conference was had.)

20 BY MS. KINZELER:

21 Q Deputy Brinson, at the time of December 2008 how many
22 weeks total training have you had in fatality
23 investigations?

24 A Six weeks of training through the Academy. I mean I
25 have training working accidents, you know, in the field.

1 Q And prior to December of 2008 how many traffic
2 fatalities had you worked?

3 A Between 35 and 40.

4 Q And the scientific -- not the scientific, the methods
5 that you used to investigate these collisions where did you
6 learn those methods?

7 A At the South Carolina Criminal Justice Academy.

8 Q And what certification do you hold?

9 A The traffic safety officer certification.

10 Q Do you have to get recertified after you have been
11 certified?

12 A For the data master and the field sobriety test it is
13 either a year or two year. I can't remember the
14 recertification process.

15 Q But for the collision investigation?

16 A Collision, no, ma'am.

17 Q And have you ever been qualified as an expert in
18 traffic fatality investigation?

19 A No, ma'am.

20 MS. KINZELER: At this time, Your Honor, we are moving
21 to admit him as an expert in traffic fatality investigation
22 as a member of that team for the Sheriff's Office.

23 THE COURT: Any questions or objections ---

24 MR. MASON: Yes, Your Honor ---

25 THE COURT: --- regarding the witness' qualifications?

VOIR DIRE BY MR. MASON OF DEPUTY BRINSON

1 MR. MASON: Yes, Your Honor.

2 THE COURT: Do you have questions or objections?

3 MR. MASON: Both.

4 THE COURT: You may proceed with your questions.

5 **VOIR DIRE BY MR. MASON OF DEPUTY BRINSON:**

6 Q Now the course you said you went to is this course that
7 they use this blue book here (motioning); is that correct?

8 A I am not sure, sir.

9 Q Okay. You said ---

10 A What year was that book issued? They changed the
11 manual. I couldn't tell you if that was the manual I had or
12 not by looking at it.

13 Q But it was called At-Scene Traffic Accident
14 Investigation at The South Carolina Department Of Public
15 Safety and Criminal Justice Academy?

16 A It was the course I attended. Now whether that is the
17 manual I used or not, I couldn't tell you at this point.

18 Q Fair enough. Now you when you talk about accident
19 reconstruction you are supposed to follow the manual; is
20 that correct?

21 A I am supposed to follow ...?

22 Q The procedures. The procedures involved.

23 A There's no set procedures. I mean they teach you how
24 to read evidence and they teach you how to use mathematical
25 equations to determine what happened in the wreck. But

1 there is not a procedure as far as step one, two, three.
2 Each accident is different.

3 Q Okay. Just to understand. You have got field sketch.
4 Is that one thing you are supposed to do?

5 A That is one thing they teach you. That is correct.

6 THE COURT: Limit your questions to his education,
7 training and experience; not the basis of any opinion that
8 would be ---

9 MR. MASON: I understand.

10 THE COURT: That the State would be seeking to elicit.

11 Q You are now what would be called as a certified
12 accident reconstructionist; isn't that correct?

13 A Did you say not?

14 Q You are not?

15 A I am. That is correct. I am a certified accident
16 reconstructionist.

17 Q What organization are you saying is that certified you?

18 A Through the South Carolina Criminal Justice Academy.

19 Q And that is as you said the six weeks' worth of
20 training; is that correct?

21 A It is -- yes, sir.

22 Q Okay. And you have never rendered an expert opinion in
23 any court as an accident reconstructionist; isn't that
24 correct?

25 A I have not been qualified as an expert. That is

1 correct.

2 Q Okay. And with regard to an accident reconstruction
3 you did not perform an accident reconstruction ---

4 MS. KINZELER: Objection, Your Honor.

5 Q --- in this case; is that correct?

6 THE COURT: The basis of the objection?

7 MS. KINZELER: Relevance for the voir dire for expert
8 purposes.

9 THE COURT: Voir dire only as to his education,
10 training and experience; not the foundation or any opinions
11 that would be rendered as a result of that expertise.

12 Q Have you ever prepared an accident -- a full-scale
13 accident reconstruction?

14 MS. KINZELER: Objection, Your Honor.

15 THE COURT: Overruled.

16 A Yes, sir.

17 Q Okay. And in what -- and how many -- and how many
18 cases have you done?

19 A I mean I would say that I have worked between probably
20 35 and 40 fatal accidents prior to 2008.

21 Q No, my ---

22 A They are not done on every case. And I don't have -- I
23 mean I don't have a number in front of me right now to tell
24 you how many I have done particular things on.

25 Q So you are unable to say how many cases you have

1 actually done a reconstruction in; is that correct?

2 A I am able to say several, if that is what you are
3 looking for.

4 Q Okay. Well, is several two or three or four?

5 A Many.

6 Q Is it several or is it many?

7 A We will go with many.

8 Q You will go with many. Okay. And so on those cases
9 that there was -- it is your testimony there was some type
10 of in-depth accident reconstruction done; is that correct?

11 A Yes, sir.

12 Q And you are the one that did it; is that your
13 testimony?

14 A Myself and the other investigators that were on the
15 case with me. That is correct.

16 Q I am talking about have you used scientific procedures
17 to determine speed?

18 A Yes.

19 Q Have you used scientific procedure to determine the
20 path of travel?

21 A Yes.

22 Q Have you used scientific procedure to determine maximum
23 engagement?

24 A Yes.

25 Q Have you used scientific procedures to determine

1 different crash analysis between vehicles?

2 A That is what those things you just asked me is crash
3 analysis. That is correct.

4 Q And in each of those cases have you prepared a fatality
5 report?

6 A Yes, sir.

7 Q And when you do so do you do so carefully and
8 thoroughly with attention to the details that are set forth
9 in that report?

10 MS. KINZELER: Objection.

11 THE COURT: Basis?

12 MS. KINZELER: Relevance to the voir dire.

13 THE COURT: Please restate the question.

14 MR. MASON: Right.

15 Q I'm asking you about when you do these fatality reports
16 or reconstructions do you do so thoroughly with regard to
17 your work?

18 THE COURT: Sustained.

19 A Yes, sir.

20 THE COURT: Outside the scope of voir dire on the
21 education, training, and experience. Goes to the weight of
22 the opinion that would be rendered.

23 Q Now when you render your testimony do you give opinions
24 about what you think happened?

25 A At what time?

1 Q In connection with as an accident reconstructionist is
2 that what you are saying you are qualified to do to give an
3 opinion about something that you didn't see happen?

4 MS. KINZELER: Objection.

5 THE COURT: Basis?

6 MS. KINZELER: Outside the scope of voir dire.

7 THE COURT: Please restate the question, Mr. Mason.

8 MR. MASON: Right.

9 Q Are you telling -- are you testifying that you believe
10 you are qualified to give an opinion about how an accident
11 happened that you didn't see happen?

12 MS. KINZELER: Objection.

13 THE COURT: Sustained.

14 Q Do you believe you know the steps necessary to be taken
15 to do a proper accident reconstruction?

16 A Yes, sir.

17 MR. MASON: Those are the questions I have on the issue
18 of qualification.

19 THE COURT: Any redirect on voir dire?

20 MS. KINZELER: No, ma'am.

21 THE COURT: Any objection as to the witness being
22 admitted for the purpose for the scope -- actually it is my
23 understanding he will be testifying as to point of impact;
24 is that correct, not in any full-scale accident
25 reconstruction?

VOIR DIRE BY MR. MASON OF DEPUTY BRINSON

1 MS. KINZELER: Yes, Your Honor, I am not seeking to
2 admit him as a reconstructionist.

3 THE COURT: Okay. So he would be admitted ---

4 MS. KINZELER: I can clarify if Your Honor would like.

5 THE COURT: That would be ---

6 MS. KINZELER: I am seeking to admit him as a traffic
7 fatality -- an expert in traffic fatality investigations so
8 that he can testify to the measurements he took in
9 determining the point of impact. There was no
10 reconstruction therefore he wouldn't be testifying as to
11 reconstruction.

12 THE COURT: Okay. Any objection, Mr. Mason?

13 MR. MASON: Yes, Your Honor, we need to be heard; 704
14 reliability as well.

15 THE COURT: Madam Forelady, ladies and gentlemen, I
16 have a brief matter of law I need to take up with the
17 attorneys. It should be brief.

18 Please leave your notepads in your seats, and please do
19 not discuss the case during your break. If you would go
20 with the bailiff for me, please. We appreciate your
21 patience.

22 (WHEREUPON, the jury was removed from the courtroom at
23 approximately 4:42 p.m.)

24 THE COURT: You may be seated. What is the basis of
25 the objection?

1 MR. MASON: Reliability of the testimony in the absence
2 of a number of issues that I would wish to examine the
3 officer about and put on ---

4 THE COURT: Reliability would not be a basis of an
5 objection based on his education, training or experience.
6 You would have to object based on the fact that he were
7 asserting that he does not have sufficient education,
8 training and experience to testify as to his measurements
9 and as to the point of impact.

10 The training unless you have some scientific evidence
11 or some scientist who is going testify and tell me that the
12 methods that are employed by the South Carolina Criminal
13 Justice Academy are not reliable and are not accepted then
14 again you are mixing two different concepts, each of which
15 are inapplicable and in an opposite to one another. They
16 are two separate things and with two different standards.

17 So I need you to -- you -- she has sought to admit this
18 expert -- excuse me, to admit this witness as an expert for
19 the sole purpose of within the confines of his employment
20 and within the scope of his duties as a fatality -- as a
21 part of the fatality team of the Charleston County Sheriff's
22 Department and to testify as to the measurements he took at
23 the scene and as to the point of impact.

24 What is the basis of your objection regarding his
25 admission on that -- on those grounds?

1 MR. MASON: He didn't locate the point of impact, Your
2 Honor. What he located was what is called maximum
3 engagement.

4 He painted "M, E" on the ground, okay. That doesn't --
5 that isn't the place that the initial point of contact took
6 place, okay. The case is about where the contact took place
7 and which lane precisely where the contact took place.

8 So what we have is a witness whose -- who the State has
9 asked to testify about something he didn't do.

10 He located the final rest. He located maximum
11 engagement. He located certain other items that are related
12 to his measurement, but he didn't locate what the -- what
13 you refer to -- what is referred to as the initial point of
14 contact which can be in an accident can be, you know, 10, 12
15 feet away from what he did locate so ---

16 THE COURT: All -- all of what you are talking about is
17 a weight issue, not an admissibility issue as to his
18 education, training and experience and whether he can assist
19 the trier of fact on an -- on an issue that is outside of
20 their commonly knowledge.

21 So I need you to limit your argument or focus your
22 argument on his qualifications. The rest of it that you are
23 talking about now is a weight issue, and I assume you are
24 going to have your own expert come in and testify and then
25 it becomes a battle of whomever the jury believes about the

1 point of impact and that terminology.

2 MR. MASON: But he didn't locate the point of impact.

3 That -- in other words she ---

4 THE COURT: I never knew that he didn't -- I don't know
5 that he did not locate the point of impact. But

6 irregardless, that has nothing to do with his

7 qualifications. That has to do with his opinion, which are
8 two different things.

9 MR. MASON: She has tendered him as a witness who is an
10 expert on the point of impact. And so if she wants ---

11 THE COURT: She has tendered him as an expert who has
12 received certification as a fatality -- as a part of the
13 Charleston County Fatality Team and as an accident
14 reconstructionist.

15 MR. MASON: Your Honor, what my position is is that I
16 am entitled to voir dire Deputy Brinson outside of the
17 hearing of the jury for you to determine as gatekeeper
18 whether you ought to let him render an opinion based on what
19 he has actually done in this case which is no scaled
20 drawing, no witness statements, no ---

21 THE COURT: The court does not determine the weight of
22 an expert's opinion. This court determines -- the only
23 thing reliability relates to is the reliability of the
24 underlying science.

25 You want me to weigh the reliability of his actual

1 opinion. That is a weight issue. That is for the jury to
2 determine whether they believe his testimony, whether it is
3 based on sufficient education, training, and experience;
4 whether there is sufficient foundation for his opinion based
5 on whatever underlying work he did to produce that opinion.

6 But as the gatekeeper it is not this court's function
7 to weight an expert's testimony and decide whether it is
8 going to -- whether as -- it is not my function as the fact
9 finder.

10 What you are arguing are weight issues as to whether he
11 made any mistakes in his calculations or otherwise.

12 Our case law when it talks about reliability it talks
13 about the reliability of the underlying science. In other
14 words, if there is some formula he employed that is not
15 generally accepted, if there is some mechanical procedure
16 that he has employed that is not a part of what is regularly
17 accepted.

18 But what he has testified to is that he has employed
19 what he was trained to do at the South Carolina Criminal
20 Justice Academy, what he was certified to do, and what he
21 has done in 35 to 40 other accidents. That is not a
22 reliability issue. That is a weight issue.

23 MR. MASON: What it is is he testified he did not do --
24 I believe the record at this point is that there is no
25 reconstruction done in this case. So what they have asked

1 for is to allow a witness who did not do a reconstruction to
2 render opinions about how the accident would be
3 reconstructed. So that ---

4 THE COURT: Well, point of impact. That is not a full
5 reconstruction. And they are not done in every accident,
6 nor are they required in every accident.

7 Case law supports them being able to render an opinion
8 as to point of impact. Everything you have raised up to
9 this point goes to the weight of his opinion. And I would
10 expect you to thoroughly question him regarding that.

11 And I suspect based on your witness list you may well
12 be calling a witness to say that he is wrong, which then
13 becomes a battle of the dueling experts as to who testified
14 appropriately as to what the point of impact was.

15 But certainly he is qualified to testify as to the
16 point of impact based on what he has testified to, that
17 being his certification by the South Carolina Criminal
18 Justice Academy, the fact that he worked on at least 35 to
19 40 fatal accidents prior to '08 which was prior to the time
20 of this accident, as well as this being within the scope of
21 his responsibilities at the Charleston County Sheriff's
22 Department.

23 All the other things that you raise really do not go to
24 reliability of the science. This court does not weigh the
25 reliability of an expert's testimony because I will instruct

1 the jury they can disregard an expert's opinion. If they
2 feel it is contradicted by the rest of the case they don't
3 have to pay attention to it at all even if it is not
4 contradicted.

5 So it is not for me and my gatekeeper function to weigh
6 and to be the fact finder on an expert's opinion. It is for
7 this court and its reliability function to determine the
8 reliability of the underlying science.

9 MR. MASON: Well, the issue is we have got an officer
10 who has never been an expert before who has done several or
11 a few reconstructions ---

12 THE COURT: Well, if that were the criteria ---

13 MR. MASON: --- who didn't do what ---

14 THE COURT: --- there are many experts that would never
15 be qualified the first time.

16 MR. MASON: Who didn't do ---

17 THE COURT: That is not the bar as to whether somebody
18 should be qualified as an expert.

19 MR. MASON: He didn't do one in this case and didn't
20 locate the point of impact in this case and that the State
21 wants to offer him as an expert to testify about something
22 he didn't do. That is our objection, Your Honor. Thank
23 you.

24 THE COURT: Well, he -- it is my understanding that he
25 will -- and of course we are at this point we are only

1 talking about his qualifications, not about -- not about
2 what his actual opinion will be.

3 But if the State is going to elicit his testimony
4 regarding the point of impact they are going to have to
5 establish, one, that he is the one that took the
6 measurements and that he is the one that made these
7 calculations and that he is the one that is rendering his
8 opinion.

9 Of course an expert can rely on hearsay, meaning manual
10 treatises and other things or depositions, other things
11 outside of -- that they did not necessarily produce for the
12 purposes of rendering an opinion. They are entitled to do
13 that. But I have not heard anything up to this point that
14 tells me he did not perform these actual measurements.

15 And they do these things as a fatality team. There's
16 not one person that does it. There are like two or three of
17 them that -- or sometimes -- I don't -- I don't really -- I
18 don't want to misstate the number of people that actually do
19 it.

20 But a fatality team consists of a select group of
21 individuals who do these for each policing authority. And
22 he is a part of that team.

23 Now is it -- is Mr. Mason accurate that he did not
24 perform this, or is that inaccurate?

25 MS. KINZELER: Your Honor, that is actually inaccurate.

1 I understand that is his opinion. Deputy Brinson would
2 testify that the -- it is not actually called -- and correct
3 me if I'm wrong obviously Deputy Brinson; but it is not
4 necessarily the actual point of impact, it is an area of
5 impact. Maximum engagement is a certain point. Point of
6 impact or first point of contact generally occurs right
7 before maximum engagement.

8 And my understanding what his testimony would be would
9 be that this is within like one like ten thousandths of a
10 centimeter or some very -- it is the same spot.

11 The way that this accident occurs it is the same -- it
12 is like -- it is not six feet to the right. It is
13 physically impossible for that to be the case.

14 And so in finding maximum engagement he did find point
15 of impact and area of impact. And I don't know that his
16 testimony will be specifically the point of impact as here
17 so much so as it is this is the lane in which the accident
18 occurred and here is how we know this because it would be
19 physically impossible for it to have occurred the way Mr.
20 Mason suggests.

21 THE COURT: Well, all of that goes to the weight of the
22 opinion to render ---

23 MS. KINZELER: But he did determine it.

24 THE COURT: He can fully cross-examine him regarding
25 his -- his -- his calculations and the differing terms that

1 are being employed. But none of that goes to -- all of that
2 goes to weight, not admissibility.

3 Deputy Brinson has testified that he received
4 certification as an accident reconstructionist through the
5 South Carolina Criminal Justice Academy, that he has
6 received certain education, training, and experience through
7 several mechanisms, those being training classes as well as
8 recertification in his field as well as several DUI arrests,
9 and in addition to that, the investigation of 35 to 40 fatal
10 accidents prior to 2008 which is prior to the date of this
11 incident, that he received his certification in 2005.

12 And although he has not been qualified as an expert in
13 any court prior to this time, that is not the barometer by
14 which this court measures a person's education, training,
15 and experience for their admissibility as an expert.

16 If that were the case many experts would never be
17 admitted. There has to be some point when a person is
18 admitted for the first time. So that is not the court's
19 benchmark in determining what is appropriate in terms of
20 admitting someone as an expert witness.

21 Our rules are very clear and our case law is very clear
22 in articulating the standard that is to be applied.

23 And our courts have been very clear that the
24 qualification of a witness as an expert rests in the sound
25 discretion of the trial judge whose decision will not be

1 disturbed absent an abuse of discretion.

2 And we know the abuse of discretion amounts to a lack
3 of factual support of the record or there being a violation
4 or it being contrary to applicable case law.

5 Our courts have articulated that there is no abuse of
6 discretion and qualification by which the witness as an
7 expert so long as the witness has acquired by study or
8 practical experience such knowledge of the subject matter of
9 his testimony as would enable him to give guidance and
10 assistance to a jury in resolving factual issue which is
11 beyond the scope of the jury's good judgment and common
12 knowledge.

13 The court would find for the record that this witness
14 possesses practical experience and such knowledge of the
15 subject matter by his training, education and experience and
16 certification to enable him to give guidance and assistance
17 to the jury in resolving this issue as it is well beyond the
18 jury's good judgment and common knowledge.

