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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON CONNELL PALMER,

APPELLANT

APPELLATE CASE NO. 2024-001930

RECORD ON APPEAL

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MARK R. FARTHING
Senior Assistant Deputy Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-4117

ATTORNEY FOR APPELLANT

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit
PO Box 607
Lancaster, SC 29721
(803) 416-9336

ATTORNEYS FOR RESPONDENT

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**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBITS NOS. 1 AND 2 (RECORDINGS), STATE’S
EXHIBITS NOS. 15-17 (PHOTOGRAPHS), STATE’S EXHIBITS NOS. 21
AND 22 (PHOTOGRAPHS), STATE’S EXHIBIT NO. 28
(PHOTOGRAPH), STATE’S EXHIBIT NO. 34 (PHOTOGRAPH),
STATE’S EXHIBITS NOS. 49 AND 50 (PHOTOGRAPHS), STATE’S
EXHIBITS NOS. 52-54 (PHOTOGRAPHS), STATE’S EXHIBIT NO. 84
(PHOTOGRAPH), STATE’S EXHIBIT NO. 88 (PHOTOGRAPH),
STATE’S EXHIBIT NO. 92 (PHOTOGRAPH), STATE’S EXHIBIT NO. 95
(PHOTOGRAPH), STATE’S EXHIBIT NO. 96 (MAIT REPORT), AND
STATE’S EXHIBIT NO. 97 (COLLISION MAPPING)]**

JURY TRIAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER)

State of South Carolina,) INDICTMENTS: 2023-GS-12-248,
) 2023-GS-12-249,
Plaintiff,) 2023-GS-12-317
)
versus)
)
Jason Palmer)
)
Defendant.)

JURY TRIAL

DATES AND TIMES:

October 28, 2024 - 9:47 a.m. to 5:20 p.m.

October 29, 2024 - 9:57 a.m. to 12:56 p.m.

October 30, 2024 - 10:29 a.m. to 4:47 p.m.

October 31, 2024 - 10:28 a.m. to 2:19 p.m.

November 1, 2024 - 9:12 a.m. to 1:43 p.m.

LOCATION: South Carolina Circuit Court No. 6

JUDGE: Brian M. Gibbons

TRANSCRIBED BY: Jessica N. Antonucci

LEGAL EAGLE

Post Office Box

Greenville, South Carolina 29606

(864) 467-1373 -- depos@legaleagleinc.com

1 and gentlemen, like I indicated earlier, now we'll
2 begin asking questions or what we call trial
3 specific questions about the matter before the Court
4 this week, okay. So, at this -- and I'll remind
5 you, you are still under oath. Madam Solicitor,
6 please call your case.

7 MS. LIVELY: Yes, thank you, Your Honor. This
8 is the State of South Carolina versus Jason Connell
9 Palmer. He has four charges that he will be tried
10 on this week. If you'd like for me to, Your Honor,
11 I can get you to call them out, or you could go
12 ahead and tell the jury and the jury panel what all
13 of those are.

14 JUDGE GIBBONS: All right. Thank you, Madam
15 Solicitor. Ladies and gentlemen of the jury, I'm
16 holding in my hands what are called indictments, and
17 of course indictments aren't evidence of anything.
18 Indictments are just the general written description
19 of the criminal charges, which have been made by the
20 State of South Carolina, against a particular
21 defendant, okay. So just because they're typed up
22 and I'm looking at them doesn't mean anything, other
23 than it makes it easier for me to read to you, and
24 kind of give you a general idea about the case
25 that's going to be tried before the Court, because

JURY TRIAL

1 that may help formulate your responses -- or
2 response or responses, to the questions that are
3 asked, okay. So the State has called the case;
4 State of South Carolina versus Jason Palmer. The
5 State has alleged, and again remember these are
6 allegations, and I'll say it now and you'll hear me
7 repeat it several times during this process, that
8 everyone is presumed innocent until proven guilty,
9 okay, in a court of law. And y'all already know
10 that, but I'm reminding you of that. So, the State
11 has alleged that on or about July 10th, 2022, that
12 Jason Palmer did here in Chester County unlawfully
13 injure Thomas Shanks and great bodily injury
14 resulted from a automobile accident, or vehicle
15 accident, which happened on I-77, when the State
16 alleges that the Defendant was driving recklessly
17 over the speed limit, and as a result of this
18 accident Mr. Shanks suffered multiple incapacitating
19 injuries requiring extended hospital treatment and
20 permanent injury. So, that's a charge called
21 assault and battery of a high and aggravated nature.
22 The State has also charged Mr. Palmer with reckless
23 homicide, where they allege that -- the State has
24 alleged that on or about July 10th, 2022, Mr. Palmer
25 was operating a vehicle recklessly on I-77 here in

1 Chester County, and struck the rear of the victim's
2 vehicle causing the vehicle to run off the roadway,
3 hitting several trees, and ultimately killing John
4 Maxwell Shanks, date of birth, [REDACTED]/2015, all right.
5 So, that's the charge of reckless homicide. Next
6 charge is possession of cocaine base, that on or
7 about July 10, 2022, the State has alleged that Mr.
8 Palmer knowingly and intentionally possessed cocaine
9 base, or what we call crack cocaine, which is
10 against the law in South Carolina. And lastly, the
11 State has alleged that Mr. Palmer on that date
12 possessed marijuana, which is a controlled substance
13 and is unlawful. So, that's the type of case.
14 Those are generally the description of the charges
15 that have been made the State against Mr. Palmer.
16 Mr. Palmer has pled not guilty, and that's what this
17 trial is about. So, ladies and gentlemen, at this
18 point and time, before I start going over specific
19 questions related to this trial, and whether or not
20 you'll be seated as a trial juror, I'm gonna have
21 the attorneys introduce themselves to you, and
22 whoever is seated at their table who's going to be
23 participating in this trial. Madam Solicitor?

24 MS. LIVELY: Yes, thank you, Your Honor.
25 Thank you all for being here. You know, I know you

JURY TRIAL

1 didn't have a choice. My name is Candice Lively,
2 I'm the Deputy Solicitor for Chester County, which
3 is in the Sixth Judicial Circuit; elected Solicitor
4 Randy Newman, I think he's been introduced to you
5 already. Also, I have our chief investigator Keith
6 Lewis; and my second chair, Assistant Solicitor
7 Julia Soprano-Cesmat will be here assisting as well.

8 JUDGE GIBBONS: Thank you, Madam Solicitor.
9 Mr. Frick?

10 MR. FRICK: Thank you, Your Honor. Good
11 morning, ladies and gentlemen. I met you earlier,
12 but again my name is William Frick. I practice
13 criminal law here in Chester County. I have the
14 privilege of representing Mr. Jason Palmer this
15 week. Stand up so they can see you. And assisting
16 me with the trial this week is Attorney Kay
17 Boulware.

18 JUDGE GIBBONS: All right, thank you. So,
19 ladies and gentlemen, the first question I have, and
20 again it's the same process, if a question applies
21 to you, please stand and then we'll deal with your
22 response. The first thing we're gonna need to know,
23 and any response you give is what your juror number
24 is, okay. So, if I forget to ask, make sure you
25 blurt it out, okay, when you stand up. So, the

1 first question is, is any member of the jury panel
2 related by blood or marriage, or have any close,
3 personal, or social relationship with any of the
4 attorneys involved in this case? If so, please
5 stand. No response. Is any member of the jury
6 panel related by blood or marriage, or have any
7 close, personal, or social relationship with the
8 Defendant, Jason Palmer? If so, please stand. All
9 right, so ladies and gentlemen, there are a number
10 of witnesses who may testify in this case, okay.
11 So, I'm going to read those names of these people,
12 okay. And the question is gonna be is if you're
13 related to them by blood or marriage, or have any
14 close, personal, or social relationship with any of
15 these witnesses, okay. And then, of course, if you
16 do you'll stand and we'll deal with your response.
17 But, the second question, and the most important
18 question is, well just because you know them that
19 way or are related to them, can you still be a fair
20 and impartial juror if that person testifies, okay.
21 So, here are some names and I'm gonna -- just
22 because I say the names doesn't mean they're
23 definitely going to testify, but we need to know if
24 you know them, okay. So, here's some names in no
25 particular order, first of all I'm going to read

1 some names from South Carolina Highway Patrol and
2 law enforcement, Kenneth Warlick, Highway Patrol;
3 Scott Darby, Highway Patrol; Tyler Holland, Highway
4 Patrol; Grant Cooke, with MAIT from the Highway
5 Patrol; Jason Gilberts with MAIT -- Jason Gilbert
6 with MAIT from the Highway Patrol. Does anybody
7 recognize those names as I've described? If so,
8 please stand. All right, yes, ma'am, what's your
9 juror number?

10 JUROR NO. 120: 120.

11 JUDGE GIBBONS: All right, which name?

12 JUROR NO. 120: Scott Darby.

13 JUDGE GIBBONS: All right, how do you know Mr.
14 Darby?

15 JUROR NO. 120: Personal friend.

16 JUDGE GIBBONS: All right, would that affect
17 your ability to be fair or impartial?

18 JUROR NO. 120: No, sir.

19 JUDGE GIBBONS: Thank you. What's your juror
20 number again?

21 JUROR NO. 120: 120. Perry.

22 JUDGE GIBBONS: All right, thank you. All
23 right, next set of names, Mark Lindsay with MAIT;
24 Weston Rivett with MAIT; Morgan Hughes with the
25 Highway Patrol; Haneef or Haneef Tull with the

1 Highway Patrol; Cyteco Dye, formerly Highway Patrol;
2 Terry Tinker, our Coroner; and Chris Bradshaw. Does
3 anybody recognize those names as described? All
4 right, Ms. Perry?

5 JUROR NO. 112: Terry Tinker, I have a working
6 relation with.

7 JUDGE GIBBONS: All right, would that affect
8 your ability to be fair and impartial?

9 JUROR NO. 112: No.

10 JUDGE GIBBONS: Thank you. That's juror
11 number 112. I'm sorry, yes, in the back?

12 JUROR NO. 85: 85.

13 JUDGE GIBBONS: All right, 85, how do you
14 respond?

15 JUROR NO. 85: I'm just a personal friend of
16 Terry Tinker.

17 JUDGE GIBBONS: All right, would that affect
18 your ability to be fair or impartial? Thank you,
19 she says no; and that's juror 85. Yes?

20 JUROR NO. 86: 86.

21 JUDGE GIBBONS: Yes.

22 JUROR NO. 86: Terry Tinker.

23 JUDGE GIBBONS: All right, how do you know Mr.
24 Tinker?

25 JUROR NO. 86: Just a friend.

1 JUDGE GIBBONS: All right. Would that affect
2 your ability to be fair or impartial?

3 JUROR NO. 86: No, sir.

4 JUDGE GIBBONS: All right, thank you.

5 JUROR NO. 86: I also think I know the Dye
6 gentleman, possibly.

7 JUDGE GIBBONS: Cyteco Dye?

8 JUROR NO. 86: If he's a -- also a
9 firefighter.

10 JUDGE GIBBONS: I don't know.

11 JUROR NO. 86: Okay. May not be him then.

12 JUDGE GIBBONS: Okay. All right, thank you.

13 All right, anybody else on those names? Okay. Next
14 set of names are from SLED, Lawrence Zivkovich,
15 Colleen Kelly, Carmen Tucker. Anybody recognize
16 those? That's toxicology, drug analysis people.

17 All right. Next set of names are EMS people,
18 Danielle Bonner, Elena Malzahn, David Dutton, and
19 Tyson Melton. Anybody recognize those names? Other
20 than Ms. Perry? All right, this is juror number
21 112, Ms. Perry, can you be fair and impartial?