19 And the case that is on point that has been cited in
20 several other cases, that being State versus Goode which is
21 a Court of Appeals, a 1991 decision, where they found in
22 this case relief cert was denied on it.

23 But and if I'm wrong -- I don't know that it really is
24 dispositive in any event. But in this case the officer had
25 much less training than Officer Brinson and our courts found

1 that the officer who had received training had practical
2 experience in determining the point of impact in an
3 accident investigation could properly be qualified as an
4 expert to testify on that issue in a DUI prosecution, that
5 where the officer who had received training and had
6 practical experience in determining speed of vehicles
7 involved in collisions could properly be qualified as an
8 expert witness on that issue. And it was referring to the
9 point of impact, which is what the officer testified to in
10 this particular case.

11 And in this case, referring to the Goode case, what the
12 appellant challenged was the officer's ability to provide
13 testimony to the extent that he gave an opinion that the
14 testimony as to the lane of impact.

15 And he testified regarding that he observed a gouge
16 mark in the victim's lane thus indicating to him that the
17 collision had taken place in the victim's lane.

18 The court then qualified the officer as an expert but
19 advised the State that it had to lay the appropriate
20 foundation as to his experience.

21 Of course factually this case developed a little bit
22 different than ours. And the court discerned no error in
23 his qualification as an expert on the lane of impact issue.

24 This case is squarely on point with this case. The
25 State would seek to elicit the officer's opinion as to the

1 lane of impact based on his training at the Criminal Justice
2 Academy, his investigation of 35 to 40 other accidents, as
3 well as his additional training and experience.

4 This is not an accident reconstruction that he is
5 testifying to. It is simply the lane of impact or point of
6 impact. Although I don't know that those are terms of art.

7 State versus Goode has been cited in Austin versus
8 Stokes-Craven Holding Corporation as good law and as --
9 regarding the qualification of a person as an expert.

10 Now the other issues that have been raised regarding
11 this witness go to the weight of the testimony, not its
12 admissibility.

13 There have been no valid issues raised regarding the
14 reliability of the science that is being employed or the
15 methods that he -- the reliability of those methods; in
16 other words, those being those generally accepted within the
17 field of study to make these determinations.

18 The objections that have been raised really go to the
19 weight of the testimony. And those can be fully explored in
20 cross-examination. The motion is denied. The witness will
21 be admitted as an expert. Please bring the jury.

22 (WHEREUPON, the jury entered the courtroom at
23 approximately 5:00 p.m.)

24 THE BAILIFF: The jury is present, Your Honor.

25 THE COURT: You may be seated. Ladies and gentlemen,

1 we appreciate your patience. The State may resume its
2 questions.

3 MS. KINZELER: Your Honor, can we do the finding on the
4 record?

5 THE COURT: The witness is to be admitted as an expert
6 for the limited purposes that have already been articulated
7 for the record. You may proceed.

8 MS. KINZELER: Thank you.

9 BY MS. KINZELER:

10 Q Deputy Brinson, do you have any recollection of a
11 collision that occurred on Point of Pines Road in December
12 of '08?

13 A Yes, ma'am.

14 Q Tell the jury what you remember about being called out
15 there initially.

16 A It was in the early evening. I think I got called out
17 around 6:30 or so. I was off that day but on call for the
18 traffic fatality. I live in Summerville, so it was a hike
19 out to Edisto. It took me about an hour and fifteen minutes
20 or so to get there I think. And ---

21 Q Stop your train of thought for one second.

22 MS. KINZELER: Your Honor, may I approach?

23 THE COURT: You may.

24 Q Deputy Brinson, ---

25 MR. MASON: Your Honor, objection.

1 THE COURT: I'm sorry?

2 MR. MASON: I have an objection to the exhibit.

3 THE COURT: Please approach.

4 (WHEREUPON, a bench conference was had.)

5 THE COURT: You may proceed.

6 Q Deputy Brinson, do you recognize that? Let me rephrase
7 that question. Do you recognize the area captured in that
8 picture?

9 A Yes, ma'am.

10 Q And what do you recognize it to be?

11 A That is the area between Highway 174 and Point of Pines
12 Road which is where the collision in December there 2008
13 took place.

14 Q Okay.

15 MS. KINZELER: Your Honor, if I may publish to the
16 jury.

17 THE COURT: On the ELMO you may.

18 Q Deputy Brinson, can you sort of point generally to the
19 area where you responded to. Well, let me start over. I am
20 sorry. What are we looking at right here (motioning)? What
21 is this (motioning)?

22 A That is Point of Pines Road.

23 Q And ---

24 A This is Highway 174 here (motioning), and this is Point
25 of Pines Road (motioning).

1 Q And roughly where did the collision occur that you
2 responded to?

3 A Roughly it was in this area here (motioning). It is a
4 variance of a huge scale, so it is -- but it is in this
5 general area (motioning), this initial curve.

6 Q And do you recall roughly what time you got out there?

7 A I believe I got on the scene at around 6:45 that
8 evening I believe. I don't have the call logs or anything
9 in front of me.

10 Q Why were you called to respond to the collision if it
11 was your day off on call?

12 A Because I am on the fatality team for the Sheriff's
13 Office Traffic Division and we get called out if anything --
14 if there is a confirmed death or if there is a Category I
15 injuries which is that is done to the hospital.

16 A Category I is basically one category prior to death.
17 It is very significant injuries with a severe risk of dying.
18 So we are called out to investigate those accidents.

19 Q Tell the jury a little bit not particular in this case
20 but just generally how do you investigate a traffic
21 fatality, sort of the big picture of the steps you go
22 through.

23 A On a very general basis when we first get there, there
24 is usually some uniform or law deputies that are working
25 that district or that area of the county who have gotten on

1 the scene before us normally, because we are coming from our
2 house and they are already out working.

3 They usually have the scene secured for us by blocking
4 off the road, using crime scene tape, whatever it is that
5 they need to do to secure the scene so that all the evidence
6 lays where it came to its final rest at and the marks in the
7 roadway or any type of evidence, nothing is disturbed to the
8 best of their ability before we get there.

9 And from that point on usually that deputy will kind of
10 fill us in on what he has done so far, what he has observed
11 or what he has seen or heard or collected.

12 And then from there we try to -- we observe the scene
13 and try to figure out what happened in the accident and
14 decide if charges are probable, you know, if someone needs
15 to be charged or what exactly took place in the accident.

16 Q Is there a process you go through as far as reviewing
17 the scene before moving anything or marking anything?

18 A You know, we review -- we look over the scene and try
19 to pick out the evidence and figure out exactly what is out
20 there, what we are looking at.

21 We have a lab -- from our crime scene we call them lab
22 techs, but it is the officers do fingerprints and pictures
23 and everything. They respond out also and take pictures for
24 us.

25 And we normally -- we don't do any of our markings or

1 disturb anything until those pictures are taken. That way
2 in the pictures as you look at them later on the stuff is
3 where it was. It wasn't moved, it wasn't painted.

4 And once they take pictures we will go along with we
5 normally use orange spray paint and we will paint different
6 marks and label different things, so if we have to go back
7 out weeks later or to look at the scene again so we know
8 where everything was.

9 Q In this case do you recall when you first got on the
10 scene?

11 A I believe it was 6:45 that evening roughly.

12 Q Who was there when you got there?

13 A When I got there from the Sheriff's Office, Deputy
14 Luckadoo was there. There was another deputy on the far end
15 of the accident that I never spoke to. I don't remember who
16 that was. There was ---

17 Q Explain that to the jurors, this far end. That was for
18 you, not the screen. I'm sorry.

19 A Like the two deputies on this -- it was a two-lane road
20 so it was fairly simple for the deputies to block it off.
21 One deputy got on this end of the accident -- on this end of
22 the accident (motioning). And another deputy was down past
23 the accident on the other end so that nobody could drive
24 through the accident scene.

25 And Deputy Luckadoo was at the end right where you come

1 off of Highway 174 which is the main drag, if you want to
2 call it that, coming in. So he was the first deputy that we
3 got to.

4 The deputy that was on the other end I just talked to
5 him maybe one -- I don't remember who it was because he was
6 on the far end that wasn't directly involved in the accident
7 scene.

8 There were several fire trucks there, a few from the
9 Charleston County Rescue Squad. I believe the EMS
10 supervisor was still on the scene.

11 There was no -- EMS had already taken the patients that
12 were involved in the accident to the hospital. Because like
13 I said, it took me a while to get out there from
14 Summerville.

15 The victim that was deceased in the crash was still in
16 his vehicle at the scene when I got there.

17 Q When you get there who are the first people you talk
18 to?

19 A I spoke with Deputy Luckadoo. When I first got there,
20 like a said earlier, he kind of filled me in on what had
21 taken place prior to me getting there.

22 Q Without repeating what Deputy Luckadoo told you, what
23 did you learn from this conversation?

24 A I learned that we had two vehicles were involved in it
25 and it was a head-on collision and that there was alcohol

1 involved in the accident from things that had been observed
2 from Deputy Luckadoo.

3 Q What are those things?

4 A He observed the boisterous type attitude from one of
5 the -- from the driver of the pickup truck, a smell and odor
6 of alcohol that he noted himself. And some other fire and
7 EMS guys had told me that they also ---

8 Q Don't -- without repeating what anyone said.

9 A I'm sorry.

10 Q What did you learn from those conversations?

11 A Just that the alcohol was involved ---

12 THE COURT: As to what he did as a result of the
13 conversation.

14 Q Or what did you do as a result of the conversation?

15 A I determined that there was further investigation
16 needed to see if alcohol was involved or impaired driving
17 was involved in the accident and

18 Q As part of your investigation do you recall speaking
19 with any witnesses out there, anyone not involved in the
20 collision?

21 A The only person that I spoke to was at the very end,
22 right before I was getting ready to leave. Which I think we
23 were out there for probably an hour, hour and a half, off
24 the top of my head without looking at the times.

25 Right before we were getting ready to leave it is a

1 wooded area that we were in on a two-lane road. And it was
2 dark of course by then.

3 And this -- a guy just appeared. I don't know where he
4 came from. I turned around and he was standing in the
5 middle of the accident scene. There in a pair of overalls.
6 And he told me that he was looking for a dog that was
7 supposedly in the truck that was involved in the accident.

8 And so we actually looked around for a few minutes. We
9 didn't see a dog that was injured or, you know, any sign --
10 we didn't really see any signs of a dog honestly.

11 And I took that guy's name and number in case somebody
12 called about the dog or animal control units picked it up.
13 And that was -- that was the only person that I spoke to
14 that was a civilian out there.

15 Q Did -- during this conversation with this witness did
16 the witness give you any indication that he had been there
17 earlier or that he had seen anything?

18 A No, as far as when the wreck happened?

19 Q Or anything after the wreck.

20 A No, ma'am. I mean he talked about the dog, and that is
21 it.

22 Q You referenced -- I don't know if you did or not. What
23 else did you find at the scene other than the wrecked cars?

24 A There was a cooler and some beer cans and a liquor
25 bottle ---

1 MR. MASON: Object, Your Honor.

2 THE COURT: Basis?

3 MR. MASON: Approach?

4 THE COURT: You may.

5 (WHEREUPON, a bench conference was had.)

6 THE COURT: Proceed.

7 Q What is the next thing that you did after you sort of
8 met with Deputy Luckadoo and reviewed the scene?

9 A We took -- we were waiting on -- I can't remember if
10 she got there with me or we had to wait a few minutes for
11 our lab investigator to get there. But like I said, we were
12 waiting for her to take pictures before we did a lot of
13 moving of things.

14 So myself and Deputy Burrell went ahead and started
15 taking some measurements, because we could do that without
16 disturbing the scene, and labeling things as where they
17 were.

18 Q What are you measuring? Tell them about this. What
19 are we measuring when we are out there?

20 A Basically the way we were trained to do it is find a
21 point on either end of your accident. A point -- you try to
22 find a point they will never -- that can be put back if you
23 have to go back later.

24 We like to use power poles because the power company
25 can locate those. Even if they move them they can tell you

1 where it used to be. In this wreck I used an SCE&G pole.

2 And you start from that is considered to be your
3 reference point. And you basically just continue down a
4 line through your accident scene marking the evidence as you
5 go down from -- everything goes from your reference point.
6 And ten feet to this and five feet to that.

7 And you just continue on down through your accident
8 scene labeling the -- all of the marks, any pertinent
9 evidence and stuff that is on your scene.

10 So at some point later if you had to go back out there
11 you could start at that pole and you could go right down and
12 lay everything back out to where it was.

13 Q Do you measure the cars?

14 A The final rest of the cars, yes, ma'am.

15 Q What else about the cars do you measure?

16 A We measure the wheelbase which is front to back
17 basically and the wheel track which is the width of the car.

18 Q Do you do that for both cars?

19 A For both cars. And that is for the post collision.

20 Q What kind of night was it? What was the weather like?

21 A I remember it being cold out there in the woods. And I
22 think it was kind of foggy or wet in the air I do recall.
23 It wasn't raining. It just had that damp feeling in the
24 air.

25 Q And what kind of road are we talking about; is it

1 urban, rural?

2 A It is a two-lane road. And this particular section had
3 a double yellow line and it was basically a dirt shoulder
4 and trees on both sides of it. It is for the most part in
5 the woods. I think there are some dirt driveways here and
6 there.

7 Q Did you have an opportunity to review the inside of
8 either of the cars?

9 A Yes, ma'am, we looked through the -- we went through --
10 looked through the truck first because the -- we waiting for
11 the coroner for the other car because we can't do anything
12 with that until she does what she needs to do with the body.

13 We went through the truck looking for any signs of
14 anything we could find in there.

15 Q For what purpose?

16 A For either alcohol or anything that we could see if
17 there was blood inside the vehicle that may tell us, you
18 know, how the driver -- what happened to the driver during
19 the wreck. Just any signs of evidence that we can find in
20 the vehicle. We really didn't find much inside the truck.

21 Q Did you see any indication that a dog had been in
22 there, any hair or anything?

23 A I don't recall any significant signs of a dog. The
24 truck had rolled over a couple of times so it was -- the
25 inside of it was just disheveled, so it was really hard to

1 see any signs of hair and stuff that may be in there.

2 Once the coroner got finished with the body over on the
3 Geo then we continued to do our investigation on that car.
4 We went through the inside of it. We found a beer can that
5 was underneath the front passenger seat or kind of between
6 that and the console area or the hump.

7 Q Of the Geo?

8 A In the Geo, yes, ma'am. And ---

9 Q What kind of beer was that?

10 A I would have to look back in the picture. I don't
11 remember the type of beer off of the top of my head. I
12 believe it was a blue and silver can. We have a picture of
13 it that we documented it with.

14 MS. KINZELER: May I approach, Your Honor?

15 THE COURT: You may.

16 Q Do you recognize that photo?

17 A Yes, ma'am.

18 Q How do you recognize ---

19 THE COURT: Please approach.

20 (WHEREUPON, a bench conference was had.)

21 Q Deputy Brinson, you said that you took some
22 measurements while you were at the scene?

23 A Yes, ma'am.

24 Q Did you record those measurements anywhere?

25 A Yes, ma'am, field notes and also my report.

1 Q How does that work; is that -- how many people are
2 doing this with you? Just tell the jury how that works in
3 general.

4 A In general it is at least two, sometimes three of us.
5 I think that night it was just myself and Deputy Burrell
6 were the only traffic guys.

7 THE COURT REPORTER: I'm sorry, Your Honor, Deputy ...?

8 THE COURT: Yeah, if you slow down for us a little bit.
9 And I need you to speak directly into the microphone so the
10 court reporter can take down your responses.

11 THE COURT: Do you need him to repeat his answer from
12 the beginning?

13 THE COURT REPORTER: Yes, ma'am.

14 THE COURT: If you could repeat your answer, sir.

15 A Most of the time it is two, maybe three people there
16 taking the measurements. That night it was myself and
17 Deputy Burrell that did the measurements out there.

18 Q Throughout the course of your investigation you
19 mentioned that the truck had rolled. How were you able to
20 determine that? What did you observe out there that night
21 to be able to determine that?

22 A Observed on the roadway you can see the yaw marks which
23 are marks the tires leave when the tires are sliding
24 sideways. You can look at the truck and see that it has
25 scrapes. I think there is a picture of it somewhere.

1 There are scrapes down the side of the truck all over
2 the truck where you can tell where it rolled -- where it
3 slid on its side down the -- down the pavement.

4 Q Did you notice anything in particular about the tires
5 on the truck?

6 A The tires on the ...?

7 Q Or the hubcaps?

8 A Yeah, the rims I am -- I am pretty sure is on the
9 passenger side, without looking back at the pictures. But
10 rims on the passenger side where the truck was sliding
11 sideways down the road it started to roll the tire off the
12 rim. And the actual rim dug into the asphalt, and there is
13 asphalt caked into the rim which is what caused the truck to
14 start flipping.

15 Q Did you take measurements of the roadway, the lane
16 widths?

17 A Yes, ma'am.

18 Q Would it aid your testimony to the jury to be able to
19 refer to your report with your measurements in it to sort of
20 explain what you found?

21 A Yes, ma'am.

22 MS. KINZELER: May I approach, Your Honor?

23 THE COURT: You may.

24 (WHEREUPON, a document was presented to the witness.)

25 A Thank you.

1 Q Do you recognize that?

2 A Yes, ma'am.

3 Q What is it?

4 A That is my report and as well as my field notes.

5 Q And who took those measurements?

6 A Myself and Deputy Burrell.

7 Q Who was the scribe and who did the measuring?

8 A Deputy Burrell was doing the writing, and I was doing
9 the measuring.

10 Q How wide is this road that we are talking about?

11 A The eastbound lane is ten foot, two inches wide. And
12 the westbound lane is nine foot, ten. Which is that is from
13 the edge of the pavement to the center of the double yellow
14 line. So it is

15 Q Okay. And were you able to determine who the owner of
16 was of the truck?

17 A The owner of the truck, yes, ma'am, that was Mr.
18 Barclay.

19 Q Do you see Mr. Barclay in the room today?

20 A Yes, ma'am.

21 Q Could you just identify him for the record with what he
22 is wearing or where he is sitting?

23 A The second guy over here with the long black hair with
24 the glasses on.

25 Q Were you able to identify the driver of the Geo ---

1 MS. KINZELER: I'm sorry, Your Honor. Let the record
2 reflect that Deputy Brinson identified the defendant, Mr.
3 Barclay.

4 THE COURT: Note the record so indicate. Please
5 proceed.

6 Q Were you able to determine through your investigation
7 who the owner of the Geo was?

8 A Yes, ma'am. This is on the back page of the report.

9 Q Do you need the rest of your folder?

10 A Yes, ma'am, it is on the back page of the report. I am
11 sorry.

12 MR. MASON: Your Honor, may I see what she is handing
13 the witness?

14 (WHEREUPON, document was presented to defense
15 counselor.)

16 MS. KINZELER: May I approach, Your Honor?

17 (WHEREUPON, document was presented to the witness.)