22 JUROR NO. 86: Yes, I can.

23 JUDGE GIBBONS: All right, thank you. Yes,
24 ma'am?

25 JUROR NO. 86: Yes.

1 JUDGE GIBBONS: Juror 86.

2 JUROR NO. 86: Yes.

3 JUDGE GIBBONS: Which name do you recognize?

4 JUROR NO. 86: Melton.

5 JUDGE GIBBONS: Okay. And how do you know Mr.
6 Melton?

7 JUROR NO. 86: He's a firefighter. I just
8 know him.

9 JUDGE GIBBONS: All right. Now you live in
10 the Richburg area?

11 JUROR NO. 86: Community, yes.

12 JUDGE GIBBONS: Okay. Thank you. And would
13 that affect your ability to be fair and impartial?

14 JUROR NO. 86: No, it will not.

15 JUDGE GIBBONS: All right. Thank you. Yes,
16 ma'am?

17 JUROR NO. 55: 55.

18 JUDGE GIBBONS: All right. Melton, personal
19 friend.

20 JUDGE GIBBONS: Would that affect your ability
21 to be fair or impartial?

22 JUROR NO. 55: No, it does not.

23 JUDGE GIBBONS: Thank you. Yes, sir?

24 JUROR NO. 12: Number 12.

25 JUDGE GIBBONS: Yes, sir.

1 JUROR NO. 12: Tyson Melton, friend.

2 JUDGE GIBBONS: All right, would that affect
3 your ability to be fair or impartial?

4 JUROR NO. 12: No, sir.

5 THE CLERK: He's number 14?

6 JUDGE GIBBONS: That's number 14. He's number
7 14. All right. Yes, ma'am.

8 JUROR NO. 85: 85.

9 JUDGE GIBBONS: 85, yes, ma'am.

10 JUROR NO. 85: Melton.

11 JUDGE GIBBONS: And would that affect your
12 ability to be fair or impartial?

13 JUROR NO. 85: No, sir.

14 JUDGE GIBBONS: All right, thank you. Okay,

15 next set of names, LaToya Parker who is an RN at

16 Chester Hospital; Dr. Kelly Crawford, anybody

17 recognize those names? All right. Next set of

18 witnesses, Jessica Shanks, James Logan, Felicia

19 Logan, Joseph Parker, Brittney Dempsey. Anybody

20 recognize those names? Okay. Next set, Mark

21 Turner, Jacinta Parris, Jill Parris, Jermaine

22 Nichols. Does anybody recognize those names in this

23 trial? All right. Has any member of the jury panel

24 or a member of your immediate family ever been the

25 victim of a crime? If so, please stand. All right,

1 in the back, yes, ma'am, your juror number is 85.

2 How do you respond to that?

3 JUROR NO. 85: Could I speak in private?

4 JUDGE GIBBONS: I'm sorry.

5 JUROR NO. 85: Could I speak in private?

6 JUDGE GIBBONS: Yes, ma'am, just give me one
7 second. Yes, sir?

8 JUROR NO. 44: I'm number 44.

9 JUDGE GIBBONS: Yes, sir.

10 JUROR NO. 44: When I was younger I was a
11 victim of a robbery and kidnapping.

12 JUDGE GIBBONS: Okay. And would that affect
13 your ability to be fair and impartial?

14 JUROR NO. 44: No.

15 JUDGE GIBBONS: All right, thank you. All
16 right, yes, ma'am, juror number?

17 JUROR NO. 40: 40.

18 JUDGE GIBBONS: All right, yes, how do you
19 respond?

20 JUROR NO. 40: Domestic violence, I was a
21 victim.

22 JUDGE GIBBONS: Would that affect your ability
23 to be fair or impartial?

24 JUROR NO. 40: No, sir.

25 JUDGE GIBBONS: All right, thank you. All

1 right, has any member of the jury panel -- hang on
2 one second, let me -- has any member of the jury
3 panel read or seen any media coverage through the
4 internet, the newspaper, social media, television
5 news, or anything whatsoever about this case? If
6 so, please stand. Does anybody think they know
7 anything about this case, or talked to anybody
8 around the water cooler or at -- or at church about
9 this case? Facebook? Anybody? If so, please
10 stand. All right, thank you, we're gonna bring you
11 all up here. Let me see juror number 85 -- slide
12 over there. Let me see juror number 85 first. Hey.

13 JUROR NO. 85: Hey, how are you?

14 JUDGE GIBBONS: Hey. (Inaudible) okay,
15 currently being prosecuted?

16 JUROR NO. 85: Uh-huh (affirmative).

17 JUDGE GIBBONS: Not by the Solicitor? Can you
18 be fair and impartial?

19 JUROR NO. 85: (Inaudible).

20 JUDGE GIBBONS: Okay, (inaudible).

21 JUROR NO. 85: (Inaudible).

22 JUDGE GIBBONS: All right, thank you, ma'am.

23 (Inaudible). All right, thank you, just have a seat
24 down there. Thank you. All right, yes, ma'am,
25 juror number 112? Yes, ma'am.

1 JUROR NO. 112: (Inaudible). No, sir.

2 JUDGE GIBBONS: (Inaudible) you just heard
3 about it (inaudible). All right, can you be fair
4 and impartial?

5 JUROR NO. 112: Yes.

6 JUDGE GIBBONS: Okay. All right, thank you.
7 Has any member of the jury panel or your immediate
8 family served with Richburg or currently serves with
9 Richburg Fire and Rescue? If so, please stand if
10 you hadn't already let me know that. All right,
11 yes, ma'am, come up and approach. What's your juror
12 number?

13 JUROR NO. 55: 55.

14 JUDGE GIBBONS: 55, yes, ma'am. How do you
15 respond to this?

16 JUROR NO. 55: My (inaudible).

17 JUDGE GIBBONS: In Richburg.

18 JUROR NO. 55: Uh-huh (affirmative).

19 JUDGE GIBBONS: Did she talk to you about
20 this?

21 JUROR NO. 55: Uh-huh (affirmative).

22 JUDGE GIBBONS: You don't know anything about
23 it? You don't remember anything?

24 JUROR NO. 55: (Inaudible).

25 JUDGE GIBBONS: Can you be fair and impartial?

JURY TRIAL

1 JUROR NO. 55: Yes.

2 JUDGE GIBBONS: All right, thank you, very
3 much, Ms. Gaston. All right, thank you. Has any
4 member of the jury panel or member of your immediate
5 family ever been accused of committing a crime? If
6 so, please stand. If you haven't already told her.
7 No response. Has any member of the jury panel lost
8 a child or had a child pass away? If so, please
9 stand. All right. All right, yes, sir, over there,
10 what's your juror number?

11 JUROR NO. 18: 18.

12 JUDGE GIBBONS: All right, how do you respond
13 to this?

14 JUROR NO. 18: I lost a child in 2019.

15 JUDGE GIBBONS: All right. I hate to ask, but
16 was it in a motor vehicle accident or anything like
17 that? You don't have to get into specifics.