18 A Thank you.

19 Q Having reviewed your report to refresh your
20 recollection were you able to determine who the owner of the
21 Geo was?

22 A Yes, ma'am. Alvaro Garcia.

23 Q During the course of your investigation were you able
24 to determine the width of the truck?

25 A Yes, ma'am.

1 Q How did you determine that?

2 A By measuring the wheel track which is done from the
3 center of the tire to the center of the tire, left to right.
4 So it is the width of the truck looking at it if you're
5 standing behind it looking at it from left to right.

6 Q And how long was it?

7 A Five foot, eight on the rear. And it was five foot,
8 four on the front. This is post collision, so that
9 difference is because of damage.

10 Q And the Geo were you able to determine the width of
11 that car?

12 A Yes, ma'am. It was the rear wheel track on it was four
13 foot, eleven inches. And the front wheel track was four
14 foot, seven.

15 Q Tell the jury a little bit about areas of impact and
16 maximum engagement and how you are able to determine those
17 things.

18 A When you have the collision the maximum engagement is
19 the point at which two vehicles are maximumly engaged. It
20 is when you have a collision -- I'm sorry, I wish I had
21 little cars. But ---

22 Q Did you prepare a collision report as part of your
23 investigation?

24 A Yes, ma'am.

25 Q Would it aid your diagram to -- I'm sorry, would it aid

1 your testimony to refer to your diagram in explaining this
2 to the jury?

3 A Okay. Yes, ma'am.

4 MR. MASON: Objection Your Honor. May we approach?

5 (WHEREUPON, a bench conference was had.)

6 THE COURT: May be used demonstratively only for the
7 purpose of explaining the opinion. You may proceed.

8 MS. KINZELER: May I approach, Your Honor?

9 THE COURT: You may.

10 Q Deputy Brinson, I am showing you State's Exhibit 1 for
11 identification purposes only. Do you recognize that?

12 A Yes, ma'am.

13 Q And how do you recognize it?

14 A It is a sketch that we did of the accident.

15 MR. MASON: Objection, Your Honor.

16 THE COURT: Basis?

17 MR. MASON: May I approach?

18 THE COURT: You may.

19 (WHEREUPON, a bench conference was had.)

20 THE COURT: Proceed.

21 Q Deputy Brinson, who prepared that diagram?

22 A I physically drew it on the computer.

23 Q Were you the -- who was the one to translate the
24 measurements to the computer diagram?

25 A Well, this is actually not to scale so it is just -- it

1 is just depicting what took place at the scene. It was a
2 demonstration.

3 Q And you prepared that diagram?

4 A I did.

5 MS. KINZELER: Permission to publish, Your Honor?

6 THE COURT: If he is going to use it to explain his
7 opinion but not simply to publish it. If it is for
8 demonstrative purposes that is what you can use this for.

9 MS. KINZELER: For demonstrative purposes only, Your
10 Honor, may I publish ---

11 THE COURT: Demonstrative for him to explain his
12 opinion. Not just to publish it. Is he going to go through
13 it and explain his measurements?

14 MS. KINZELER: Yes, ma'am.

15 THE COURT: Okay. You may proceed.

16 MR. MASON: Your Honor, may we approach?

17 THE COURT: You may. You may approach.

18 MR. MASON: Thank you.

19 (WHEREUPON, a bench conference was had.)

20 THE COURT: Proceed. And be careful.

21 MS. KINZELER: Yes, ma'am. I will just -- I will just
22 put it on there.

23 THE COURT: That is the better thing to do.

24 Q All right. And Deputy Brinson, is this the diagram I
25 just showed you?

1 A Yes, ma'am.

2 Q Tell the jury -- what are we looking at here.

3 A The Point of Pines Road is a slight curve in the road.
4 And that is a picture of the truck here that was in the
5 eastbound.

6 MR. MASON: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. MASON: Lack of personal knowledge.

9 THE COURT: Overruled.

10 Q Deputy Brinson ---

11 THE COURT: Actually he is opining as an expert. He
12 does not have to have personal knowledge.

13 MR. MASON: He, Your Honor, did not state it as such.
14 There is no question to a reasonable degree of any kind
15 of ---

16 THE COURT: You don't have to use that exact language
17 as long as you can exact that from the scope of the
18 question. You don't have to use that exact language.
19 Overruled.

20 MR. MASON: Seven -- 704.

21 THE COURT: Overruled.

22 MR. MASON: Objection.

23 THE COURT: I've noted your exception.

24 Make sure you ask the question in the appropriate form.
25 Make sure you are using the diagram for demonstrative

1 purposes to explain the scope and the foundation for
2 testimony.

3 Q If you have a seat first, Deputy Brinson. When you
4 first get there how do you determine, if you could use this
5 diagram to explain to the jury, the directions. Is there a
6 difference between compass direction and street direction?

7 MR. MASON: Objection.

8 A Yes, we ---

9 MR. MASON: Leading.

10 THE COURT: I will give her a little latitude.
11 Overruled. You may proceed.

12 A We do -- when we label accident reports and stuff we
13 use -- it goes by the number of the road. Odd number roads
14 are labeled -- that run north and south if they have an odd
15 number. And even number roads run east and west. Like I-26
16 for instance runs east and west.

17 So it goes by the number that the road has given to it
18 by either the federal government or South Carolina or the
19 County.

20 Q And in this case at the intersection of 174 and Point
21 of Pines Road what do we have?

22 A You have two even number roads.

23 Q So ---

24 A One-seventy-four is an even number. And Point of Pines
25 Road also has an even number.

1 MS. KINZELER: May I approach, Your Honor?

2 THE COURT: You may.

3 Q In this case how did you determine east and west? If
4 you could just sort of explain to the jury where 174 would
5 be and the directions that we are looking at.

6 A One-seventy-four would run over here (motioning). It
7 is running -- it is a T-intersection at 174. And since they
8 both have even numbers Edisto Beach is over here (motioning)
9 which is a main area of beach at the edge of the -- at the
10 edge of the -- at the water.

11 So that is why we determine the truck would be going
12 eastbound because he is technically heading towards the
13 beach.

14 Although there is water on this side (motioning) it is
15 a major area up there, Edisto Beach, so we determined that
16 to be eastbound.

17 Q And then who did you determine who would be going
18 westbound?

19 A The Geo.

20 Q When you started investigating this collision which
21 point in this road did you start with; where is your
22 reference point? Roughly. I know it is not on there.

23 A The reference point should be right back over here
24 (motioning) which is the SCE&G pole.

25 Q And to start your investigation sort of walk the jury

1 through it where you started and what you did, how you did
2 your measurements.

3 A You have there is an SCE&G -- an SCE&G pole that is
4 located right ---

5 MR. MASON: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. MASON: Nothing shown on that diagram.

8 THE COURT: Overruled. It is being used for
9 demonstrative purposes only. It is based on his personal
10 knowledge and investigation of the incident in the
11 performance of the basis of his opinion.

12 It is probably easier if he comes down to the ELMO and
13 does it. And that way he can project his voice toward the
14 court reporter.

15 MS. KINZELER: Sure.

16 THE COURT: So that she can hear him clearly.

17 Q Okay. So begin with your reference point.

18 A There is an SCE&G pole that is just east of where the
19 truck came to a final rest.

20 Q So where do you begin then from there?

21 A All right, so the SCE&G pole sits back off the roadway.
22 So what we do is -- again, this being eastbound (motioning),
23 this way being westbound (motioning). So it is going to --
24 get my bearings straight.

25 Okay. All right, this is eastbound. So North is going

1 up. South is going down. West is going this direction
2 (motioning).

3 So the way we do it is you start at the SCE&G pole or
4 your point of reference and then you come out northbound
5 toward the edge of the road.

6 So you start at the pole here (motioning). You start
7 at the pole here (motioning) and then you would measure out
8 to the edge of the road north.

9 So you measure out to the road in a North direction
10 whatever distance that is, and you note it. And that is
11 where you -- that is where we use our reference point from.

12 So from there on then we start from that point on the
13 edge of the road and we are traveling -- we are traveling
14 westbound down the side of the road.

15 So from the reference point for instance to get to this
16 back tire of the truck if you think about a 90-degree angle
17 you are -- so you would come down the edge of the road,
18 whatever that measurement comes out to be, in a westbound
19 direction. And then you would go north however -- whatever
20 that measurement is to get to the rear tire of that truck.

21 And that is how we label -- we label both the tires --
22 we label all the tires that we can. Sometimes in a wreck if
23 they are so demolished we might only get three tires off of
24 the vehicle.

25 We label like down here in the impact area there is

1 gouges, skidmarks, different things that happen in the
2 accident. Those are all labeled. Everything comes from
3 back here (motioning). Measure it down and you go a
4 90-degree angle up to it.

5 So if we ever had to go back to it we could find where
6 this pole was, go up our measurement to get to the road and
7 we could go down and start laying things out as we go back
8 down.

9 Q And looking at this diagram you illustrate for the jury
10 were you able to determine the final resting position to
11 these cars?

12 A That is correct. The final rest of the truck is --
13 this is his final resting point (motioning). And this is
14 the final resting point of the car (motioning).

15 Q And if you could go back to the witness stand.

16 (WHEREUPON, witness returns to witness stand.)

17 Q Did you see any other marks out there that you are
18 trained to look for in a traffic collision investigation?

19 A Yes, ma'am. There was -- there was gouges in the road.
20 There was --

21 Q What does a gouge look like?

22 A A gouge is usually has -- a gouge is down in if you
23 think of digging into the asphalt or the roadbed. Fresh
24 gouges they usually have white powder or white dust around
25 them from being churned up like a concrete dust almost.

1 Sometimes they are long. Sometimes they just have different
2 shapes depending on what part of the vehicle dug into the
3 asphalt.

4 Q What's -- I'm sorry.

5 A Go ahead.

6 Q What is the difference between pre- and post-impact
7 skid marks?

8 MR. MASON: Objection, Your Honor.

9 THE COURT: Basis?

10 MR. MASON: Lack of foundation.

11 THE COURT: Overruled. Rendering an opinion. Any
12 objections will go to weight. You may explore on
13 cross-examination.

14 MR. MASON: Foundation, Your Honor.

15 THE COURT: Overruled.

16 MR. MASON: Facts not in evidence, Your Honor.

17 THE COURT: Overruled. I asked for the basis of the
18 objection. And you don't continue to state them after I
19 have overruled them. You state all the basis.

20 MR. MASON: Yes, Your Honor.

21 THE COURT: You may proceed.

22 Q Generally, Deputy Brinson, what is the difference
23 between a pre-impact and post-impact skid mark?

24 A Normally if they are pre-impact and someone is slamming
25 on the brakes and skidding they are normally heavy, black

1 skid marks that are left from their tires.

2 Post-impact you can have a number of different. If the
3 vehicle starts to slide sideways and you have some yaw marks
4 or ---

5 Q What is a yaw mark?

6 A Yaw marks are when the vehicle is sliding sideways the
7 tire is still rotating forward but it is sliding sideways
8 down the road so your skid mark actually looks -- actually
9 has like diagonal lines that go through it almost. You can
10 see the vehicle sliding.

11 Q In this case did you find any pre- or post-impact skid
12 marks?

13 A Yes, ma'am. There were some -- there was nothing
14 pre-impact that we could find from either vehicle. There
15 were some yaw marks or scuff marks that were left from the
16 truck and the vehicle after impact.

17 Q Did you find any post-impact skid marks?

18 A Yes, the Geo had skid marks from post-impact, and the
19 truck had yaw marks before it started to roll.

20 Q What lane were the post-impact skid marks from the Geo
21 in?

22 A They were in the Geo's correct lane, the westbound
23 lane.

24 Q What does a point of maximum engagement look like? How
25 do you know that when you see it?

1 A It is -- normally it is the biggest spot that you are
2 looking at. There is -- it is the most damage on the
3 roadway is normally your point of maximum engagement.

4 It is dictated by deep gouges because vehicles are at
5 their maximum point. The two forces from the vehicles are
6 at their maximum point of colliding forcing the vehicles
7 down towards the road.

8 So it is normally your deepest gouges are concentrated
9 in an area where the part of the frame or something the
10 vehicle has dug into the asphalt.

11 Q So tell the jury what is significant is in max -- the
12 point of maximum engagement, what does that mean when you
13 find that?

14 A Maximum engagement is the point at which, like I said,
15 the two -- the forces of both vehicles have collided and as
16 they are transferring to -- they transfer to each other.
17 That is Newton. The force from this vehicles transfers to
18 that vehicle and vice versa.

19 When they become maximumly engaged as they are engaging
20 they are driving down, and maximum engagement is the point
21 just before they separate at the collision.

22 Q What is -- tell the jury about area of impact and point
23 of impact. What do those things mean?

24 A We usually try to label an area, or an impact area is
25 what we try to call it, around maximum engagement. The

1 two -- the point of first touch which is at the point at
2 which the vehicles first touch each other; not damage each
3 other, but they first touch each other.

4 Which if you think of an accident in slow motion the
5 vehicles barely start to touch and then they start driving
6 each other down almost into a v-formation.

7 The point of first touch is so fast from maximum
8 engagement that they are basically the same area. I mean it
9 happens within thousandths of a second. And so it is
10 basically the same area as maximum engagement.

11 And it is very hard to find the point of first touch
12 because it doesn't leave a lot of marks. Depending on the
13 type of accident. But in this particular accident it
14 doesn't leave pre -- I mean there was no marks from the
15 first touch.

16 Q In this investigation did you determine what the speed
17 limit was on this road?

18 A I believe it was 45 miles an hour. Hold on so I can
19 verify that.

20 Q Were you able to determine by estimate the speeds of
21 these vehicles?

22 A We did estimate the speeds of the vehicles. It wasn't
23 done through math. It was done through -- speed was not a
24 factor in this collision. It was the placement of the
25 vehicles at the time of collision that was a factor. So

1 speed was nothing but an estimate.

2 Q And what were your estimations for the defendant's
3 vehicle?

4 A I believe we had it -- we estimated his vehicle at
5 around 40 miles an hour.

6 Q And what was your estimate of the victim's vehicle?

7 A Thirty to thirty-five.

8 Q What does that mean total when you combine it for
9 maximum engagement?

10 A Well, if you have got one vehicle doing 40 and one
11 vehicle doing 30 it is a 70 mile an hour collision. In this
12 particular accident here you have a full-size pickup truck
13 that weighs approximately 6,000 pounds depending on the load
14 that it has on it. Its gross vehicle weight I think is like
15 5,800 pounds. And then you have a Geo that's gross vehicle
16 weight unloaded is around, excuse me, 15 to 1,800 pounds.

17 So you are talking about a vehicle that outweighs --
18 the truck outweighs the Geo almost three times its vehicle
19 weight. So he definitely has the most force in a minimum
20 collision whenever the two of them collide.

21 Q In this case were you able to determine the maximum
22 point of engagement and area of impact?

23 A Yes, ma'am.

24 Q How were you able to determine that?

25 A Through the marks that were left on the road.

1 Q Did you use any measurements of any tires or where they
2 were located?

3 A We did use the -- I have a picture that -- at the point
4 of maximum engagement the Geo its front passenger tire when
5 the Geo got pushed backwards it was pushed backwards and did
6 a 180 and landed on -- it came to rest on the shoulder.

7 There is a skid mark from that tire from the point of
8 maximum engagement and it does the "U" and it right through
9 the dirt, and that final rest is still -- the tire is still
10 sitting in the track that it left.

11 Q How far from the shoulder was that passenger tire on
12 the Geo?

13 A From the -- from our baseline, like I was showing
14 earlier where we go down the side of the road, it was 15
15 feet north which is -- so that would be crossing the
16 eastbound lane because his mark was in the westbound lane.
17 So the eastbound lane is ten foot, two wide.

18 Q In which lane was the Geo traveling in?

19 A The westbound lane. So if you take the ten foot, two
20 from the fifteen feet, because we had to go across that
21 lane, it is five foot, two inches inside the westbound lane
22 is the passenger tire.

23 Q And how wide is the Geo that we talked about; how wide
24 is that car?

25 A The wheelbase on that car was four foot, seven.

1 Q So based on where you found this post-impact skid mark
2 from the passenger tire on the Geo ---

3 MR. MASON: Objection. Leading, Your Honor.

4 THE COURT: Sustained. Leading.

5 Q Were you able to -- let me rephrase that. Based on the
6 measurements that you just referred to were you able to
7 determine whether or not the Geo was traveling in his own
8 lane when he hit -- when he was struck?

9 A Yes.

10 Q How did you determine that?

11 A Well, like I said, the tire mark is five foot, two
12 inches inside the westbound lane from the yellow line going
13 towards the shoulder.

14 So the passenger tire is inside that lane. The width
15 of the car was four foot, seven; so you are left with --
16 left with one foot, five inches I believe if my math is
17 right that quick without writing it down.

18 It is approximately a foot to a foot and a half inside
19 the yellow line is where the driver side tire of the car had
20 been.

21 MR. MASON: May it please the court, Your Honor?

22 THE COURT: Yes, sir.

23 MR. MASON: May I approach?

24 THE COURT: Uh-huh.

25 (WHEREUPON, a bench conference was had.)

1 THE COURT: Proceed.

2 Q Deputy Brinson, were you able to determine through your
3 investigation where the tires on Mr. Barclay's were at the
4 point of maximum engagement?

5 A Yes, ma'am, there was the yaw mark that started from
6 his rear tire if we use that mark and then use the wheelbase
7 of his truck we can place it back to where it was at maximum
8 engagement.

9 Q Where was the right, rear tire of that truck in
10 relation to the point of maximum engagement?

11 A Maximum engagement going down from my reference point
12 down was seventy-seven foot, eleven inches down; and the
13 start of the truck marks was eighty-seven foot, six. So ten
14 foot, five inches past where the maximum engagement is is
15 the rear tire of the truck.

16 Q Where in the two lanes in this two-lane road where
17 would that right -- rear, right tire had been at point of
18 maximum engagement, where in the road?

19 A It was almost on top of the yellow line. Let's see.
20 To get to that where the truck mark was it is nine foot
21 north. So that is moving from the edge of the road in
22 towards the double yellow line.

23 And the eastbound lane which is what he was in is ten
24 foot, two. So he was one foot, two inches -- his passenger
25 side was one foot, two inches from the double yellow line.

1 Q Where was his driver's side tire at the point of
2 maximum engagement, the driver's side of his car?

3 A Complete -- everything except for one foot of his
4 passenger side was in the westbound lane maximum engagement.

5 Q And whose lane was that?

6 A The defendant's in the G- -- I'm sorry, the victim of
7 the Geo, Mr. Garcia.

8 Q And when we talk about point of maximum engagement in
9 this case how do we know where the point of impact is in
10 relation to maximum engagement in this case?

11 A This case they are virtually the same. Due to the
12 weight difference in the two vehicles it happens the Geo
13 basically was stopped in its tracks ---

14 Q So ---

15 A --- because the truck outweighed him so much.

16 Q So at the end of this investigation were you able to
17 determine the lane of impact?

18 A Yes, it was in the westbound lane which is Mr. Garcia's
19 correct lane to be traveling in.

20 Q And when we talk about maximum engagement and point of
21 impact is there any way that maximum engagement could have
22 been ---

23 MR. MASON: Objection. Leading, Your Honor.

24 THE COURT: Sustained. Leading. Rephrase.

25 Q How -- what is the furthest away from maximum

1 engagement that a point of impact could be, based on your
2 experience?