18 JUROR NO. 18: No.

19 JUDGE GIBBONS: All right. Would that affect
20 your ability to be a fair and impartial juror?

21 JUROR NO. 18: No.

22 JUDGE GIBBONS: Thank you sir, you may be
23 seated. Yes, ma'am, juror number?

24 JUROR NO. 43: 43.

25 JUDGE GIBBONS: Okay.

1 JUROR NO. 43: My daughter passed away a year
2 ago.

3 JUDGE GIBBONS: All right. Motor vehicle
4 accident?

5 JUROR NO. 43: No.

6 JUDGE GIBBONS: All right, thank you. Would
7 that affect your ability to be fair or impartial?

8 JUROR NO. 43: No.

9 JUDGE GIBBONS: Thank you very much. All
10 right, yes, ma'am.

11 JUROR NO. 40: Juror number 40.

12 JUDGE GIBBONS: Yes.

13 JUROR NO. 40: My son passed away two weeks
14 ago.

15 JUDGE GIBBONS: Oh, goodness, sorry to hear
16 about that. Can you be fair or impartial?

17 JUROR NO. 40: Yes.

18 JUDGE GIBBONS: All right, thank you. All
19 right.

20 JUROR NO. 66: 66.

21 JUDGE GIBBONS: Yes, sir.

22 JUROR NO. 66: Oldest son passed away when he
23 was 19.

24 JUDGE GIBBONS: All right. Motor vehicle
25 accident?

1 JUROR NO. 66: (Inaudible).

2 JUDGE GIBBONS: Can you be fair and impartial?
3 He says yes. Thank you. All right. Has any member
4 of the jury panel ever been involved in a motor
5 vehicle accident? If so, please stand. All right,
6 so here's what we're gonna do. If you have been
7 involved in a motor -- well, everybody's standing.
8 So, I'm just gonna go around and tell me your juror
9 numbers, just so the lawyers can make a note of it,
10 and then I'm gonna do the process of elimination,
11 okay, by asking if you cannot be fair or impartial
12 in the trial of this case, because you've been in a
13 motor vehicle accident, you'll have to remain
14 standing. All right, that's what we'll do, okay.
15 And then we'll go from there. But, I do need you to
16 -- since the question was asked and you stood up, I
17 need you to identify your juror number. Starting
18 from my right to my left. Ms. Going, what's your
19 juror number?

20 JUROR NO. 59: 59.

21 JUDGE GIBBONS: All right, thank you. Right
22 behind you.

23 JUROR NO. 67: 67.

24 JUDGE GIBBONS: 67. Yes, sir?

25 JUROR NO. 132: 132.

1 JUDGE GIBBONS: 132. Yes, ma'am?

2 JUROR NO. 148: 148.

3 JUDGE GIBBONS: 148. Yes, sir?

4 JUROR NO. 44: 44.

5 JUDGE GIBBONS: Okay, yes, sir?

6 JUROR NO. 68: 68.

7 JUDGE GIBBONS: Yup. Go ahead.

8 JUROR NO. 43: Me?

9 JUDGE GIBBONS: Yes, ma'am.

10 JUROR NO. 43: 43.

11 JUDGE GIBBONS: All right. Yes, ma'am?

12 JUROR NO. 86: 86.

13 JUDGE GIBBONS: 86. Right behind you.

14 JUROR NO. 133: 133.

15 JUDGE GIBBONS: 133?

16 JUROR NO. 133: Yes.

17 JUDGE GIBBONS: Okay. Yes, sir.

18 JUROR NO. 47: 47.

19 JUDGE GIBBONS: 47. Yes, sir?

20 JUROR NO. 144: 144.

21 JUDGE GIBBONS: Yes.

22 JUROR NO. 98: 98.

23 JUDGE GIBBONS: All right, thank you. Anybody

24 on this side of the courtroom, if because of the

25 fact that you've been in a motor vehicle collision

1 before, if that would cause you to not be able to be
2 fair or impartial if you were picked to serve as a
3 juror in this case, please remain standing. If not,
4 be seated. All right, thank you. All right, Ms.
5 Going, you don't think --

6 JUROR NO. 59: No.

7 JUDGE GIBBONS: All right, thank you. That's
8 juror number 59, all right. Thank you, ma'am. You
9 can be seated, thank you. All right, going around
10 to this side, similar thing, sorry about those who
11 had to stand longer. All right, right in the front
12 what's your juror number?

13 JUROR NO. 58: 58.

14 JUDGE GIBBONS: All right.

15 JUROR NO. 96: 96.

16 JUDGE GIBBONS: All right.

17 JUROR NO. 92: 92.

18 JUDGE GIBBONS: Yeah.

19 JUROR NO. 99: 99.

20 JUDGE GIBBONS: Yeah.

21 JUROR NO. 75: 75.

22 JUDGE GIBBONS: Yeah.

23 JUROR NO. 10: 10.

24 JUDGE GIBBONS: Yeah.

25 JUROR NO. 76: 76.

1 JUDGE GIBBONS: Yeah.

2 JUROR NO. 126: 126.

3 JUDGE GIBBONS: Okay. Ma'am?

4 JUROR NO. 39: 39.

5 JUDGE GIBBONS: 39, all right. Yes, sir?

6 JUROR NO. 14: 14.

7 JUDGE GIBBONS: 14. Yes, ma'am?

8 JUROR NO. 101: 101.

9 JUDGE GIBBONS: All right.

10 JUROR NO. 3: 3.

11 JUDGE GIBBONS: 3.

12 JUROR NO. 38: 38.

13 JUDGE GIBBONS: Yup.

14 JUROR NO. 83: 83.

15 JUDGE GIBBONS: Yup.

16 JUROR NO. 103: 103.

17 JUDGE GIBBONS: Yup.

18 JUROR NO. 24: 24.

19 JUDGE GIBBONS: Yup.

20 JUROR NO. 55: 55.

21 JUDGE GIBBONS: Yup.

22 JUROR NO. 150: 150.

23 JUROR NO. 160: 160.

24 JUROR NO. 40: 40.

25 JUROR NO. 73: 73.

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1 JUDGE GIBBONS: That it? All right, if you
2 cannot be fair and impartial, because of the fact
3 that you've been in a motor vehicle collision
4 before, please remain standing. If not, be seated.
5 Thank you. Okay. Is any member of the jury panel a
6 member of, contributor to, or volunteer for, any
7 organization which advocates for victims rights or
8 for strengthening criminal penalties or supporting
9 law enforcement, such as the South Carolina Victims
10 Assistance Network, Mothers Against Drunk Driving,
11 South Carolina Law Enforcement Association,
12 Fraternal Order of Police, or is anybody involved in
13 any social justice organization or movement, such as
14 Black Lives Matter or Blue Lives Matter? If so,
15 please stand. All right, no response. Has any
16 member of the jury panel ever served on a criminal
17 jury trial before? If so, please stand. All right,
18 yes, juror number?