3 A I mean for this type of a wreck here -- it depends on
4 the type of wreck. I mean for a head-on collision like we
5 have in this case it is within inches of maximum engagement.
6 It happens that fast within thousands of a second.

7 Q Would it be possible for the point of impact to have
8 occurred in Mr. Barclay's lane?

9 A No, ma'am, it is not possible.

10 Q And why not?

11 A There's no marks that indicate that. There is no --
12 there's no marks in the road. There's no marks on the
13 vehicles.

14 Q When you say no marks, clarify that for the jury.

15 A There is no damage or any type of scuff. There is
16 nothing that shows that that -- that the point of impact
17 took place anywhere other than where it is being shown that
18 it has taken place. There is no evidence leading to it
19 showing anywhere else.

20 Q Based on the measurements you took -- let me rephrase
21 that. Did you do any mechanical inspections of these cars?

22 A We got the tires information and did -- like I said,
23 just measured the wheelbase and tracks of them.

24 Q How does the speed of the vehicles matter in this case?

25 A It is not significant. I mean, like I stated, the

1 truck -- the truck outweighs the car by almost three times
2 its amount. I mean higher speed would have just been, you
3 know, more damage to the vehicles. Lower speed, you know,
4 still it is a losing battle for the Geo.

5 THE COURT: Madam Forelady, ladies and gentlemen, we
6 are going to take advantage of this break in testimony to
7 take our evening recess. I apologize that we have gone
8 beyond five o'clock.

9 During this break please do not discuss the case among
10 yourselves or with anyone else. Please do not watch, read,
11 or listen to any media accounts about this case. And again,
12 please do not do any independent research of any type on the
13 Internet.

14 You are bound as the fact finders to decide this case
15 solely on the evidence and the testimony that is presented
16 in the courtroom.

17 When you return to the courthouse in the morning at
18 9:30 you will come directly to your jury room. Again,
19 please don't have any contact with anyone in or about the
20 courthouse.

21 Please leave your notepads in your seats. We will
22 secure them during the recess. We appreciate your patience.
23 Have a wonderful evening.

24 (WHEREUPON, the jurors left the courtroom at
25 approximately 5:47 p.m.)

1 THE COURT: It is my understanding that the officer is
2 relying on his file in testifying; is that correct; is that
3 what he has been referring to as he has testified?

4 MS. KINZELER: He has been referring to the
5 measurements in his incident report and notes. Not in his
6 entire file.

7 THE COURT: Incident report and notes, was that
8 provided to the defense?

9 MS. KINZELER: Yes, Your Honor.

10 THE COURT: Do you have a copy of the incident report
11 and the notes?

12 MR. MASON: I sure do. But I don't know what he is
13 writing at, looking at, whether he made some notes -- I just
14 don't know what he has up there.

15 THE COURT: He has been -- I have been watching him
16 very carefully. He did some simple math a moment ago
17 regarding a distance. But that is the only thing he has
18 been writing.

19 The State has -- I wanted to make sure on his testimony
20 because it is my understanding that that is what he was
21 referring to. I wanted to make sure for clarity purposes
22 that we are all on the same page and that was provided to
23 you.

24 There is no -- there is no duty that they have to give
25 it to you again. So you already have those documents in

1 your possession, correct?

2 MR. MASON: I don't know what he has with him at the
3 witness stand. That is what I would like to see what it is
4 that he has. If it is the incident report, yes, Your Honor,
5 I do have that. I did receive that in discovery.

6 I don't know what he has brought. He could have done
7 work over the weekend for all I know that he has got with
8 him up there. I don't know ---

9 THE COURT: Officer, are you referring to anything
10 other than your incident report and notes that have already
11 been provided to defense counselor?

12 DEPUTY BRINSON: Your Honor, I didn't bring anything up
13 here. This was just given to me.

14 THE COURT: Okay.

15 DEPUTY BRINSON: But no, ma'am, it is my incident ---

16 THE COURT: Certification of that, counsel, as an
17 officer of the court is sufficient. You already have the
18 documents in your possession. Sir, during the break you are
19 not to discuss your testimony with anyone. Okay?

20 DEPUTY BRINSON: Yes, ma'am.

21 THE COURT: You are -- yes?

22 MR. MASON: We would ask that the notes that he had
23 made to figure all of this out while he has been on the
24 witness stand ---

25 THE COURT: I have already told you that that is

1 not ---

2 MR. MASON: --- be marked.

3 THE COURT: I am not going to have his simple math. He
4 testified as to what he -- he did a simple math notation
5 which was subtracting two numbers. That is not going to be
6 made a part of the record.

7 MR. MASON: The point is, Your Honor, is this is a
8 felony DUI case and he is up on the witness stand figuring
9 out answers. I think it is pertinent for me to be able to
10 express to the jury that he came up there and on the
11 witness ---

12 THE COURT: I don't think there is any mystery that he
13 did. He did it in their presence. If you want to argue
14 that, that is fine. But a notation where he subtracted two
15 numbers is not going to be made an exhibit in this trial.

16 MR. MASON: I understand your ruling.

17 THE COURT: It would be used for demonstrative
18 purposes. In any event it would not be admissible. He has
19 testified. As to the substance of that you will have a full
20 opportunity to cross-examine him on that ---

21 MR. MASON: Thank you, Your Honor.

22 THE COURT: --- as to any preparation in rendering his
23 opinion.

24 Are we ready to adjourn for the evening? From the
25 State?

1 MS. KINZELER: Absolutely, Your Honor.

2 THE COURT: From the defense?

3 MR. MASON: Yes, Your Honor.

4 THE COURT: Have a good evening. See you at 9:30.

5 (WHEREUPON, court adjourned for evening at

6 approximately 5:56 p.m.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official 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 all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on October 24, 2011 transcribed from audio provided to me by Sharon Vizor-Hanks, Official Court Reporter.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: January 31, 2013

Certified Transcript Provided For: _____

Certification Reference # _____

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
2011-GS-10-002817
3 COUNTY OF CHARLESTON
4
5 STATE OF SOUTH CAROLINA,)
6)
7 -vs-)
8 WALTER DOUGLAS BARCLAY,)
9 Defendant.)
10 October 24-31 2011
November 1, 2011
11
12 B E F O R E:
13 HONORABLE DEADRA L. JEFFERSON
14
15 A P P E A R A N C E S:
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22 VOLUME II of V
23 October 24, 2011
24
25

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1 (Reconvened 10:05 a.m., October 25, 2011)

2 THE COURT: If the witness would retake the
3 stand, please.

4 I will remind you, sir, you're still under
5 oath.

6 Is the State ready to proceed?

7 MS. KINZELER: We are, Your Honor.

8 THE COURT: Is the defense ready to proceed?

9 MR. FORSBERG: We are. I would like to bring
10 something to the Court's attention prior to
11 bringing the jury in, if I may.

12 THE COURT: Sure.

13 MR. FORSBERG: It was brought to our
14 attention this morning that Mr. Barclay was kept in
15 the booking area of the jail all night, wasn't
16 allowed to sleep, had to sit in a chair all evening
17 with other prisoners because there was no room.
18 Clearly you have already indicated this trial may
19 go into next week and I don't know what, if any,
20 efforts the Court could make to see that a
21 defendant who is actually on trial is allowed the
22 opportunity to sleep.

23 In addition to that, he was not allowed to
24 have a shower, he wasn't allowed to brush his
25 teeth, he wasn't allowed to shave his face, and by

1 the time we get to next week he's going to look
2 like a wreck and I hate to have that prejudice him
3 in the eyes of the jury if there is any way the
4 Court could intercede with the jail and indicate
5 that this gentleman needs to be put somewhere where
6 he can at least get rest. This is obviously a
7 stressful time for him and we want him to be able
8 to put his best face forward.

9 Again, we're just making the request of the
10 Court. If there is anything that Your Honor can do
11 in that regard we would ask it be done.

12 THE COURT: I'll look into it.

13 MR. KELLER: He wasn't fed yesterday, either,
14 all day, he was given a balogna sandwich this
15 morning.

16 THE COURT: He wasn't fed when he got back to
17 the jail last night?

18 DEPUTY SHERIFF: Judge, I can look into it.
19 I don't have that knowledge.

20 THE COURT: Before I can make any sort of
21 assessment I need to know that.

22 DEPUTY SHERIFF: Yes, ma'am.

23 THE COURT: If you can look into it for me I
24 would appreciate it.

25 DEPUTY SHERIFF: Yes, ma'am.

1 MR. FORSBERG: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 DEPUTY SHERIFF: I'll go take care of that
4 now, Your Honor.

5 THE COURT: If you could for me.

6 In the meantime if you all would talk to the
7 bondsman and see if he would be willing to stay on
8 his bond and consent to any estreatment in the
9 event Mr. Barclay does not appear.

10 MR. FORSBERG: We'll get on that right now,
11 Your Honor.

12 THE COURT: Okay. Is the State ready to
13 proceed?

14 MS. KINZELER: Yes.

15 THE COURT: Is the defense ready to proceed?

16 MR. MASON: Yes, Your Honor, thank you.

17 THE COURT: Very well. Please bring in the
18 jury.

19 DEPUTY SHERIFF: Your Honor, just so the
20 Court knows, I have made the lieutenant aware over
21 at the jail and he's checking into that now.

22 THE COURT: Thank you, I appreciate that.

23 MR. FORSBERG: Your Honor, assuming Mr.
24 Seigler, the bondsman, is willing to stay on the
25 bond, what would the Court need to know from us or

1 do you want Mr. Seigler?

2 THE COURT: He would need to enter into
3 something in writing indicating he is basically in
4 effect writing a new bond and for staying on his
5 old bond with those same terms, that he does
6 understand if Mr. Barclay does not appear he is
7 still subject to the same estreatment under the
8 statute.

9 MR. FORSBERG: I just needed to make sure you
10 didn't need him to appear. Is a writing
11 sufficient?

12 THE COURT: Or your word as an officer of the
13 court.

14 MR. FORSBERG: Yes, ma'am, thank you.

15 (The jury returned to the courtroom).

16 BAILIFF: The jury is present, Your Honor.

17 THE COURT: You may be seated.

18 Ladies and gentlemen, I hope you all had a
19 pleasant and restful evening. We appreciate your
20 patience, we had some logistical delays this
21 morning that could not be avoided, so please know
22 that we do not take your time for granted and we
23 greatly appreciate your patience. We will now
24 resume with the direct examination of the witness.
25 The State may proceed.

1 MS. KINZELER: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 WILLIAM BRINSON, having been previously sworn,
4 continued to testify on direct examination.

5 BY MS. KINZELER:

6 Q Deputy Brinson, what investigation, if any,
7 did you do regarding the mechanical condition of
8 the car?

9 A We looked at the tires as far as the tread on
10 the tires and just did a brief examination of
11 whether the lights were working and that kind of
12 stuff. We didn't actually have the car
13 investigated by a mechanic.

14 Q Did you draw, were you able to draw -- what
15 were your conclusions?

16 A I mean, the tires on the cars appeared to be,
17 you know, they had sufficient tread on them to be
18 operated on the road.

19 Q Why is that important?

20 A For gripping the asphalt.

21 Q What else were you able to determine?

22 A I mean, prior to the accident both cars
23 seemed to be roadworthy, there was no defects that
24 looked like, prior to the accident, would have
25 caused any problems.

1 Q And when you completed your investigation,
2 can you give the jury a summary of your findings as
3 to how this collision occurred?

4 MR. MASON: Objection, Your Honor, asked and
5 answered.

6 THE COURT: Overruled.

7 A The investigation revealed that there was a
8 truck that was traveling eastbound on Moores Pond
9 Road, a Geo that was traveling westbound on Moores
10 Pond Road and as they entered the curve the truck
11 crossed over into the westbound lane almost
12 completely and struck the Geo head-on which in turn
13 caused the Geo to do a 180 backward like a backward
14 U-turn, for a good explanation. The truck started
15 sliding sideways and flipped two times, two or
16 three times and came to rest on its tires down past
17 the collision point.

18 Q What did you do after you completed your
19 investigation at the scene?

20 A Went down to MUSC, Medical University, where
21 the patients from the accident were transported.

22 Q Was anyone there with the defendant?

23 A Yes. Deputy Martin who worked for the
24 sheriff's office was down there already.

25 Q When you got there did you speak with Deputy

1 Martin?

2 A I did.

3 Q As a result of your conversation with Deputy
4 Martin what did you do?

5 A Well, prior to going to the hospital I spoke
6 to Deputy Martin via telephone when I was at the
7 accident scene, Deputy Martin was down at the
8 hospital collecting information for us, and I
9 consulted with him, myself and Deputy Burrell
10 consulted with Deputy Martin, pulled the evidence
11 together we had at the scene with what he had down
12 at the hospital as far as the demeanor and signs of
13 alcohol use being involved in the accident.

14 Q As a result of that conversation what did you
15 do?

16 A I determined there was probable cause that
17 the defendant was under the influence of alcohol
18 while operating a vehicle and instructed Deputy
19 Martin to get a blood sample from him.

20 Q When you arrived at the hospital who was with
21 you?

22 A Deputy Burrell was with me.

23 Q When you all got there did you speak with
24 Deputy Martin about anything that had occurred at
25 the hospital before you got there?

1 A Deputy Martin, they had already drawn the
2 blood whenever I got there and he filled me in on
3 what took place and turned the evidence over to me.

4 Q At some point at the hospital did you advise
5 the defendant of his Miranda rights?

6 A I did. When I first got there and talked to
7 Deputy Martin and he told me the steps he took
8 getting the blood, he had advised the defendant of
9 his Miranda warnings verbally, and I like to do it
10 in writing and have the defendant sign it so there
11 is a record, written record of it, and so I turned
12 to Mr. Barclay and read him the rights, then asked
13 him if he understood them and had him sign the
14 form.

15 Q Did you do that from memory or how did you do
16 that?

17 A I read it. It's on the form.

18 Q Did he give you an indication as to whether
19 or not he understood those rights?

20 A Yes, ma'am, he advised he understood them and
21 signed the form saying he understood them.

22 Q At some point after that did you hear the
23 defendant make any statements?

24 A Yes, ma'am.

25 Q What did you hear?

1 A He was kind of in and out, falling asleep in
2 the bed in the ER. He woke up at one point and
3 asked where he was, why was he here, and through
4 the conversation we had, he had a conversation with
5 Deputy Burrell and told Deputy Burrell he had been
6 on his farm and had had some beers and drinks while
7 he was working on his farm that day.

8 Q Where did you go after the hospital, what
9 happened next?

10 A We took Mr. Barclay to the Charleston County
11 Detention Center and were in the sally port of the
12 detention center filling out our paperwork. Before
13 we can take Mr. Barclay inside we have to have our
14 paperwork finished. At that point Mr. Barclay was
15 sitting on a picnic bench while we were filling out
16 paperwork and he fell back off the bench and hit
17 his head on the wall behind him, so we had to take
18 him back down to the Medical University again to
19 get checked out before we could take him to jail.

20 Q What was his demeanor like throughout this
21 process?

22 A Very sluggish, still had the obvious odor of
23 alcohol about him.

24 Q And I'm going to go back to the hospital for
25 a minute. When you got there did you have the

1 opportunity to handle any physical evidence in this
2 case?

3 A Deputy Martin had already drawn the blood,
4 like I say, and he turned that blood kit over to me
5 so I could take possession of it.

6 Q Explain to the jury what the blood kit looks
7 like, what are we dealing with?

8 A It's a box, a cardboard box that in the
9 inside of it has two tubes that are used to collect
10 the blood sample. It also has a little bottle for
11 a urine sample if you get that as well, and there
12 is paperwork inside of it you fill out for SLED and
13 it has stickers to seal everything up. Once the
14 blood is taken a sticker goes over the top of the
15 tube and it is labeled with some information to
16 identify where it is from. There is also a sticker
17 in there with the box when everything is in the
18 box, that you put over the outside of the box so it
19 can't be opened again unless somebody cuts the
20 sticker, so it is tamper proof once it is sealed up
21 and to be sent to SLED.

22 Q And when you -- who did you receive the blood
23 kit from?

24 A Deputy Martin.

25 Q What was it in when you received it?

1 A It was sealed, it was ready to go to SLED, it
2 was sealed up with the stickers.

3 Q Had the paperwork already been put in the
4 box?

5 A Yes, ma'am.

6 Q Did you give that to anybody subsequently or
7 what did you do with it?

8 A I took possession from him and had it with me
9 until we got to the sally port of the jail where
10 Investigator Kjellman from our lab came and picked
11 it up. It has to be kept in a refrigerated
12 environment, they have to come get it from us
13 because we don't have access to their secure
14 facility where the evidence is.

15 Q And while it was in your custody and control
16 did anyone else have access to it?

17 A No, ma'am.

18 Q And when you gave it to Investigator Kjellman
19 what was the condition of the box? Was it still
20 sealed?

21 A Yes, ma'am.

22 Q When you were leaving the hospital with the
23 defendant can you tell the jury a little bit about
24 his demeanor there?

25 A We walked out to the parking lot and he was

1 walking, we had to help him down the curb and down,
2 there is a ramp coming out of the ER as well, so we
3 kind of helped him walk out to the car. I wouldn't
4 say we had to keep our hand on him the entire time
5 but we had to help him.

6 Q Did you take him immediately to the jail or
7 did you do anything in between?

8 A He said he wanted to smoke a cigarette so we
9 did let him smoke a cigarette out in the parking
10 lot. He didn't have handcuffs on him at that time
11 because he had been in the emergency room and
12 before we put the handcuffs on he asked could he
13 please smoke a cigarette, so we did allow him to
14 smoke a cigarette standing next to our car before
15 we put the handcuffs on him.

16 Q After you got back from MUSC the second trip
17 was that pretty much the extent of your
18 investigation?

19 A Yes, ma'am. We finished our paperwork at the
20 hospital the second time so when we got back we
21 just walked inside the jail.

22 MS. KINZELER: If you will, answer any
23 questions for Mr. Mason.

24 THE COURT: You may proceed.

25 MR. MASON: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 CROSS EXAMINATION BY MR. MASON:

3 Q Good morning Deputy Brinson.

4 A Good morning.

5 Q Now, as I understand it, the sun set on
6 December 8, 2008, at about 5:48, it was totally
7 dark when you got down there, is that correct?

8 A It was totally dark when I got there. I
9 don't know what time the sun set.

10 Q And you got there at 7:30, is that correct?

11 A I don't have the dispatch record, I don't
12 have the times with me, sir.

13 Yes, approximately.

14 Q You were dispatched at 8:30 and you arrived
15 at 9:30 -- I mean, you arrived at 7:30. Does that
16 make sense?

17 A If you have something I can read I will be
18 glad to say yes or no but I don't know the times
19 off the top of my head.

20 MR. MASON: Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 A This is just a report. The times on here are
24 the times that the sheriff's office received the
25 call.