19 JUROR NO. 38: 38.

20 JUDGE GIBBONS: All right. What kind of
21 charge was it?

22 JUROR NO. 38: It was an assault charge at the
23 Magistrate (inaudible) Chester.

24 JUDGE GIBBONS: All right. Would that affect
25 your ability to be fair or impartial?

1 JUROR NO. 38: No.

2 JUDGE GIBBONS: And what was the verdict?

3 JUROR NO. 38: The victim was a no-show, so it
4 was dismissed.

5 JUDGE GIBBONS: Thank you. All right, yes,
6 sir, juror number?

7 JUROR NO. 14: 14.

8 JUDGE GIBBONS: Yes, sir, what kind of case
9 was it?

10 JUROR NO. 14: Attempted murder.

11 JUDGE GIBBONS: And what was the result?

12 JUROR NO. 14: Guilty.

13 JUDGE GIBBONS: And how long ago was this?

14 JUROR NO. 14: '20.

15 JUDGE GIBBONS: All right. Can you be fair
16 and impartial in the trial of this case?

17 JUROR NO. 14: Yes, sir.

18 JUDGE GIBBONS: All right, thank you. All
19 right. Is there any member of the jury panel who a
20 member of your family or -- okay, is there any
21 member of the jury panel, or a member of your
22 immediate family, who has ever served or sought
23 employment in law enforcement in any capacity?
24 Either as a Sheriff's Deputy, a Trooper, Constable,
25 Military Police, or anything like that? If so,

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1 please stand. So, if you have a member of your
2 family who is currently or formerly law enforcement,
3 please stand. All right, thank you. From my left
4 to right this time. All right, right there, yes,
5 ma'am, you just stood up.

6 JUROR NO. 76: My husband.

7 JUDGE GIBBONS: Okay. And what's your juror
8 number?

9 JUROR NO. 76: 76.

10 JUDGE GIBBONS: 76, your husband is what now?

11 JUROR NO. 76: He was a police officer.

12 JUDGE GIBBONS: He's retired. What type of
13 officer was he?

14 JUROR NO. 76: He was a deputy.

15 JUDGE GIBBONS: Would that affect your ability
16 to be fair or impartial?

17 JUROR NO. 76: (Inaudible).

18 JUDGE GIBBONS: All right, thank you, ma'am,
19 you can be seated. Right behind you, your juror
20 number?

21 JUROR NO. 38: 38.

22 JUDGE GIBBONS: All right.

23 JUROR NO. 38: My husband is a retired K9
24 handler from Ohio, and I'm a retired E911
25 dispatcher.

1 JUDGE GIBBONS: Can you be fair and impartial?

2 JUROR NO. 38: Yes.

3 JUDGE GIBBONS: Thank you. Yes, ma'am?

4 JUROR NO. 3: Juror number 3. My husband with
5 employed with the Chester Sheriff's Office as the
6 major over the jail at the (inaudible).

7 JUDGE GIBBONS: All right. Can --

8 JUROR NO. 3: But he's retired now, but he
9 went back to do --

10 JUDGE GIBBONS: He's currently working there
11 now?

12 JUROR NO. 3: Yes.

13 JUDGE GIBBONS: At the jail?

14 JUROR NO. 3: At -- not in law enforcement, as
15 (inaudible).

16 JUDGE GIBBONS: Okay. Can you be fair and
17 impartial?

18 JUROR NO. 3: (Inaudible).

19 JUDGE GIBBONS: Thank you. Yes, ma'am?

20 JUROR NO. (not given): My husband formerly
21 worked for Chester Sheriff's Office as the detective
22 and then (inaudible).

23 JUDGE GIBBONS: All right, can you be fair and
24 impartial?

25 JUROR NO. (not given): Yes.

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1 JUDGE GIBBONS: All right. Thank you. Yes,
2 sir.

3 JUROR NO. 44: Number 44, prior military Army,
4 293 Company and SRDT.

5 JUDGE GIBBONS: Can you be fair and impartial?

6 JUROR NO. 44: Yes.

7 JUDGE GIBBONS: All right, thank you. Has any
8 member of the jury panel ever sought employment or
9 ever worked for either a criminal defense attorney's
10 office or a prosecutor's office? If so, please
11 stand. We're almost done. Has any member of the
12 jury panel ever received any law enforcement or
13 legal training? If so, please stand. Yes, sir.

14 JUROR NO. 44: It's number 44.

15 JUDGE GIBBONS: In your service as a military?

16 JUROR NO. 44: Correct.

17 JUDGE GIBBONS: Would that affect your ability
18 to be fair or impartial?

19 JUROR NO. 44: No, sir.

20 JUDGE GIBBONS: All right, thank you, sir.

21 JUROR NO. 132: Number 132.

22 JUDGE GIBBONS: Yeah.

23 JUROR NO. 132: During the hurricane Hugo,
24 (inaudible) Charleston.

25 JUDGE GIBBONS: Can you be fair and impartial?

1 JUROR NO. 132: Yes.

2 JUDGE GIBBONS: Thank you. All right. Is
3 there any member of the jury panel that has a moral,
4 religious, or philosophical reason why he or she
5 cannot be a fair and impartial juror in this case?
6 If so, please stand. All right, any further voir
7 dire from the State?

8 MS. LIVELY: Not from the State, Your Honor.

9 JUDGE GIBBONS: Any further voir dire from the
10 Defense?

11 MR. FRICK: Nothing previously requested, no,
12 sir.

13 JUDGE GIBBONS: All right. I'm sorry, what'd
14 you say?

15 MR. FRICK: Nothing other than previously
16 requested. I think you got my question.

17 JUDGE GIBBONS: Yeah, I went -- yeah, I went
18 through everything. All right, so ladies and
19 gentlemen, what's going to happen now, is that the
20 Solicitor -- excuse me, the Clerk's office has a
21 software program that just randomly collates y'all's
22 names into a random order, not alphabetically, not -
23 - not numerically, okay. They're going to print off
24 a list, and they're going to give me and my law
25 clerk a copy of that list, and they'll give the

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1 Defense a copy of that list, and they'll give the
2 State a copy of that list. And I'm gonna let them
3 look at it for just a couple of minutes, so don't
4 leave, okay. Because we're gonna then pick a jury
5 for the trial of this case, okay. So, with the --
6 when we get to that point and the Clerk's office
7 calls your name, and I'm about to meet with them
8 here in a second, I'm about to tell y'all what to
9 do, then we're going to -- you'll stand and then
10 they'll decide whether you're going to be on the
11 trial jury or not. If you are selected they'll
12 bring you up here and have you seated in the box
13 over there, okay. So, that's what's gonna happen.
14 So y'all can be at ease for a little bit while I
15 talk to the lawyers and the staff, but please do not
16 leave this courtroom and certainly do not talk about
17 this case 'cause you know nothing about it, other
18 than the kind of case it is and the name of it,
19 okay. Thank you. We're at ease. Let me see the
20 lawyers up here real quick.

21 (OFF THE RECORD)

22 JUDGE GIBBONS: -- English class from Richard
23 Wynn Academy here, that's who's seated in the Grand
24 Jury room, their head teacher, Ms. Lindy Blanks is a
25 Chester County native, that's her daddy right there,

1 Paul Short. Many of you may have known Paul Short,
2 Judge Short, and I'm thankful to actually occupy his
3 seat on the bench. He was my predecessor for this
4 job I have, and I'm grateful, thank you Ms. Blanks.

5 MS. BLANKS: (Inaudible).

6 JUDGE GIBBONS: Yes, ma'am. And so, having
7 said that I'm gonna take this opportunity since I --
8 y'all can't go anywhere and you got to listen to me,
9 to kind of give you a little bit of information,
10 just a little bit of civics information about what's
11 happening here, and of course I'll have the students
12 listen to it as well. Y'all will be tested today
13 when you get back, it's going to be a multiple
14 choice though, okay. And there's always gonna be A
15 is more correct than B, one of those kind of
16 questions. I'm just kidding, there's not gonna be
17 any test. All right, so let me tell you a little
18 bit about it. So, South Carolina has 46 counties,
19 okay. Of course, everybody knew that, right? These
20 counties are divided into 16 judicial circuits,
21 okay, all throughout the state, just like we have
22 congressional districts and all that kind of stuff,
23 there's 16 circuits. I already told you, you all
24 live in Chester County, meaning that y'all are part
25 of the Sixth Judicial Circuit. If you are in Rock

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1 Hill, York County, for example, that's part of
2 what's called the Sixteenth Judicial Circuit, and
3 it's York and Union counties make up that judicial
4 circuit. Each judicial circuit has at least two
5 counties in it. Now, you may say, well why is it
6 York and Union, 'cause they barely touch? Why
7 shouldn't it be -- why isn't it York and Cherokee
8 County where Gaffney is. That's a good question. I
9 don't know. I'm sure politics, there's a political
10 reason why the legislature -- our South Carolina
11 legislature did that when they were creating legisla
12 -- when they were creating the judicial circuits way
13 back when, okay. But anyway, I just held court,
14 like I said, last week down in the Fourteenth
15 Judicial Circuit, which is Beaufort, Colleton,
16 Jasper, Hampton, and Allendale counties, okay. Now
17 why is that number 14? I don't know. Why are we
18 number 6? I don't know. I think York county is 16
19 'cause they're like close to the last letter in the
20 alphabet, but honestly I don't know why the numbers
21 are the way they are. Much to the chagrin of Ms.
22 Carpenter, and Madam Clerk, I apologize, I'm not
23 gonna be here much in the first part of the year,
24 because I have been assigned by our Chief Justice to
25 preside primarily over the Fourth Circuit, which is

1 Chesterfield, Marlboro, Darlington, and Dillon
2 counties. So, I'm gonna be on the road a lot, my
3 law clerk ain't happy about it either, sorry, but
4 it's okay. Anyway, so that's the way the judicial
5 circuits work, okay. So, each judicial circuit has
6 at least one resident circuit court judge, okay.
7 And I'm the only person in the Sixth Circuit. In
8 fact, I'm the only circuit -- we're the only circuit
9 that has one circuit court judge. I'm hoping our
10 legislature gives us another one, there's Lancaster
11 County y'all, when I got on the bench close to 20
12 years ago Lancaster County had maybe 55, 60,000
13 people in it (inaudible), Mr. Newman, he knows, and
14 now it has -- it's approaching 130,000 people, and
15 obviously the more people the more business and for
16 what I do, okay. So, hopefully that will happen.
17 But nonetheless, each judicial circuit has an
18 elected Solicitor. And each judicial circuit has an
19 elected Public Defender, that's how our justice
20 system is set up as it goes from around the state,
21 okay. I'm a State Court Judge, that means I work
22 for the state of South Carolina. I hold Court in
23 county courthouses, okay. So, now everybody has a
24 general under -- civics understanding of what's
25 happening, okay. So, having said that my remarks

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1 coincided with the printing of the jury list, so
2 we're going to have the clerk's office hand this out
3 right now, and then we will let the lawyers look at
4 it for a couple of minutes, y'all continue to remain
5 at ease and then we will do what's called strike up
6 a jury, okay. And it's five and 10, correct, Madam
7 Solicitor?

8 MS. LIVELY: The first is five and five, Your
9 Honor.

10 JUDGE GIBBONS: All right. Mr. Frick?

11 MR. FRICK: I'd love to have five, but I think
12 statute says otherwise.

13 JUDGE GIBBONS: I'm sorry?

14 MR. FRICK: I said I'd love to have 10, but I
15 think the statute says otherwise.

16 JUDGE GIBBONS: I think you're right about
17 that. I've had that issue come up before. All
18 right, now I'll hear from you later about that,
19 okay, five and five.

20 (OFF RECORD)

21 JUDGE GIBBONS: All right, we'll begin the
22 empanelment process now. Madam Clerk, if you'll
23 start the process.

24 THE CLERK: Juror number 67, Holly R. Harris.

25 JUDGE GIBBONS: Just stand where you are,

1 thank you.

2 THE CLERK: What say the State?

3 MS. LIVELY: Present the juror.

4 THE CLERK: Thank you. What say the Defense?

5 MR. FRICK: Please seat the juror.

6 THE CLERK: Please come forward, ma'am. Juror
7 number 14, Paul E. Broome. What say the State?

8 MS. LIVELY: Present this juror.

9 THE CLERK: What say the Defense?

10 MR. FRICK: Please excuse the juror from the
11 trial.

12 THE CLERK: You may be seated, sir. Number
13 103, Randall T. Mitchell. What say the State?

14 MS. LIVELY: Please excuse the juror from this
15 case.

16 THE CLERK: You may be seated, sir. Number
17 73, Paul R. Holliman. What say the State?

18 MS. LIVELY: Present this juror.

19 THE CLERK: Thank you. What say the Defense?

20 MR. FRICK: Please seat the juror.

21 THE CLERK: Please come forward, sir. Number
22 42, Christopher J. Edwards. What say the State?

23 MS. LIVELY: Present the juror.

24 THE CLERK: Thank you. What say the Defense?

25 MR. FRICK: Please seat the juror.

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1 THE CLERK: Thank you. Number 55, Marie W.
2 Gaston.

3 MS. LIVELY: Present this juror.

4 THE CLERK: Thank you. What say the Defense?

5 MR. FRICK: Please excuse the juror from the
6 trial.

7 THE CLERK: You may be seated, ma'am. Number
8 4, Kelly M. Bagley. What say the State?

9 MS. LIVELY: Present this juror.

10 THE CLERK: What say the Defense?

11 MR. FRICK: Please seat the juror.

12 THE CLERK: Please come forward. Number 83,
13 Daniel C. Lago. What say the State?

14 MS. LIVELY: Present the juror.

15 THE CLERK: Thank you. What say the Defense?

16 MR. FRICK: Please seat the juror.

17 THE CLERK: Please come forward. Number 66,
18 Gary D. Harper. What say the State?

19 MS. LIVELY: Present the juror.

20 THE CLERK: Thank you. What say the Defense?

21 MR. FRICK: Please seat the juror.

22 THE CLERK: Please come forward.

23 MR. FRICK: Excuse me, excuse me, excuse me,
24 I'm sorry. I'm sorry. I was on the wrong way -
25 please excuse this juror from the trial of this

1 case.