1 Q Okay. What time was that?

2 A The time the first deputy got on the scene?

3 Q The sheriff's office received the call at
4 6:06 and the first deputy arrived at the scene at
5 6:16. Correct?

6 A Correct.

7 Q Okay. And when you got there a number of
8 things was done, were done, as you described to the
9 jury. One of the things that was done was you
10 checked the headlights switch on Mr. Barclay's
11 vehicle, is that correct?

12 A Yes, sir.

13 Q And it was in the auto position, indicating
14 that it would have been equipped with daytime
15 running lights and that would it have been on
16 assuming it wasn't altered from the time of the
17 collision?

18 A I believe the auto means it comes on when it
19 gets dark. I don't know that qualifies for daytime
20 running lights.

21 Q Anyway, you determined that, assuming Mr.
22 Barclay's vehicle had not been tampered with
23 between the time of the accident and the time you
24 arrived there, that he had had his proper driving
25 lights on at the time of the collision?

1 A Correct.

2 Q And you have testified to finding certain
3 beer cans. There were no beer cans inside of Mr.
4 Barclay's vehicle. Is that correct?

5 A That is correct.

6 Q And all of the beer cans that you did find
7 were closed beer cans, in other words, they had not
8 been opened as if somebody would have been able to
9 drink out of them, they had busted open at the
10 scene?

11 A Correct, they were opened on the side at the
12 scene.

13 Q Is it a fair statement because of that there
14 was an odor of alcohol in the air and in the area
15 where the beer cans had broke open?

16 A Yes.

17 Q Okay. And you have testified to an
18 inspection of the condition of the Geo, is that
19 correct?

20 A Yes.

21 Q Okay. Did you know that that vehicle had a
22 salvage title? In other words --

23 MS. KINZELER: Objection.

24 THE COURT: Basis?

25 MS. KINZELER: Relevance.

1 THE COURT: Please approach.

2 (Unrecorded bench conference).

3 THE COURT: The objection is sustained as to
4 relevance.

5 BY MR. MASON:

6 Q You did no mechanical inspection of the
7 vehicle in the daylight, is that correct?

8 A That's correct.

9 Q You did not take it to the impound yard where
10 it could be looked at or photographed in the
11 daytime, isn't that correct?

12 A That is correct.

13 Q And you determined that it had four different
14 types of tires on each wheel, in other words, the
15 tires were of different size and different brand as
16 to each tire on the Geo, isn't that correct?

17 A I have to look back at my report, sir.

18 Q You determined that Mr. Garcia did not have a
19 driver's license, isn't that correct?

20 A I believe he had a Florida license but I
21 would have to look back at my report again. If you
22 have it I will be glad to look at it.

23 Q Mr. Garcia did not have a South Carolina
24 driver's license, is that correct, sir?

25 MS. KINZELER: Objection.

1 THE COURT: Basis?

2 MS. KINZELER: Foundation.

3 THE COURT: Approach.

4 (Unrecorded bench conference).

5 THE COURT: Sustained, foundation.

6 BY MR. MASON:

7 Q Now, as part of your investigation, when you
8 fill out your accident reports and your incident
9 reports you determine whether or not a person has a
10 South Carolina driver's license. Is that correct?

11 A No, sir.

12 MR. MASON: May I approach the witness?

13 THE COURT: The reason?

14 Q Did you prepare an incident report in this
15 matter?

16 A Yes.

17 MR. MASON: May I approach?

18 THE COURT: He can only use it to refresh his
19 memory.

20 Q Refreshing your memory, do you see where it
21 says driver's license number? Read to the jury the
22 driver's license number of Mr. Garcia you filled in
23 in that report.

24 MR. MASON: Objection.

25 THE COURT: Basis?

1 MS. KINZELER: Objection.

2 THE COURT: Basis?

3 MS. KINZELER: Foundation.

4 THE COURT: Sustained. The witness indicated
5 he did not research the matter.

6 BY MR. MASON:

7 Q Is there an area for Mr. Garcia's driver's
8 license in your incident report?

9 MS. KINZELER: Objection.

10 THE COURT: Basis?

11 MS. KINZELER: Lack of foundation.

12 THE COURT: Sustained.

13 BY MR. MASON:

14 Q Is it blank where you would normally fill in
15 the license number?

16 MS. KINZELER: Objection.

17 THE COURT: Sustained. Approach.

18 (Unrecorded bench conference).

19 THE COURT: Sustained, foundation.

20 BY MR. MASON:

21 Q So, it is your testimony you did not look up
22 to determine whether Mr. Garcia had a driver's
23 license?

24 A I said I believe he had a Florida driver's
25 license. I would have to look back in my notes.

1 Q He had a Florida identification card, isn't
2 that correct?

3 MS. KINZELER: Objection.

4 THE WITNESS: I would have to look back on my
5 notes.

6 THE COURT: Basis?

7 MS. KINZELER: Foundation.

8 THE COURT: Sustained, foundation.

9 BY MR. MASON:

10 Q Do you have your notes with you?

11 A No, sir.

12 Q Where did you leave your notes?

13 A In my file cabinet in my office.

14 Q So you came to court in this matter and you
15 didn't bring your file with you?

16 A You have it all, sir.

17 MR. MASON: Your Honor, may we show the
18 witness a document, it might refresh his
19 recollection.

20 THE COURT: After you establish a foundation.

21 BY MR. MASON:

22 Q Did you look at an ID of Mr. Garcia's?

23 A When the coroner got his personal belongings
24 we found something in his wallet from Florida.

25 Q If I showed you that document would you be

1 able to determine if that is what it is you looked
2 at?

3 A I believe so.

4 MR. MASON: Your Honor, may I?

5 THE COURT: You may proceed.

6 Q Please turn around --

7 MS. KINZELER: Objection.

8 THE COURT: Basis?

9 MS. KINZELER: Foundation.

10 THE COURT: Sustained. You have not
11 established that -- I had allowed you to show it to
12 him to refresh his memory, not publish it to the
13 jury. Please turn it off. You may proceed, use
14 the documents to refresh his memory, follow the
15 rules.

16 MR. MASON: I will go on to some other
17 questions while we look for the document.

18 BY MR. MASON:

19 Q Your recollection is it was a Florida
20 driver's license?

21 A It was a Florida identification card.

22 Q Okay. Now, prior to the collision you
23 determined that both vehicles were moving
24 essentially straight ahead. Is that correct?

25 MS. KINZELER: Objection.

1 THE COURT: Basis?

2 MS. KINZELER: Form of the question.

3 THE COURT: Please rephrase.

4 BY MR. MASON:

5 Q In your report you prepared you indicated
6 that prior to impact both vehicles were moving
7 essentially straight ahead. Isn't that correct?

8 A Correct.

9 Q I'm sorry, it took me a second to find the
10 document. Does the picture I showed you appear to
11 be the Florida identification card that you saw?

12 A Yes, sir.

13 Q Okay. And am I correct that it is an
14 identification card and not a driver's license?

15 A Correct.

16 Q And you testified to the estimated speed of
17 the vehicles at the time of the collision. Is that
18 correct?

19 A That's correct.

20 Q And your testimony is that you believe but
21 did not figure out in a mathematical way that Mr.
22 Barclay was doing approximately 40 miles an hour,
23 is that correct?

24 A That's what's on the accident report,
25 correct.

1 Q And you believe but did not figure out in a
2 mathematical way that the Geo was traveling at
3 between 30 and 35 miles an hour. Correct?

4 A On the accident report, correct.

5 Q Now, you showed the jury a drawing yesterday
6 that you had prepared in this case. Is that
7 correct?

8 A It was a drawing put up, yes, sir.

9 Q And you have -- well, did you prepare it,
10 sir?

11 A I did, yes, sir.

12 Q Okay. And you prepared it on or about
13 September 21st, 2011. Isn't that correct?

14 A I'm not sure of the exact date of the
15 drawing. Sometime after the accident when we were
16 doing the investigation.

17 Q Well, there is two years and ten months since
18 the accident, so respectfully I'm asking you did
19 you do it within the last 60 days?

20 A No.

21 Q Okay. So, did you do it within the last six
22 months?

23 A It was done within a week after the accident,
24 a week to week and a half while we finished our
25 investigation after the accident in 2008.

1 Q So, you have done two drawings, is that
2 correct?

3 A Not that I'm aware of.

4 Q You did one that is on the accident report.
5 Correct?

6 A Oh, I'm sorry, yes.

7 Q Okay.

8 A There is a drawing on the accident report,
9 which is required by South Carolina, and then there
10 is that full sized drawing that we used yesterday.

11 Q Well, the full size drawing you used
12 yesterday was provided to me on September 21st,
13 2011.

14 MS. KINZELER: Objection.

15 THE COURT: Basis?

16 MS. KINZELER: Relevance.

17 THE COURT: Your question?

18 MR. MASON: I'm trying to determine --

19 THE COURT: I didn't ask you to make a
20 statement in the presence of the jury, I'm just
21 asking you to restate the question.

22 BY MR. MASON:

23 Q I'm trying to determine, Deputy Brinson, when
24 it is you prepared the drawing that was shown to
25 the jury yesterday.

1 MS. KINZELER: Objection.

2 THE COURT: Ask the question.

3 Q When did you prepare, Deputy Brinson, the
4 drawing that was shown to the jury yesterday?

5 A Within a week to a week and a half after the
6 collision, during our investigation.

7 Q So, you prepared two not to scale drawings in
8 this case, is that correct?

9 A Correct.

10 Q Now, you have testified yesterday that if a
11 secondary road has an even number that it is what
12 is referred to as an east-west road, is that
13 correct, sir?

14 A That is correct.

15 Q Okay. And in fact Mr. Barclay was in the
16 westbound lane of Highway 174. Isn't that correct?

17 A No.

18 Q Do you know your compass directions?

19 A Do I know compass directions?

20 Q Yes.

21 A Yes.

22 Q Are you supposed to indicate the actual
23 compass direction of travel for each vehicle?

24 A No.

25 Q When there is an even number route the

1 compass direction converts to the standard
2 direction east-west as required by the South
3 Carolina traffic collision report form manual.
4 Isn't that correct?

5 MS. KINZELER: Objection.

6 THE COURT: Basis?

7 MS. KINZELER: Form of the question.

8 THE COURT: Rephrase.

9 BY MR. MASON:

10 Q If I showed you a map of this general area
11 would you be able to tell the jury what is north
12 and south, east and west?

13 A If you show me a map that has the north
14 direction on it.

15 Q Okay.

16 MR. MASON: Your Honor, may I do so?

17 THE COURT: You may proceed.

18 MR. MASON: Thank you. May I approach, Your
19 Honor?

20 THE COURT: You may.

21 BY MR. MASON:

22 Q Does the document I just showed you correctly
23 indicate north, south, east and west?

24 A Yes, sir.

25 Q Does this document I just showed you

1 correctly indicate north, south, east and west?

2 A It's a blow-up of this.

3 MS. KINZELER: Your Honor, may we approach?

4 THE COURT: You may.

5 (Unrecorded bench conference).

6 THE COURT: Mark it for --

7 MR. MASON: May it please the Court?

8 THE COURT: Yes.

9 MR. MASON: May I get the court reporter to
10 mark it?

11 THE COURT: ID only. Show them to Counsel
12 first, please.

13 (Maps marked as Defendant's Exhibit
14 Numbers 1 and 2 for Identification).

15 MR. MASON: May it please the Court?

16 BY MR. MASON:

17 Q I show you what has been marked Defendant's
18 Exhibit 1 for Identification. Is that a correct
19 map showing north, south, east and west?

20 A Yes.

21 Q I show you Defendant's Number 2 for
22 Identification. Is that a correct map showing
23 north, south, east and west?

24 A The best I can tell. There is nothing but
25 trees basically, there is no reference to it.

1 Q Do you see north, south, east and west?

2 A On your page here west is on the left, east
3 is on the right, north is at the top, south at the
4 bottom, that's correct.

5 Q And it appears to be correct compass
6 directions?

7 A The best I can tell.

8 MR. MASON: Your Honor, for demonstrative
9 purposes at this time can I show it to the jury or
10 publish it to the jury in some way?

11 THE COURT: The only way you will be able to
12 publish it for demonstrative purposes is aiding the
13 testimony but you can't just publish it.

14 MR. MASON: Okay.

15 THE COURT: Have you had the court reporter
16 mark them for ID?

17 MR. MASON: They are.

18 BY MR. MASON:

19 Q Now, would it be demonstrative for you to
20 explain to the jury which direction you say Mr.
21 Barclay was traveling?

22 A I labeled on the report he was traveling
23 east, which is done by road number, like I have
24 explained, and that's the way that it is determined
25 on that road. It is not compass direction, it's

1 the road is termed east, west, north or south. It
2 can be labeled that he was traveling any direction
3 I want, it doesn't change the direction the
4 vehicles were traveling. The label is put on so
5 you can identify the two vehicles are coming from
6 separate directions.

7 Q No question the true compass direction that
8 Mr. Barclay was traveling was west, not east, isn't
9 that correct?

10 A According to that picture you showed me, that
11 would have him traveling west.

12 Q He was traveling west and your uniform
13 traffic collision report indicates he was traveling
14 east, is that correct?

15 A It goes by road number, that's correct.

16 Q Your fatality investigation says he was
17 traveling east. Is that correct?

18 A That's correct.

19 Q The indictment paperwork you prepared in this
20 case said that he was traveling east, isn't that
21 correct?

22 A That's correct.

23 Q All the paperwork you have prepared in this
24 case said that he was traveling east but in fact he
25 was traveling west. Isn't that correct, Deputy

1 Brinson?

2 A No, sir.

3 Q Can you identify for me any piece of paper
4 that you prepared that said Mr. Barclay was
5 traveling in a westerly direction at the time of
6 this collision?

7 A No, sir.

8 Q Okay. Because all your paperwork says he was
9 traveling east, isn't that correct?

10 A That's correct, yes.

11 Q And the compass says he's travel west, isn't
12 that correct?

13 A That is correct. We don't use compass
14 directions when we're doing reports.

15 Q Now, are you familiar with the proper manner
16 in which to complete the uniform traffic collision
17 report?

18 A Yes, sir.

19 Q Okay. And are you familiar with the South
20 Carolina traffic collision report TR310, the
21 instruction manual relating to that, the
22 preparation of that report?

23 A I have read the manual, yes, sir.

24 Q And does it tell you how you are to fill in
25 each of the little boxes in that report?

1 A Yes, sir.

2 MR. MASON: Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 MR. MASON: May I mark a page for
6 identification, Your Honor?

7 THE COURT: Show it to opposing Counsel.

8 MR. MASON: I did.

9 THE COURT: Any objection?

10 MS. KINZELER: No, ma'am.

11 THE COURT: Proceed.

12 (Excerpt from instruction manual marked and
13 received in evidence as Defendant's Exhibit
14 Number 3).

15 BY MR. MASON:

16 Q I show you what is a certified copy of the
17 instruction manual for preparing the accident
18 report. Do you see where it says number 49,
19 direction of travel. Read to the jury what it
20 says.

21 A It has one little box, it says indicate the
22 actual compass direction of travel by circling the
23 proper letter.

24 That is done on the drawing portion of the
25 accident report.

1 Q You did not indicate the proper compass
2 direction of travel in relation to Mr. Barclay's
3 vehicle in your paperwork, isn't that correct, sir?

4 A That's correct. The common practice is to
5 use the road direction.

6 Q Now, are all your other measurements tied to
7 your incorrect compass readings?

8 A No, sir, because we don't use compass
9 directions, as I have explained several times.

10 Q You have testified that on the drawing you
11 did that you also have to indicate north, south,
12 east and west, is that correct?

13 A On what drawing?

14 Q The drawing you did on the uniform traffic
15 collision report.

16 A Yes, we put it in the box for north.

17 Q Do you manipulate that arrow so it properly
18 shows north, south, east and west in relation to
19 the accident?

20 A It depends on the orientation of the
21 accident, yes. The arrow is not always pointing
22 straight up. Is that what you're asking?

23 Q Yes. Sometimes it is pointed east or west or
24 south?

25 A Depending on the orientation of the drawing,

1 correct.

2 MR. MASON: May I approach, Your Honor?

3 THE COURT: Yes.

4 Q The diagram you did of this accident scene on
5 your accident report doesn't have north in it,
6 correct, for direction. Isn't that true, sir?

7 A Well, if you actually want to look at it, the
8 block that you wanted me to read about north, east,
9 south and west, they are not labeled because it is
10 labeled north here and labeled at the top up here
11 as east. There is nothing circled in this block.

12 Q So --

13 A Nothing to show west, east, south or north
14 because it is already labeled at the top and this
15 already shows what the north direction is, so a
16 normal person can determine east and west from that
17 drawing.

18 Q You have all your paperwork. In all your
19 paperwork Mr. Barclay was traveling east, is that
20 correct?

21 A That's correct.

22 Q That's a mistake, isn't it?

23 A No.

24 Q With regard to the fatality investigation you
25 prepared, is that an important document?

1 A Yes, sir.

2 Q And is it reviewed by your superior Sergeant
3 Grimsley before it can be finally completed?

4 A It's reviewed by my supervisor, yes, sir.

5 Q Whoever that might be at the time?

6 A Correct.

7 MR. MASON: Your Honor, may I approach?

8 THE COURT: You may.

9 MR. MASON; May I mark the document for
10 identification, Your Honor?

11 THE COURT: You may.

12 (Excerpt from Traffic Fatality Investigation
13 marked as Defendant's Exhibit Number 4 for
14 Identification).

15 BY MR. MASON:

16 Q Deputy Brinson, I have handed you what is a
17 page in your traffic fatality investigation, I have
18 the whole document here if you would like to look
19 at it. Read for the jury where it says the
20 condition.

21 THE COURT: To refresh his memory, ask the
22 direct question.

23 Q Is that document correct?

24 A Yes.

25 Q Okay. And did the initial point of collision

1 in this case occur in the westbound lane?

2 MS. KINZELER: Objection.

3 THE COURT: Approach.

4 (Unrecorded bench conference).

5 THE COURT: You may proceed.

6 BY MR. MASON:

7 Q Have you prepared any writing in which you
8 indicated that the initial point of collision
9 occurred in the westbound lane of Point of Pines
10 Road?

11 MS. KINZELER: Objection.

12 THE COURT: Basis?

13 MS. KINZELER: Asked and answered.

14 THE COURT: I'm going to allow you this one
15 last question. Proceed. It has been asked and
16 answered but, sir, you may answer the question.

17 A Can you state it again for me?

18 Q Yes. Have you prepared any writing in which
19 you wrote that the initial point of the collision
20 occurred in the westbound lane on Point of Pines
21 Road?

22 A It is -- I have prepared that based on road
23 direction, that's correct.

24 Q Is your answer to my question yes?

25 A My answer is I have prepared that and it is

1 based on road direction, that is correct.

2 Q If you are standing north of me right now, if
3 I got a compass out it may not be the north
4 direction, it is a direction to orient someone to
5 where a vehicle, where people are, where things
6 are, it is different from compass direction?