2 THE CLERK: Sir, you may be seated. Number
3 50, Jeffrey J. Ferguson. What say the State?

4 MS. LIVELY: Present the juror.

5 THE CLERK: Thank you. What say the Defense?

6 MR. FRICK: Please seat the juror.

7 THE CLERK: Please come forward, sir. Number
8 39, Linda W. Dover. What say the State?

9 MS. LIVELY: Present the juror.

10 THE CLERK: Thank you. What say the Defense?

11 MR. FRICK: Please seat the juror.

12 THE CLERK: Please come forward. Number 99,
13 Scotty G. McKenzie. What say the State?

14 MS. LIVELY: Present this juror.

15 THE CLERK: Thank you. What say the Defense?

16 MR. FRICK: Please seat the juror.

17 THE CLERK: Please come forward. Number 68,
18 David B. Hensley, Junior. What say the State?

19 MS. LIVELY: Please excuse the juror from this
20 case.

21 THE CLERK: You may be seated, sir. Number
22 38, Robin R. Doran. What say the State?

23 MS. LIVELY: Present this juror.

24 THE CLERK: What say the Defense?

25 MR. FRICK: Please excuse the juror from the

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1 trial in this case.

2 THE CLERK: Please be seated. Number 133,
3 Takela S. Stevenson. What say the State?

4 MS. LIVELY: Please excuse the juror from this
5 case.

6 THE CLERK: You may be seated. Number 121,
7 John L. Salters, Junior. What say the State?

8 MS. LIVELY: Present the juror.

9 THE CLERK: Thank you. What say the Defense?

10 MR. FRICK: Please seat the juror.

11 THE CLERK: Please come forward, sir. Number
12 119, Andrea G. Rowe. What say the State?

13 MS. LIVELY: Present the juror, I apologize.
14 Thank you.

15 THE CLERK: Thank you. What say the Defense?

16 MR. FRICK: Please seat the juror.

17 THE CLERK: Please come forward. Juror number
18 86, Julie F. Ligon. What say the State?

19 MS. LIVELY: Present the juror.

20 THE CLERK: What say the defense?

21 MS. LIVELY: Please excuse the juror from the
22 trial.

23 THE CLERK: You may be seated. Number 26,
24 James P. Colvin. What say the State?

25 MS. LIVELY: Present the juror.

1 THE CLERK: Thank you. What say the Defense?

2 MR. FRICK: Please seat the juror.

3 THE CLERK: Please come forward. Number 44,
4 Christopher Elkin. What say the state?

5 MS. LIVELY: Present the juror.

6 THE CLERK: What say the Defense?

7 MR. FRICK: I think I'm out, am I right?

8 Okay, no challenge for cause.

9 THE CLERK: Please come forward, sir.

10 JUDGE GIBBONS: Is that 12?

11 THE CLERK: I've got 12.

12 JUDGE GIBBONS: All right one and two are
13 alternates (inaudible).

14 THE CLERK: (Inaudible) two alternates.

15 JUDGE GIBBONS: We have two alternates, yeah.

16 THE CLERK: Number 40, Mary A. Duprey.

17 MS. LIVELY: Present the juror.

18 THE CLERK: Thank you. What say the Defense?

19 MR. FRICK: Please excuse the juror from the
20 trial of this case.

21 THE CLERK: You may be seated. Number 96,
22 Mason G. McCormick. What say the State?

23 MS. LIVELY: Present the juror.

24 THE CLERK: What say the Defense?

25 MR. FRICK: Please seat the juror.

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1 THE CLERK: Please come forward. Number 116,
2 Mackenzie A. Rice. What say the State?

3 MS. LIVELY: Please excuse the juror.

4 THE CLERK: You may be seated. Number 18,
5 Jordan L. Calhoun. What say the State?

6 MS. LIVELY: Present the juror.

7 THE CLERK: What say the Defense?

8 MR. FRICK: Please excuse the juror from the
9 trial of this case.

10 THE CLERK: Number 144, Adrian M. West, III.
11 What say the State?

12 MS. LIVELY: Present the juror.

13 THE CLERK: What say the Defense?

14 MR. FRICK: Please excuse the juror from the
15 trial of this case.

16 THE CLERK: Number 98, Katelynn R. McGhee.

17 JUDGE GIBBONS: Any challenge from the State?

18 MS. LIVELY: No, Your Honor.

19 JUDGE GIBBONS: Any challenge from the
20 Defense?

21 MR. FRICK: No, Your Honor.

22 JUDGE GIBBONS: Thank you. Come on up. All
23 right, thank you Madam Clerk. All right, any
24 matters of law regarding jury selection from the
25 State?

1 MS. LIVELY: No, Your Honor, not from the
2 State.

3 JUDGE GIBBONS: Any matters of law from the
4 Defense?

5 MR. FRICK: Nothing from Defense.

6 JUDGE GIBBONS: All right, thank you. All
7 right, ladies and gentlemen of the trial jury, at
8 this point in time I'm gonna have y'all go back to
9 your jury room. I'm gonna have the bailiff show you
10 where you are. You're not -- we're gonna take a
11 break here shortly. I know it's been a long
12 morning. But, go on back there, kind of get
13 familiar with your environment, run to the restroom,
14 do what you got to do, and I'll get you back out
15 here and let you know what's gonna happen from then
16 on. Again, don't talk about anything about the case
17 until I tell you to start talking about it, okay.
18 Thank you, head on back to the jury room.

19 (JURY EXITS)

20 JUDGE GIBBONS: All right, everybody else on
21 the jury panel, what will happen is, when you're on
22 jury duty and you don't get selected for a
23 particular trial it doesn't mean you're off the hook
24 yet, okay, you're on call essentially this week.
25 So, I want you to call back after 6:00 p.m. today on

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1 JUDGE GIBBONS: I think --

2 MR. FRICK: He had a bag of about 70 grams
3 of marijuana that he took back to headquarters,
4 weighed out, and repacked into three separate bags
5 for each defendant in that --

6 JUDGE GIBBONS: I think the jury's entitled to
7 hear that.

8 MS. LIVELY: That's fine. No, I understand,
9 but there's no other issues in regards to his
10 termination that was --

11 JUDGE GIBBONS: Right, this isn't going to be
12 a Mark Furman situation.

13 MS. LIVELY: That's what I mean, okay.

14 MR. FRICK: No.

15 MS. LIVELY: All right, thank you.

16 JUDGE GIBBONS: All right, sounds good. As
17 long as we stay in those perimeters everything's
18 fine. All right, what's next?