7 MS. KINZELER: Objection.

8 THE COURT: Basis?

9 MR. MASON: I haven't asked the question.
10 I'm not sure what she's objecting to.

11 THE COURT: Basis for your objection?

12 MS. KINZELER: I withdraw, Your Honor.

13 THE COURT: The objection is withdrawn, you
14 may proceed.

15 BY MR. MASON:

16 Q Would you agree with me, though, in a
17 fatality case it is real important for the
18 paperwork to be right?

19 A I would agree it is important for it to be
20 right, that's correct.

21 Q Now, yesterday you testified to the width of
22 the truck, the rear track width of the truck, is
23 that correct?

24 A I did.

25 Q Okay.

1 MR. MASON: Your Honor, may I approach?

2 THE COURT: You may.

3 MS. KINZELER: Objection, Your Honor.

4 THE COURT: Approach.

5 (Unrecorded bench conference).

6 THE COURT: Sustained, rephrase your
7 question.

8 MR. MASON: Yes.

9 BY MR. MASON:

10 Q Now, you testified to the rear track width of
11 the Chevrolet pickup truck, is that correct?

12 A That's correct.

13 Q Have you ever indicated on any of your
14 paperwork that the rear track width of the
15 Chevrolet truck was ten foot nine inches wide?

16 A I don't know, sir. If you have that I will
17 be glad to look at it.

18 MR. MASON: May I approach, Your Honor?

19 THE COURT: You may.

20 MR. MASON: May I mark it for identification?

21 THE COURT: Use to it refresh his memory.

22 BY MR. MASON:

23 Q Did you indicate on the document I just
24 handed you that the rear track --

25 MS. KINZELER: Objection.

1 THE COURT: Sustained. Allow him to refresh
2 his memory, Mr. Mason, then ask the question.

3 Q Does the document I just handed you --

4 MS. KINZELER: Objection.

5 THE COURT: Basis?

6 MS. KINZELER: The same objection, Your
7 Honor.

8 THE COURT: Rephrase the question, Mr. Mason,
9 without reference to the document itself.

10 BY MR. MASON:

11 Q The question is, have you indicated in
12 writing anywhere that the rear track width of the
13 Chevrolet truck was ten foot nine inches wide?

14 A That document does contain that, it is a an
15 error in transcribing our field notes to the
16 report.

17 Q You made a mistake, is that correct?

18 A Yes, sir,.

19 Q As to the rear width of the Chevrolet truck,
20 is that correct?

21 A When it was transcribed there was a mistake
22 made, that's correct.

23 Q You signed off without checking, isn't that
24 correct?

25 A I didn't sign off on anything, sir.

1 Q You didn't catch it, isn't that correct?

2 A That's correct.

3 Q Now, you testified yesterday that you found
4 an open beer can in the passenger side of the Geo.
5 Isn't that correct?

6 A That's correct, sir.

7 Q Did you also smell alcohol inside of the Geo?

8 A No, sir, not to my recollection. It wasn't,
9 I don't remember smelling any alcohol in the Geo.
10 It kind of had a lot of other smells.

11 Q Would it assist you in recalling exactly
12 where you found --

13 MS. KINZELER: Objection, Your Honor.

14 THE COURT: Basis?

15 MS. KINZELER: Foundation.

16 THE COURT: Please approach.

17 (Unrecorded bench conference).

18 THE COURT: Sustained, foundation.

19 BY MR. MASON:

20 Q When it came within your knowledge that there
21 was open beer in the Geo that you saw immediately
22 following this collision, did you record that on
23 any of your reports?

24 MS. KINZELER: Objection.

25 THE COURT: Basis?

1 MS. KINZELER: Facts not in evidence.

2 THE COURT: Sustained, rephrase.

3 BY MR. MASON:

4 Q Did you record the presence of the open
5 container anywhere in your report?

6 MS. KINZELER: Objection.

7 THE COURT: Basis?

8 MS. KINZELER: Lack of evidence, not in
9 evidence.

10 BY MR. MASON:

11 Q Did you indicate the beer can was open when
12 you looked at it?

13 MS. KINZELER: Objection.

14 THE COURT: Sustained. Ask the question
15 differently.

16 Q Did you inspect the beer can?

17 THE COURT: Approach.

18 (Unrecorded bench conference).

19 THE COURT: Proceed.

20 BY MR. MASON:

21 Q Did you find the beer can inside of the Geo?

22 A There was a beer can found, yes, sir.

23 Q Did you find it, is the question, sir?

24 A I don't believe I was the initial person that
25 found it.

1 Q After it was found by somebody else did you
2 go look at it?

3 A I did.

4 Q And did you observe it at the scene with your
5 own eyes, at the time of this collision?

6 A That's correct.

7 Q And did you document the open alcohol in the
8 Geo in any report you prepared in this case?

9 A Through pictures, yes, sir.

10 Q But it is not written anywhere?

11 A No, sir.

12 Q Okay. Did you issue an open container
13 citation to Mr. Davilla?

14 MS. KINZELER: Objection.

15 THE COURT: Basis of the objection?

16 MS. KINZELER: Relevance.

17 THE COURT: Overruled.

18 BY MR. MASON:

19 Q Did you issue an open container citation to
20 Mr. Davilla?

21 A No, sir. It couldn't be determined which of
22 the two had it in the car when the accident
23 happened, it was disheveled inside the car, there
24 was stuff thrown everywhere.

25 Q So you concluded it could have been the

1 driver or it could have been the passenger that had
2 at some point consumed that beer?

3 A That is why we had a tox report done on him.

4 Q Again, you did not find any beer inside Mr.
5 Barclay's car, isn't that correct?

6 A That's what I said, yes, sir.

7 Q And it would be illegal to have an open
8 container of beer inside a motor vehicle, isn't
9 that correct, sir?

10 A That is correct, sir.

11 Q Now, is it a fair statement that you don't
12 know what the paths of travel of these vehicles
13 were within, say, two seconds or 300 feet of this
14 collision, leading up to it, in other words?

15 A I know the path of travel, sir.

16 Q Well, before they make a mark in the roadway
17 how do you know where, 300 feet before these
18 vehicles collided, how do you know where they were?

19 A By the direction. I know the direction they
20 were coming from.

21 Q Direction -- let me ask you maybe in a more
22 correct way. Do you know, beyond the direction
23 they were headed, do you know precisely where
24 either vehicle was in the roadway, say, within 300
25 feet of where there is a mark in the road?

1 A No, sir.

2 Q Okay. And because it's impossible if they
3 don't leave any skid marks or tracks, they are just
4 riding over the asphalt, I believe? Is that a fair
5 statement?

6 A That is irrelevant but that's a fair
7 statement.

8 Q But you don't profess to know the path of
9 travel of either vehicle in the 300 feet before
10 this collision, other than the direction you
11 believe they were headed, isn't that correct?

12 A Yes, sir. It is not relevant to my
13 investigation.

14 Q Now, you would expect the driver who is faced
15 with a sudden emergency to take evasive action,
16 isn't that correct?

17 MS. KINZELER: Objection.

18 THE COURT: Basis?

19 MS. KINZELER: Foundation and speculation.

20 THE COURT: Sustained.

21 BY MR. MASON:

22 Q Did you determine whether there was braking
23 on behalf of either vehicle?

24 A There was not.

25 Q Okay. So, there are no skid marks, is that

1 correct?

2 A Not prior to the wreck.

3 Q Okay. And if either driver steered prior to
4 the wreck that wouldn't leave any marks in the road
5 either, isn't that a fair statement?

6 A That's correct.

7 Q And in regards to steering, that certainly is
8 an evasive maneuver, is that correct?

9 MS. KINZELER: Objection.

10 THE COURT: Basis?

11 MS. KINZELER: Speculation, foundation.

12 THE COURT: Overruled.

13 BY MR. MASON:

14 Q Steering is an evasive maneuver, isn't that
15 correct?

16 A Steering is, yes.

17 Q You either brake or you steer, is that a fair
18 statement?

19 A Correct.

20 Q Or a combination of both, right?

21 A Correct.

22 Q And if you steer you can steer right or you
23 can steer left, isn't that correct?

24 A That is the way the steering wheel works,
25 yes, sir.

1 Q And if you steer right you might go into an
2 oak tree in this area, is that correct?

3 MS. KINZELER: Objection.

4 THE COURT: I'm going to give him a little
5 latitude. To the best of his knowledge he may
6 answer the question.

7 Q If Mr. Barclay were to have steered to the
8 right there were oak trees right very close to the
9 shoulder of this road, isn't that a fair statement?

10 A There was oak trees on both sides of the
11 road, left or right, yes.

12 Q Both sides. And, so, in that situation is it
13 usually safer for a driver to stay on the road or
14 leave the road and possibly hit an oak tree?

15 MS. KINZELER: Objection.

16 THE COURT: Basis?

17 MS. KINZELER: Speculation.

18 THE COURT: Sustained.

19 BY MR. MASON:

20 Q Now, you have described the speed that you
21 estimated. At the speed that you have estimated
22 isn't it a fair statement that the vehicles are
23 approaching each other, if you combine the speed,
24 at about almost 200 feet a second?

25 A I'm not sure of the math, sir.

1 Q You could do it, right? I mean, you know how
2 many feet are in a mile, how many seconds are in a
3 minute, you know, you could do it, right?

4 A Yes, sir.

5 Q Okay. But they are closing at a fast pace,
6 is that correct?

7 A That's fair.

8 Q Okay. And they are traveling a long distance
9 within that period of time, isn't that correct?

10 A Within what period of time?

11 Q A couple seconds, within a couple seconds?

12 A I don't understand the question, actually.

13 Q All right. Let me be a little more specific.
14 I asked you, you did some math while you were on
15 the stand yesterday to figure out some questions
16 the Solicitor asked you. Do you recall that?

17 A Yes.

18 Q So, if you have a vehicle going 30 miles per
19 hour and they are traveling 1.46 feet per second --

20 MS. KINZELER: Objection.

21 THE COURT: I need to hear the whole
22 question. Please repeat the question, continue the
23 question.

24 Q As part -- you testified that you're a
25 traffic accident investigator, is that correct?

1 A Yes.

2 Q Part of what you do involves the math
3 calculations to determine speed. Isn't that
4 correct?

5 A Part of my training, yes, sir.

6 Q Okay. So, it's within your knowledge to
7 convert, to determine how many feet vehicles travel
8 and how much miles per hour, isn't that something
9 you do on occasion?

10 A Yes, sir.

11 Q And if you're going 30 miles per hour, feet
12 per second is 1.466, 30 miles per hour you travel
13 43.98 feet, assuming my math is correct?

14 A Assuming your math is correct, sir.

15 Q And if you're going 40 miles an hour times
16 1.466 feet per second you're traveling 58.64 feet
17 per second, assuming my math is correct.

18 MS. KINZELER: Objection, facts not in
19 evidence.

20 THE COURT: He can put it in the form of a
21 hypothetical, he's an expert witness.

22 Q Isn't that correct?

23 A Assuming your math is correct, sir.

24 Q And if one vehicle is going 43.98 feet per
25 second and the other vehicle is going 58.64 feet

1 per second they are coming together at a rate of
2 102 feet per second. Isn't that correct?

3 A Yes, sir.

4 Q So, in the two seconds before this accident
5 happened those vehicles had traveled over 200 feet.
6 Isn't that correct?

7 A By your math, yes, sir.

8 Q Okay. And in none of that 200 feet up until
9 there is some mark in the road do you know
10 precisely where either of those vehicles were in
11 the roadway. Isn't that correct?

12 A No. I mean, you can tell the path they came
13 from. You asked me about 300 yards earlier, that
14 is not exactly over 200 feet.

15 Q If a car goes like this and goes like that
16 and it happened 150 feet before there is any mark
17 in the road you can tell that happened?

18 A No, I can't tell that happened. You asked if
19 I could tell where the cars were prior to the
20 impact.

21 Q I thought your testimony --

22 A I said I could tell, by that I could tell the
23 path they traveled.

24 Q Directionally?

25 A You asked me about 300 yards, which is three

1 football fields. That I can't do, there isn't
2 enough in the record.

3 Q Can you do 200 feet?

4 A Probably, yes, sir. It is an estimation.

5 Q It would be just an estimation, right?

6 A Correct.

7 Q It would be an educated guess, is that a fair
8 statement?

9 A The 200 feet is an educated guess. I mean,
10 it could be 150 feet or 300 feet. You asked me if
11 I could tell from 200 feet. At approximately 200
12 feet I could probably tell.

13 Q The only way you could tell anything that you
14 have testified to is based on marks in the roadway.
15 Isn't that correct?

16 A That's correct, yes, sir.

17 Q And in your studying and training about
18 accident investigation isn't it correct that the
19 perception-reaction time for an average driver is
20 that it takes them 1.5 seconds to react?

21 A No, that's not correct. It is 1.466 seconds.

22 Q So, in 1.466 seconds these vehicles had
23 traveled about 150 feet. Isn't that correct?

24 A We're relying on your math. If you say so,
25 yes, sir.

1 Q So, if anything happened, any movement with
2 either of these vehicles within 150 feet of where
3 they actually collided there is no time for either
4 driver to react. Isn't that correct?

5 A Not necessarily correct, sir. People have
6 different levels of training driving. I mean, some
7 people can react to things that other people can't
8 react to.

9 Q But you have testified that the average
10 reaction time is 1.466 seconds.

11 A Correct.

12 Q To either take your foot up and put it on the
13 brake or move your hands to steer?

14 A That's correct.

15 Q Okay. And doesn't your training also teach
16 that it is a quicker reaction to steer than it is
17 to brake because your hands are already on the
18 steering wheel?

19 A My training in accident reconstruction?

20 Q Yes.

21 A They don't teach us defensive driving in
22 accident reconstruction.

23 Q Now, you did not take any written witness
24 statements in this case. Isn't that correct?

25 A That's correct. There were no witnesses.

1 Q So, is it your testimony that a passenger who
2 is in a car that is involved in the accident is not
3 a witness?

4 A No, that is not my statement, sir, he's
5 involved in the accident.

6 Q Well, let me ask it like this, Deputy
7 Brinson. You did not take a statement from the
8 passenger Jose Santos Davilla, isn't that correct?

9 A There was not a statement taken, that's
10 correct, we couldn't locate him.

11 Q Well, he was one triage room over from where
12 you were in the emergency room --

13 MS. KINZELER: Objection.

14 Q -- with Mr. Barclay?

15 THE COURT: Basis?

16 MS. KINZELER: Foundation, facts not in
17 evidence.

18 THE COURT: You need to establish the
19 appropriate foundation for the question.

20 Proceed.

21 MR. MASON: Yes.

22 BY MR. MASON:

23 Q You went to MUSC following this accident.
24 Isn't that correct?

25 A Correct.

1 Q And in the emergency room was Mr. Barclay.
2 Isn't that correct?
3 A Mr. Barclay, correct.
4 Q And also at MUSC in the very same emergency
5 room was Mr. Davilla, isn't that correct?
6 A That is not correct.
7 Q You do not recall whether Mr. Davilla was
8 within the same hallway area or same general area
9 of the emergency room as Mr. Barclay?
10 A No, I recall, sir.
11 Q Okay.
12 A You asked me was he two beds over from him, I
13 said no, that is not correct.
14 Q I'm sorry if my question wasn't clear. Was
15 he in the same department of MUSC as Mr. Barclay?
16 A Not while I was there.
17 Q Okay. You knew --
18 A When I was there he was upstairs getting
19 xrays and whatever else was done on him.
20 Q But you made no effort at any point in time
21 up to today to ever get a statement from Jose
22 Davilla about how this accident happened?
23 A That's incorrect.
24 Q On what day did you attempt to get a
25 statement from Mr. Davilla?

1 A I don't remember the exact date, sir. We
2 tried to track him down for a week or two after the
3 accident and the family members that we could find
4 said he went back to Guatemala or wherever he was
5 from, I don't recall off the top of my head,
6 because he did not have status in America. At that
7 point I couldn't make an overseas trip, so he was
8 kind of hard to find.

9 Q Now, it would be accurate to state that up to
10 this date you have never taken a statement from Mr.
11 Davilla?

12 A I have personally not, that's correct.

13 Q And as far as you know, nobody contacted him
14 or made actual contact with him to ask him if he
15 knew how this accident happened until sometime,
16 until some investigator of the Solicitor's office?

17 MS. KINZELER: Objection.

18 THE COURT: Basis?

19 MS. KINZELER: Facts not in evidence.

20 THE COURT: Rephrase.

21 BY MR. MASON:

22 Q You are the prosecuting officer in regard to
23 this case, isn't that correct, sir?

24 A That's correct.

25 Q Okay. And you have the assistance of

1 different investigators and officers and agents of
2 the State to assist you. Isn't that correct, sir?

3 A That's correct.

4 Q Okay. And my question is, do you know
5 whether you or anyone that is at your disposal made
6 any effort to investigate, run down Mr. Davilla and
7 get a statement from him as to how he said this
8 accident happened?

9 A I believe the Solicitor's office was in
10 contact with him. I have not been in contact with
11 him, as I already said.

12 Q Now, you would agree with me that you would
13 have liked to have talked to him as part of your
14 investigation, if for no other reason, just to
15 record what it is he had to say about the accident.
16 Isn't that correct?

17 A He was involved in the wreck, so yes, I would
18 have liked to have his side of the story.

19 Q Okay. And if you had talked to him would you
20 have asked him questions about his drinking at the
21 time?

22 MS. KINZELER: Objection.

23 THE COURT: Ever?

24 MR. MASON: At the time of the collision?

25 THE COURT: Basis?

1 MS. KINZELER: Relevance, facts not in
2 evidence.

3 THE COURT: Sustained, facts not in evidence.
4 Rephrase.

5 BY MR. MASON:

6 Q Now, would you have asked Mr. Davilla about
7 the beer you found right in the floorboard area of
8 the car in which he was riding at the time of the
9 accident?

10 A Maybe, maybe not. It is not relevant, he
11 wasn't operating the vehicle.

12 Q Okay. Well, you would have, if you had asked
13 him about it, it might have been to determine
14 whether he was paying attention?

15 MS. KINZELER: Objection.

16 THE COURT: Form of question, sustained,
17 rephrase.

18 Q Now, one of the things that you're supposed
19 to do when you investigate an accident is you're
20 supposed to try and match a gouge mark with the
21 portion of the vehicle that caused that gouge mark.
22 Isn't that correct?

23 A That is one of the things we're taught to do.

24 Q Okay. In other words, when you went to the
25 South Carolina Department of Public Safety Criminal

1 Justice Academy school one of the things they teach
2 you when you're investigating an accident is to try
3 and match the part of the vehicle that caused the
4 gouge mark with the gouge mark in the road,
5 correct?

6 A That is one of the many tools they put in the
7 tool box. Every tool is not used in every case,
8 so --

9 Q And the way that works is when the tow truck
10 driver lifts the vehicle up on the tow truck you
11 can be standing there and that would be an
12 opportunity for you to look under either of the
13 vehicles and determine if there is asphalt lodged
14 in a certain place in either vehicle. Wouldn't
15 that be a way to do it?

16 A That would be a way to do it, yes.

17 Q Okay. To photograph or inspect the
18 undercarriage of the vehicles while they are being
19 placed on the tow truck?

20 A That could be done.

21 Q Okay. And it was not done in this case,
22 isn't that correct, sir?

23 A I don't believe we have any undercarriage
24 pictures, that's correct.

25 Q Nor did you inspect the undercarriage of

1 either vehicle at the time it was put on the tow
2 truck. Isn't that correct, sir?

3 A I couldn't tell you what was done when it was
4 on the tow truck.

5 Q Maybe my question wasn't clear. I asked you
6 whether you, the investigating officer, inspected
7 the undercarriage of either vehicle at any point in
8 time?

9 A I looked at it. I mean, there is no formal
10 inspection done by anybody. Sometimes we take it
11 to an ASA mechanic to have it inspected, it depends
12 on the dynamics of the collision, and that was not
13 done in this case. Did I look at the
14 undercarriage, I'm sure I looked at it when it was
15 up on the tow truck.

16 Q You didn't look at it in a light or
17 photograph it in a way where you could come in here
18 and be able to say that, "This piece of asphalt was
19 lodged on this vehicle in a certain place and here
20 is how I would put the mark and the vehicles
21 together by that physical evidence," you aren't
22 able to do that, isn't that correct, sir?

23 A There is nothing saying the asphalt was stuck
24 in the car after it flipped around. So, I mean, I
25 don't understand the question you're asking.

1 Q Well, did you understand about the inspection
2 confirming where the ground contact occurred with
3 the vehicle undercarriage, that is what you're
4 supposed to do, right, one of the things you're
5 supposed to do?

6 A It is one of the things I can do.

7 Q And by determining which vehicle component
8 interacted with the roadway and their location
9 that's how you would try to put some pieces of a
10 puzzle together. Isn't that one way?

11 A That is a way you could do it, that is
12 correct. This actually had a tire mark directly
13 next to the marks from the Geo and the truck was
14 sitting up high, so its undercarriage would not
15 strike the ground.

16 Q Now, a collision does not occur exactly where
17 the gouge marks are located, isn't that correct?

18 A The gouge marks are results of the collision.

19 Q And they occur at the place that is called
20 maximum engagement. Isn't that correct?

21 A Some gouge marks are from maximum engagement,
22 that's correct.

23 Q In this case you typed, I'm sorry, you
24 painted the orange letters ME next to what you say
25 is a gouge mark. Isn't that correct?

1 A There is ME painted next to gouge marks,
2 that's correct.

3 Q So I guess I need to phrase my question,
4 either you or Deputy Burrell painted ME?

5 A Correct.

6 Q At the place that you say is maximum
7 engagement, is that correct?

8 A That's correct.

9 Q Now, if you think about an automobile, from
10 the center of the front tire to the leading edge of
11 the bumper you have roughly three feet. Isn't that
12 correct?

13 A The center of the front tire?

14 Q Right, the center of the front tire, to the
15 leading edge of the bumper.

16 A Is three feet?

17 Q Why don't I ask it like this. Did you ever
18 determine how much from the tire to the leading
19 edge of the front bumper, how much of the vehicles
20 would have to crush together before they reached
21 maximum engagement?

22 A No, sir.

23 Q So, do you even know -- you didn't do a crush
24 analysis, in other words. Is that a fair
25 statement?

1 A Right. I'm not trained to do that, sir.

2 Q Okay. And you didn't do an accident
3 reconstruction, isn't that correct?

4 A That's not correct.

5 Q You did an investigation but you never -- let
6 me say this. You have never done a scaled drawing
7 in this case, is that correct?

8 A That's correct.

9 Q Okay. And part of doing a reconstruction is
10 locating every vehicle and every other road mark on
11 a scaled drawing, that is what a reconstruction,
12 part of what a reconstruction is, isn't that right?

13 MS. KINZELER: Objection.

14 THE COURT: Basis?

15 MS. KINZELER: As to form.

16 THE COURT: Sustained. Form.

17 BY MR. MASON:

18 Q When we use the technical word accident
19 reconstruction doesn't that usually involve the
20 preparation of a scaled drawing in which you
21 actually locate not only the vehicles at their
22 final rest but any other markings on the roadway,
23 gouge marks, skid marks, scrapes, debris, whatever
24 it might be, that is part of an accident
25 reconstruction, isn't it?

1 A That is part of a reconstruction but it is
2 not required to be a reconstruction.

3 Q You did not do that in this case, isn't that
4 correct?

5 A That's correct.

6 Q Now, what I was asking you about a crush
7 point, if each of the vehicles has three feet of
8 bumper or front of the car, if you will?

9 MS. KINZELER: Objection, Your Honor.

10 THE COURT: Basis?

11 MS. KINZELER: Outside the scope.

12 THE COURT: Establish a foundation to ask
13 that hypothetical.

14 BY MR. MASON:

15 Q Before the cars can get to what you call
16 maximum engagement the cars have to engage and
17 crunch together. Isn't that correct?

18 A That's correct.

19 Q Okay. So, in order to do a full analysis you
20 need to know how much they crunched together, isn't
21 that correct?

22 A No, sir.

23 Q They clearly have an over hang to where they
24 crunch some number of feet. Isn't that correct?

25 A Some degree.

1 Q So, in this case we have about three feet of
2 crunching of the truck?

3 MS. KINZELER: Objection.

4 THE COURT: Basis?

5 MS. KINZELER: Foundation, facts not in
6 evidence.

7 THE COURT: Lay a foundation.

8 BY MR. MASON:

9 Q Did you determine how much crunching of the
10 front of the truck and how much crunching of the
11 front of the Geo that we have?

12 A I believe in some of my field notes, that's
13 correct.

14 Q And is the crunching, I'm just using
15 approximate, not getting down to the inch, but I'm
16 just saying didn't they each crunch in
17 approximately three feet?

18 A I'm not sure, sir.

19 Q Well, would you like, would you like to look
20 at your notes?

21 A I will be glad to.

22 Q You didn't bring your notes? You have your
23 notes, don't you?

24 MS. KINZELER: Objection.

25 THE COURT: Basis?

1 MS. KINZELER: He is asking about notes he
2 doesn't have. He deosn't have them in front of
3 him.

4 THE COURT: Madam Forelady, ladies and
5 gentlemen, I'm going to give you a brief morning
6 recess. You all have been sitting over an hour.
7 During the break please do not discuss the case.
8 Please leave your note pad in your seat.

9 (The jury was excused from the courtroom).

10 THE COURT: You may take your seats.

11 Sir, you may step down. Do not discuss your
12 testimony with anyone.

13 MS. KINZELER: Your Honor, can this gentleman
14 discuss the concerns about Mr. Barclay's status?

15 THE COURT: Sure.

16 DEPUTY SHERIFF: Your Honor, Mr. Barclay
17 missed the evening meal when he returned to the
18 detention center, in our processing, like holding
19 area, which includes some chairs similar to what
20 you would have in the DMV. However, there is
21 access to bag lunches and drinks that are available
22 and there are, it is an open cell area, so he may
23 go into a cell and take a nap or sleep, do what he
24 wants at his leisure. So, that is the conditions
25 that everybody in the jail has access to, it is an

1 open free area. As you well know, there are people
2 coming in all hours of the night, if they miss the
3 evening meal there are bag lunches and drinks
4 available for them just like in an open bay type
5 area.

6 THE COURT: Okay. Now, what about him saying
7 he wasn't able to take a shower or groom himself
8 before court? Was that accurate?

9 DEPUTY SHERIFF: That is another issue. I
10 will have to specifically look into that. I would
11 say the area where he was staying there is the
12 chairs, and those items that were brought up before
13 you before, I will go back and find out whether he
14 was made available to take a shower and get dressed
15 before court.

16 THE COURT: I appreciate you looking into
17 that for me.

18 DEPUTY SHERIFF: Is there anything else?

19 THE COURT: I believe those were the concerns
20 that were raised, his ability to eat, to sleep and
21 to be able to bathe.

22 DEPUTY SHERIFF: I will like look that and
23 make a report.

24 THE COURT: Thank you so much.

25 DEPUTY SHERIFF: Yes, ma'am.

1 MR. MASON: Your Honor?

2 THE COURT: Gentlemen, let's take fifteen,
3 because one of the jurors wants to go down and
4 smoke.

5 (Recessed at 11:35 a.m.).

6 (Resumed at 11:50 a.m.).

7 DEPUTY SHERIFF: Your Honor, I asked
8 Lieutenant Hardin at the detention center about the
9 issue of baths, he said because he came in last
10 night he was not classified in or processed, they
11 are not allowed to take a shower or bath until they
12 are processed. He assured me when he got back this
13 evening that they will complete his classification
14 and processing, he will be sure he has facilities
15 to clean up.

16 THE COURT: Okay. Thank you so much.

17 DEPUTY SHERIFF: Last night he came in at
18 such late hours.

19 THE COURT: I appreciate you checking that
20 for me.

21 DEPUTY SHERIFF: Yes, Your Honor.

22 THE COURT: Is the State ready to proceed?

23 MS. KINZELER: Yes, ma'am.

24 THE COURT: Is the defense ready to proceed?

25 MR. MASON: Yes, Your Honor.

1 THE COURT: Bring the jury in.

2 (The jury returned to the courtroom).

3 BAILIFF: The jury is present.

4 THE COURT: You may be seated.

5 THE COURT: Ladies and gentlemen, I hope you
6 enjoyed your break. We'll now resume.

7 You may continue, Mr. Mason.

8 MR. MASON: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 BY MR. MASON:

11 Q Now, Deputy Brinson, in many DUI cases that
12 you handle you obtain video footage of the person
13 either being arrested or after their arrest. Isn't
14 that a fair statement?

15 A When it is available to do so.

16 Q In fact you have video cameras that are in
17 your police car, is that correct?

18 A I do have a camera in my car, yes, sir.

19 Q And you had a camera in your car on the night
20 of this incident, isn't that correct?

21 A I did have a camera at the scene. It wasn't
22 used at the scene but I did have a camera in my
23 car.

24 Q You testified about Mr. Barclay smoking a
25 cigarette, unhandcuffed in the parking lot of the

1 MUSC, emergency room parking lot area. Correct?

2 A Correct.

3 Q Okay, and he was smoking a cigarette and he

4 was in front of your car that had this video

5 camera. Is that a fair statement?

6 A No, sir.

7 Q He was to the side of the car that had the

8 video camera. Is that a fair statement?

9 A Yes, sir.

10 Q Okay. But had you -- he hadn't yet been

11 formally arrested by the placing of handcuffs on,

12 isn't that correct?

13 A He was not in handcuffs, that's correct.

14 Q So, he was put in handcuffs once he was

15 placed in the patrol car, isn't that correct?

16 A That is correct.

17 Q All right. And you did not make a videotape

18 of him at that time, is that correct?

19 A I did not tape him smoking a cigarette, that

20 is correct.

21 Q Or responding to questions or doing any field

22 sobriety tests, no video --

23 MS. KINZELER: Objection.

24 THE COURT: Basis?

25 MS. KINZELER: Foundation.

1 THE COURT: Overruled.

2 THE WITNESS: That is correct. I was not at
3 the scene, he was taken by ambulance to the
4 hospital and the only interaction I had that I
5 possibly could have videotaped him was when he
6 smoked a cigarette.

7 BY MR. MASON:

8 Q Okay. If someone is truly drunk you would
9 expect them to appear drunk on a videotape. Isn't
10 that correct?

11 A That is not --

12 MS. KINZELER: Objection.

13 THE COURT: Basis?

14 MS. KINZELER: Speculation.

15 THE COURT: Sustained.

16 BY MR. MASON:

17 Q Do you recall when I came to the hospital?

18 MS. KINZELER: Objection.

19 THE COURT: Basis?

20 MS. KINZELER: May we approach?

21 THE COURT: You may.

22 (Unrecorded bench conference).

23 THE COURT: You may proceed.

24 BY MR. MASON:

25 Q Now, I just want to make sure I understand

1 your testimony about Mr. Barclay at the hospital,
2 okay?

3 A Okay.

4 Q Was he very, very, very intoxicated?

5 A I can't tell, I can't tell if he is very,
6 very, very intoxicated or very intoxicated.

7 Q Did he have slurred speech?

8 A He did.

9 Q Did he have very red and dilated eyes?

10 A His eyes were bloodshot.

11 Q Did he state he didn't even know that he had
12 been in an accident?

13 A That is correct.

14 Q Did he appear to laugh at the fact that
15 somebody had died?

16 A That is correct.

17 Q Was he uncooperative?

18 A I wouldn't say uncooperative other than just
19 dealing with sarcasm. He wasn't uncooperative.

20 Q The slurred speech, the very reddened eyes,
21 did that exist at the time that, around the time
22 that I arrived at the hospital?

23 MS. KINZELER: Objection.

24 THE COURT: Basis?

25 MS. KINZELER: Your Honor, may we approach?

1 THE COURT: Yes.

2 (Unrecorded bench conference).

3 BY MR. MASON:

4 Q The question I'm asking you relates, you have
5 testified to certain observations of Mr. Barclay
6 and certain statements that he made and I'm asking
7 you whether that is how he appeared at and around
8 the time that I arrived, just to set the time of it
9 up?

10 A I believe by the time when you arrived he had
11 already passed out in the bed, he was in more of a
12 lethargic state than before.

13 Q Slurred speech still, very reddened eyes
14 still, is that correct?

15 A His eyes were red. I don't know, after you
16 got there I don't think I said another word to him
17 after you got there, if I remember correctly.

18 Q Is it your testimony that you helped him walk
19 out of the hospital?

20 A He walked between my partner and I and at
21 times we had to help him with any obstacles between
22 the hospital and parking lot that we were crossing.

23 Q In fact when Mr. Barclay was released from
24 the emergency room he stood up under his own power
25 and he walked with you and Deputy Burrell to the

1 exit door at MUSC emergency room. Is that correct?

2 A That is correct.

3 Q In other words, he walked down the hallway
4 not handcuffed, but under his own power, is that
5 correct?

6 A That's what I said.

7 Q And isn't it correct that you did not note in
8 any way in your report that Mr. Barclay was in any
9 way unsteady on his feet. Isn't that correct?

10 A I don't believe I used the word unsteady on
11 his feet, that's correct.

12 Q You did not use the word that he had trouble
13 walking at any point in your report, isn't that
14 correct?

15 A That's correct.

16 Q Deputy Brinson, you have been qualified to
17 testify as a traffic fatality investigator. Would
18 you agree with me that an investigator is someone
19 who does just that, they investigate?

20 A I would agree, yes, and investigate.

21 Q And a reconstructionist is somebody who does
22 just that, they reconstruct the accident. Correct?

23 A That's right.

24 Q As a traffic fatality investigator you took
25 measurements at the scene. Isn't that correct?

1 A That is correct.

2 Q You told this jury that you did not
3 reconstruct this accident. Isn't that correct?

4 A That's not correct.

5 Q Again, you do not have a scale drawing which
6 reconstructs this accident by locating --

7 MS. KINZELER: Objection.

8 THE COURT: Basis for your objection?

9 MS. KINZELER: Asked and answered.

10 THE COURT: I will allow it.

11 BY MR. MASON:

12 Q You do not have what would be standard scale
13 accident reconstruction diagrams of this accident.
14 Isn't that correct?

15 A I have already testified that I don't have a
16 scale drawing. That is not a complete
17 reconstruction, that is part of a reconstruction
18 and not necessary in every single accident.

19 Q Now, an at-the-scene investigator interviews
20 drivers, victims and witnesses, conducts
21 inspections of vehicles and roadways and records
22 facts and locates witnesses, isn't that what you
23 were taught at the Criminal Justice Academy?

24 A Those are some things that were taught, yes,
25 sir.

1 Q And were you taught that the investigation
2 must be as thorough as any criminal investigation?

3 A Yes, sir.

4 Q And were you taught that like a criminal
5 investigator, you must seek out and evaluate all
6 available and pertinent facts?

7 A That is true.

8 Q Were you taught that you need to guard
9 against snap judgments and maintain an open mind?

10 A I couldn't say that. I don't understand what
11 you're asking me about that. If they used those
12 words when they are teaching me, I have no idea.
13 They taught us to do a thorough investigation and
14 how to complete that investigation based on the
15 type accident and the evidence you have at the
16 scene.

17 Q Well, did they teach you to never form a
18 conclusion regarding the cause and circumstances of
19 an accident until all the facts have been properly
20 evaluated?

21 A They taught us how to investigate an
22 accident.

23 Q Did they tell you to examine and evaluate all
24 three components of the accident, the driver, the
25 vehicle and the roadway?

1 A Yes, sir.

2 Q Did they teach you to take field notes and
3 prepare a field sketch to record all findings?

4 A They taught us to do that, that is correct.

5 Q Now, as I understand it, South Carolina
6 issues licenses as proof that people have been
7 examined and are qualified to operate a particular
8 type vehicle?

9 MS. KINZELER: Objection, relevance and lack
10 of foundation.

11 THE COURT: Foundation, sustained.

12 Q Do you know why South Carolina gives you a
13 license, driver's license?

14 MS. KINZELER: Objection.

15 THE COURT: Basis?

16 MS. KINZELER: Relevance.

17 THE COURT: Overruled.

18 BY MR. MASON:

19 Q Do you know why South Carolina give you a
20 driver's license?

21 A For identification purposes and testing
22 purposes.

23 Q Okay. And do those licenses indicate that a
24 person has been examined and qualified to operate a
25 vehicle?

1 A Yes, sir.

2 Q And as part of that does it include an eye
3 examination?

4 A I'm not sure of the DMV procedure, to be
5 honest with you. It changes from time to time.

6 Q You have never renewed -- when you got your
7 license --

8 THE COURT: Approach.

9 (Unrecorded bench conference).

10 THE COURT: Proceed.

11 BY MR. MASON:

12 Q In your evaluation of this accident did you
13 receive any information that the passenger or
14 driver was blinded by any headlights leading up to
15 the collision?

16 A No, sir.

17 Q Did you receive any information in your
18 evaluation of this accident that the driver of the
19 Geo did not like to drive at night?

20 A No, sir. I didn't talk to him, he was
21 deceased.

22 Q I mean from the passenger. You had talked
23 with the person who lived with him for five years.

24 A I have answered we couldn't find the
25 passenger.

1 Q And did you receive any information that the
2 driver of the Geo did not have experience driving
3 and that the only reason he was driving that day
4 was because his boss man --

5 MS. KINZELER: Objection.

6 THE COURT: Basis?

7 MS. KINZELER: Facts not in evidence.

8 THE COURT: Sustained, foundation and
9 speculation. Proceed.

10 BY MR. MASON:

11 Q Now, with regard to driving, do you, in order
12 to be a traffic investigator, do your job, do you
13 have to have some understanding of the rules of the
14 road and the operation of motor vehicles?

15 A Yes, sir.

16 Q And if I correctly stated that in driving you
17 should not look directly into the lights of cars
18 you are meeting, instead you should look toward the
19 right edge of the road and that you should slow
20 down when faced with the glare from approaching
21 headlights, is that a fair statement of driving in
22 a situation where two cars are approaching with
23 headlights coming toward one another?

24 A It's a suggestion that is given by different
25 agencies on defensive driving but I wouldn't say.

1 it's the only thing you can do.

2 Q But you have seen that information contained
3 in the South Carolina driver's manual. Is that a
4 fair statement from the manual?

5 A I don't know, sir.

6 MS. KINZELER: Objection.

7 THE COURT: Basis?

8 MS. KINZELER: Foundation.

9 THE COURT: Sustained.

10 BY MR. MASON:

11 Q Your recollection of hearing that statement
12 is from safe driving or defensive driving type
13 information, is that where you heard that?

14 A I took my driving test when I was 15 years
15 old, I remember that, a suggestion they had, that's
16 correct.

17 Q And you remember that from having taken, from
18 having studied the manual?

19 A I don't know if it was in that manual.

20 MS. KINZELER: Objection.

21 THE COURT: Basis of your objection?

22 MS. KINZELER: Speculation.

23 THE COURT: Overruled. You may proceed.

24 MR. MASON: Thank you.

25 BY MR. MASON:

1 Q Now, yesterday when you were testifying you
2 used your hands to indicate vehicles coming
3 together and going down into a V like that?

4 A Correct.

5 Q Okay. Now, is one of the things that causes
6 the front end of a car to go down when you apply
7 the brakes, sometimes the front end of your car,
8 that will be one thing that could cause the front
9 edge of the car to dip. Is that a fair statement?

10 A That's correct.

11 Q Okay. In this case we have no evidence of
12 any braking prior to impact. Is that a fair
13 statement?

14 A That's correct.

15 Q Okay. So, if we have no braking you have not
16 only the possibility of a V, but you have the
17 possibility of an A, in other words, where there is
18 some uplift involved when the vehicles engage.
19 Isn't that a fair statement?

20 A That's a fair statement, it's possible.

21 Q Right. So it is possible that you have
22 uplift when the vehicles engage, and then the gouge
23 mark would certainly occur after disengagement at a
24 point in time which the vehicles come down?

25 A That is something that could possibly happen

1 in an accident. It is not probable that it
2 happened in this accident.

3 Q But again it's something that in an accident
4 situation where there is no braking you have to
5 consider it's possible that there is also uplift as
6 well as down, there is all kind of forces?

7 A Anything is possible, tht's correct.

8 Q Anything is possible because you have, you
9 have eccentric forces, you have speed, you have
10 movement, you have momentum, you have all these
11 things going down and that essentially makes
12 anything possible?

13 A It makes it possible, correct.

14 MR. MASON: Thank you.

15 Your Honor, I have no further questions.

16 THE COURT: Any redirect?

17 MS. KINZELER: Briefly, Your Honor.

18 THE COURT: You may proceed.

19 REDIRECT EXAMINATION BY MS. KINZELER:

20 Q Deputy Brinson, you talked a lot about
21 reconstruction in this case. Why didn't you do a
22 reconstruction in this case?

23 A The evidence at the scene was clear as to
24 what happened and speed was not an issue and there
25 was no need for the extra stuff.

1 Q There was no need for a crash analysis?

2 A It wasn't -- I'm sorry, it didn't pertain to
3 what we had in this accident. The evidence on the
4 scene that night, for me on the scene looking at
5 it, it was very evident of what actually took place
6 in the accident.

7 Q And tell the jury what caused this wreck that
8 happened this night on December 8th of '08.

9 MR. MASON: Your Honor, objection, asked and
10 answered.

11 THE COURT: Overruled.

12 A Mr. Barclay's truck crossed over the
13 centerline and struck the Geo in an offset head-on
14 fashion. You can, again to the evidence, you can
15 see the path the truck took right through the curve
16 and lined it right up with maximum engagement where
17 the impact is with the accident.

18 Q How far away would the first point of touch
19 be from that maximum engagement?

20 A Inches.

21 Q We talked a little bit --

22 A Inches.

23 Q We talked a little bit about reaction time.
24 Tell the jury again what the average person's
25 reaction time is?

1 A 1.466 seconds.

2 Q How is that reaction time affected by
3 alcohol?

4 A It delays it.

5 MS. KINZELER: I think that's all I have.

6 THE COURT: Limited to redirect.

7 RECROSS EXAMINATION BY MR. MASON:

8 Q I thought when I asked you, when I was
9 questioning you about whether there was any way for
10 you to determine the exact path of these vehicles
11 in a few hundred feet before there is any markings
12 in the road, you can't do that, can you?

13 A Yes, you can.

14 Q You weren't there and you didn't see any
15 markings on the road, you're just --

16 MS. KINZELER: Objection.

17 THE COURT: Basis?

18 MS. KINZELER: Mischaracterization of the
19 testimony.

20 THE COURT: Sustained, rephrase.

21 BY MR. MASON:

22 Q If you do it logically you can get there but
23 it's an assumption on your part because you didn't
24 see it, right?

25 A Well, it is evident where the vehicle came

1 from, it didn't fall out of the sky, it is evident
2 that it traveled in a direction it traveled in to
3 get to where it ended up.

4 Q And what it did along the way, you don't
5 know?

6 A I don't but what is important is what
7 happened when it struck the other vehicle.

8 Q So it is not important to you if Mr. Barclay
9 is going down the road and he's got a sudden
10 emergency in his lane, a car coming --

11 MS. KINZELER: Objection.

12 THE COURT: Sustained.

13 Q It is not important to you if prior to this
14 accident, before the vehicles actually came
15 together, whether Mr. Garcia's vehicle at some
16 point prior to impact --

17 MS. KINZELER: Objection.

18 THE COURT: Sustained.

19 Q You don't know whether or not Mr. Garcia's
20 vehicle came into Mr. Barclay's lane at some point
21 in time before they collided, isn't that correct?

22 A At some point in time, I mean, no, I don't
23 know that, that's correct.

24 MR. MASON: Thank you.

25 THE COURT: Anything further from the State?

1 MS. KINZELER: No, ma'am.

2 THE COURT: Officer, you may step down.

3 (Witness excused).

4 THE COURT: You may call your next witness.

5 MS. KINZELER: The State calls Ben Throop to
6 the stand.

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1 BENJAMIN THROOP, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please be seated and your name
4 and spell your last name.

5 THE WITNESS: Benjamin Throop, T-h-r-o-o-p.

6. DIRECT EXAMINATION BY MS. KINZELER:

7 Q Mr. Throop, where are you currently employed?

8 A Charleston County EMS.

9 Q How long have you been there?

10 A Seven years as an EMS.

11 Q What is your role there? Tell the jury what
12 you do.

13 A I'm a paramedic, I hold the rank of sergeant,
14 which gives me rights and privileges of a crew
15 chief, I'm in charge of the ambulance, my partner
16 and patient care for all patients that are in the
17 ambulance.

18 Q Did you work in that same capacity back in
19 December of 2008?

20 A Yes, I did.

21 Q On December 8, 2008, did you respond to a
22 collision on Edisto Island?

23 A Yes, I did.

24 Q Are you familiar with the events that
25 occurred that night?

1 A Yes, I am.

2 Q Tell the jury what your role was that night,
3 if you can.

4 A I was crew chief on a truck, Med 14, we were
5 the second unit called in to provide support to
6 patients on the scene. Multiple vehicles were
7 involved so they called for additional units. I
8 was the second unit there.

9 Q Did you treat any patients that night?

10 A Yes, I did.

11 Q Who did you treat?

12 A Mr. Barclay.

13 Q Can you tell the jury anything about your
14 observations of Mr. Barclay that night while you
15 were treating him?

16 MR. MASON: Objection.

17 THE COURT: Basis?

18 MR. MASON: Foundation, personal knowledge.

19 THE COURT: Overruled. He was present, his
20 impressions.

21 You may answer the question, sir.

22 THE WITNESS: Could you repeat the question
23 for me?

24 BY MS. KINZELER:

25 Q Can you tell the jury about your observations

1 of Mr. Barclay that night while you were treating
2 him?

3 A Yes. He seemed to be in particularly good
4 mood considering the fact he had been involved in a
5 vehicle accident. I remember that pretty
6 distinctly. He answered all my questions. That is
7 really all I can say.

8 Q Did you prepare a report as you were
9 observing Mr. Barclay?

10 A I did.

11 Q Would it refresh your recollection to refer
12 to that report?

13 A Absolutely.

14 MR. MASON: Your Honor, no objection to the
15 report.

16 THE COURT: He can use it to refresh his
17 memory.

18 MS. KINZELER: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MS. KINZELER:

21 Q Could you review that for a second? Are you
22 familiar with that report?

23 A Yes, I am.

24 Q Are you the one that prepared it?

25 A Yes, I am.

1 Q Are there any observations in there, in the
2 narrative -- let me rephrase that question. What
3 is documented in that report, were those your
4 observations?

5 A Except for the initial quotes where I quote
6 the Charleston County employee Guthrie, yes, all
7 the other observations in there are mine.

8 Q And tell the jury about your observations of
9 the defendant in the back of the ambulance that
10 night.

11 A Most of these observations are just basic
12 medical things that I do for any patient, in
13 particular a patient that had a trauma or was in a
14 vehicle accident. In particular I did make a
15 notation that says that there was, the patient has
16 odor similar to ETOH about his person and clothing.

17 Q What is ETOH?

18 A The medical abbreviation for alcohol.

19 Q Is ETOH the same as rubbing alcohol, or how
20 are they different?

21 A I'm not a chemist, ma'am.

22 Q Tell the jury what you mean by ETOH. What
23 kind of alcohol are you referring to?

24 A It smelled like beer.

25 Q Where were you when you were making these

1 observations?

2 A About 36 inches from the patient.

3 Q Were you in the ambulance?

4 A I was in the rear of the ambulance with
5 closed doors, sitting on a bench seat, the bench
6 seat is approximately 36 to 48 inches from the
7 patient who is on the spine board on a stretcher.

8 Q What was his demeanor like, do you recall?

9 A Carefree would be a word I would use.

10 Q Were there any people in the back of the
11 ambulance with you other than the two of you?

12 A During the transport, no.

13 Q While you're making these observations?

14 A No.

15 Q Was he oriented?

16 A If you read what my report says, he was
17 conscious, oriented times three.

18 Q What does that mean?

19 A That means that he could answer the basic
20 questions, questions such as where am I, who am I,
21 what is the date, pretty general in nature and that
22 is done to establish a baseline.

23 Q A baseline for what?

24 A For his mental status.

25 MS. KINZELER: I think that's all I have.

1 Answer any questions Mr. Mason has.

2 THE COURT: Cross-examination?

3 MR. MASON: Yes.

4 THE COURT: You may proceed when you're
5 ready.

6 CROSS EXAMINATION BY MR. MASON:

7 Q Mr. Throop, did Mr. Barclay have a three inch
8 laceration on his head?

9 A It notes on my report he had a bleeding wound
10 on the back right of his head, yes.

11 Q He was bleeding through the bandages, is that
12 correct?

13 A Yes. I wrote bleeding wound through the
14 dressing, that is what that means.

15 Q Okay. And he was on a spine board. Did you
16 place him on the spine board?

17 A No, I did not.

18 Q Was he on the spine board when you got there?

19 A Yes, he was.

20 Q Okay. And can you describe for the jury just
21 how a person is strapped to the spine board, just
22 the whole spine board process?

23 MR. MASON: Your Honor, may I approach the
24 witness?

25 THE COURT: You may.

1 (Drawing marked as Defendant's Exhibit 5).

2 BY MR. MASON:

3 Q I'm going to hand you what has been marked as
4 Defendant's Exhibit Number 5. Would that in any
5 way aid you in explaining to the jury how you, the
6 spine board process?

7 A Sure. This is one way of immobilizing a
8 patient on a spine board.

9 MR. MASON: Your Honor, may I publish it
10 while he testifies, for demonstrative purposes?

11 THE COURT: Any objection?

12 MS. KINZELER: Yes, ma'am, I do object to
13 that.

14 THE COURT: Approach.

15 (Unrecorded bench conference).

16 THE COURT: Objection overruled.

17 BY MR. MASON:

18 Q I don't mean to blind you by the light, but
19 behind you is what you're describing.

20 A Patients are immobilized on a spine board to
21 protect their spine in the case of an underlying
22 injury. This is one way that a patient can be
23 restrained. There is multiple ways of doing it.
24 This just gives you a really good idea, that would
25 be a spine board, how patients are put on the

1 board, padding the body, immobilized. That is just
2 convenient, that is why we do it, just to protect
3 the spine.

4 Q Does this photograph fairly and accurately
5 represent the general way in which Mr. Barclay
6 would have been affixed in some manner to a spine
7 board?

8 A In a general sense, yes.

9 Q Okay. And from the time you first saw him,
10 to the time you dropped him off at the hospital,
11 was he secured on a board in a similar manner?

12 A Yes, in a general similar manner, yes.

13 Q Okay. And when you secured him, all through
14 the time that he was in your care is it a fair
15 statement that about every five or ten minutes you
16 repeatedly checked his vital signs?

17 A I did not secure Mr. Barclay. That would be
18 Mr. Guthrie, who is another paramedic.

19 Q So, Mr. Barclay was secured on a spine board
20 when you got there?

21 A Correct.

22 Q Okay. So, if your report says at patient
23 6:37, does that mean you're at Mr. Barclay, in
24 other words you're attending to Mr. Barclay at
25 6:37?

1 A That would be an estimate when I made contact
2 with Mr. Guthrie and Mr. Barclay, yes.

3 Q So, when you first saw Mr. Barclay at 6:37
4 was he on that spine board?

5 A Yes, he was.

6 Q Okay. And then it was from there that you
7 took over his care from Mr. Guthrie. Is that
8 correct?

9 A Correct.

10 Q And once you took over his care you made an
11 assessment where you had no other findings other
12 than bleeding through the dressing, is that correct?

13 A Correct. At 1838 -- well, that is not
14 correct, 1838 and 1932 I reassess him both times
15 from head to toe but, yes, there was no change
16 other than that.

17 Q So, from the time you first saw him and as
18 you rechecked him in the ambulance five or six
19 times, each time he had the highest Glasgow coma
20 you could have. In other words, he was as alert as
21 you could be, correct?

22 A Go ahead.

23 Q Is that correct?

24 A Glasgow coma doesn't just evaluate alertness,
25 it evaluates vital signs and other things.

1 Q Will you explain -- first let me ask you,
2 then I would like for you to explain to the jury,
3 if you would, did he have, let me just use laymen's
4 terms, did he have the, in terms of health, did he
5 have the best Glasgow coma score you could have
6 each time it was you performed those battery of
7 examinations?

8 A Correct, yes. I was not concerned about his
9 having an underlying head injury or --

10 Q Explain to the jury what the process is for
11 you to do that test you did for him five different
12 times while he was in the ambulance.

13 A All right. The Glasgow coma scale is an
14 evaluation tool we use in the field. It consists
15 of their responses, their alertness, their eye
16 movement, is it spontaneous. There is a
17 respiratory rate component of it, are they
18 breathing fine, are they having problems with
19 respiratory process, and then it also involves
20 their blood pressure, the level of their blood
21 pressure, it gives them a numerical value.

22 So, for his score, you know, blood pressure
23 was 128 over 89, that would be worth four points.
24 Then the respiratory rate is considered normal,
25 between 10 to 29, that is another four. And then

1 the last score which is GCS, it is four. So, yes,
2 it evaluates whether or not he sustained trauma to
3 the head, is how I would describe it.

4 Q Now, did you note multiple times in his
5 report he had normal pupils, normal dilation? I'm
6 referring to specifically at 6:45.

7 A Yes, I do.

8 Q And I didn't catch it, you referenced four
9 other points that he got for his Glasgow coma
10 score. What was the the last four points?

11 A His respiratory rate, blood pressure and then
12 the Glasgow coma score itself.

13 Q So, when you assessed him -- let me just ask
14 it this way. Did you assess him as alert and
15 oriented times three at 6:37, at 6:45, at 6:55, at
16 7:05, at 7:15 and at 7:25?

17 A I did, sir.

18 Q Now, nowhere in your narative here do you
19 write down anything about him having a carefree
20 attitude. Is that a fair statement?

21 A That's a fair statement.

22 Q And have you met with a representative of the
23 Soclicitor's office at anytime before today about
24 this case?

25 A Sure, absolutely.

1 Q Okay. And tell me when that took place?

2 A The last time or anytime?

3 Q Each time.

4 A I have had multiple phone conversations, I
5 don't remember dates and times. The last time I
6 spoke with Miss Kinzeler was last night to confirm
7 my time to be here today.

8 Q Okay. But the multiple, have all your
9 multiple conversations about this case taken place,
10 let's say, within the last 45 days?

11 A Yes.

12 MR. MASON: Thank you. I have no further
13 questions.

14 THE COURT: Any redirect?

15 MS. KINZELER: Briefly, Your Honor.

16 THE COURT: You may proceed.

17 REDIRECT EXAMINATION BY MS. KINZELER:

18 Q Mr. Throop, the picture we're looking at
19 right here, is this necessarily representative of
20 how Mr. Barclay was put on the spine board that
21 night?

22 A This is how he was presented to me. How he
23 was initially placed on the spine board is a
24 question that would have to be directed to Mr.
25 Guthrie and Mr. Sims.

1 Q And the tests with you were talking about on
2 cross-examination, do those test for level of
3 intoxication?

4 A No, they do not.

5 Q Did anybody tell you how to testify today?

6 A No, absolutely not.

7 MS. KINZELER: That's all I have. Thank you.

8 MR. MASON: I have one follow-up, Your Honor,
9 sorry.

10 RECROSS EXAMINATION BY MR. MASON:

11 Q You were just asked about the spine board.
12 Do you see people, you do this all the time, does
13 it sometimes agitate people to be strapped to that
14 board, let's say, for an hour and a half or so?

15 A They can.

16 Q Okay. And you have no indication in your
17 records that Mr. Barclay behaved in any agitated
18 way, notwithstanding that he was strapped to this
19 board?

20 A He was not agitated at all while he was
21 strapped on the board, he was able to carry on a
22 conversation with me and he remained calm.

23 Q And cooperative, correct?

24 A Cooperative.

25 Q In fact you were able to administer some

1 treatment to him in the ambulance, including give
2 him --

3 MS. KINZELER: Objection.

4 THE COURT: Basis?

5 MS. KINZELER: Beyond the scope.

6 THE COURT: Sustained to beyond the scope of
7 redirect examination.

8 MR. MASON: Your Honor, may I approach?

9 THE COURT: Yes.

10 (Unrecorded bench conference).

11 THE COURT: The objection is withdrawm. You
12 may proceed.

13 BY MR. MASON:

14 Q I was asking you about the treatment rendered
15 to Mr. Barclay in the ambulance. Were you also
16 able to get some iv's started during the trip from
17 the accident scene to the hospital?

18 A Yes, I was.

19 MR. MASON: Thank you.

20 THE COURT: Any further questions?

21 MS. KINZELER: No, ma'am.

22 THE COURT: Any objection to the witness
23 being excused, from the State?

24 MS. KINZELER: No, ma'am.

25 THE COURT: From the defense?