19 MR. FRICK: Judge, I have a motion to quash
20 the indictment of the ABHAN. I -- I previously
21 filed another motion, I'm going to get to that in a
22 second, but this is one that's dealing with a
23 technical issue on the indictment. They charged him
24 in the ABHAN indictment, which is 23GS12317 for the
25 assault and battery high and aggravated nature, I

1 state it doesn't comply with South Carolina Code of
2 Laws 17-19-20 as it erroneously states the vehicle
3 the defendant was alleged to have been operating at
4 the time of the incident. Judge, I know the
5 Solicitor's gonna say that, well, I've got a
6 reckless driving that does state the Express van
7 that was at the scene, the ABHAN case, I believe
8 they called it a Ford van, it is incorrectly titled,
9 and I certainly understand post Gentry that an
10 indictment is notice, but it still has to be
11 specific enough to understand what you're called on
12 to answer. By putting a different vehicle in there,
13 it is confusing and troublesome, and obviously I'm
14 challenging the ABHAN overall, so I am challenging
15 this issue and ask for the indictment to be quashed
16 for lack of appropriate specificity.

17 JUDGE GIBBONS: All right, what's the State's
18 response to lack of appropriate specificity for the
19 nature of the crime?

20 MS. LIVELY: Well, obviously the State
21 disagrees. Number one, all of the elements are in
22 there. The only thing that was the Scribner's
23 error, calling it a Ford van instead of a Chevy van.
24 The other thing is is that the indictment is there
25 to provide the defendant with notice as to what he's

1 answering to. So, if the defense has an issue in
2 regards to the ABHAN itself, which I understand he's
3 filed a motion in regards to that, the specific
4 issue of it being a Ford or Chevy van, he knew it's
5 all over the warrants, it's all over this entire
6 case that he was driving a Chevy van. That was just
7 a Scribner's error.

8 JUDGE GIBBONS: This indictment says Econo
9 van.

10 MS. LIVELY: Yeah.

11 JUDGE GIBBONS: It doesn't say Chevy or Ford,
12 it says Econo van.

13 MS. LIVELY: Yeah. And that's a Scribner's
14 error.

15 JUDGE GIBBONS: I don't know what that is.

16 MS. LIVELY: It's a really big like work van.

17 JUDGE GIBBONS: Okay.

18 MS. LIVELY: Yeah, one of those big white work
19 vans.

20 JUDGE GIBBONS: You believe the indictment is
21 sufficient enough to give them notice?

22 MS. LIVELY: Oh, absolutely.

23 JUDGE GIBBONS: Okay. I agree with the State.
24 Your motion to quash is denied on that technical
25 issue.

1 MR. FRICK: Yes, sir.

2 JUDGE GIBBONS: All right, tell me about the
3 substantive issue.

4 MR. FRICK: And Judge, do you have --

5 JUDGE GIBBONS: This is more interesting.

6 MR. FRICK: Do you have a copy of my motion
7 that I filed --

8 JUDGE GIBBONS: I do, you left it at my office
9 on Friday when we had pretrial.

10 MR. FRICK: I'll hand this copy up. Candice
11 do you --

12 MS. LIVELY: I don't think I still have a
13 copy, but I'm good.

14 MR. FRICK: Okay. So, Judge, this is a motion
15 that I filed, it's -- in fact it's a motion to quash
16 for vindictive prosecution 'cause I -- Mr. Palmer
17 had been arrested in July of '22, they charged him
18 with felony DUI death results, great bodily injury,
19 at that time. Subsequent to that, there was a SLED
20 analysis that determined that he had no alcohol in
21 his blood, and there was a small amount of
22 metabolite THC in his system, which of course you
23 can't put a timeframe on, so there's no way to say
24 whether that had any influence on him. State
25 subsequently sent the blood to another lab, who I

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1 learned in a recent case that I just had, does an
2 entire huge panel of substances, and nothing came
3 back on that, he was clean. Subsequent to that, I
4 was asking for an additional -- because they
5 couldn't go forward on the felony DUI, we knew it
6 was a reckless homicide, they indicted him on that.
7 I asked for a bond hearing on that. And then just
8 before that, the State went to the Grand Jury with
9 the assault and battery of a high and aggravated
10 nature. That was the nature of my argument at that
11 time. Since that time I've done some argument on
12 the -- I've done some research on the ABHAN. I
13 certainly recognize that a lot of what I'm going to
14 be talking about is probably more appropriate for a
15 directed verdict, but I think it's important to
16 discuss now. Judge, I believe the legislative
17 intent of the ABHAN is to have it as a specific
18 intent crime. What happened, as we're all aware, is
19 prior to 2010, we had a bunch of common law assault
20 and batteries of all different varieties, and they
21 didn't necessarily require any specific intent. In
22 2010 we wrote -- we got rid of all the common law
23 assault and batteries, and then codified assault and
24 batteries with the top one being attempted murder,
25 and then there's ABHAN first degree, second degree,

1 and third degree. Admittedly, the State -- the
2 legislature did not state in there any specific type
3 of intent, whether it should be general, whether it
4 can be done by recklessness, whether it could be
5 done by specific intent. My argument is, since that
6 time we have now had legislation -- I mean, we have
7 now had cases that came forward, I think it was the
8 King -- maybe it was the King case, we've had cases
9 that came forward that said that attempted murder
10 requires specific intent. There are also cases that
11 suggest that lesser degrees of ABHAN require
12 specific intent. So, I would think that it was --

13 JUDGE GIBBONS: Doesn't that go toward
14 attempted crimes?

15 MR. FRICK: It does --

16 JUDGE GIBBONS: Rather than the actual
17 completion of a crime? Do you understand what I'm
18 asking?

19 MR. FRICK: It does, and that's what they
20 ruled in the case with the attempted murder, is if
21 you've got -- have a specific target, for lack of
22 better term, and you're trying to attempt that one
23 thing --

24 JUDGE GIBBONS: I specifically intended to
25 kill that person.

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1 MR. FRICK: Correct.

2 JUDGE GIBBONS: Right, I understand.

3 MR. FRICK: Correct. Correct. However, I do
4 believe it's nonsensical when we got a statute where
5 they're all lesser-included's of each other, and if
6 the attempted murder is gonna require specific
7 intent, and the lower levels may require specific
8 intent, that the ABHAN doesn't have to require
9 specific intent. And that we can now bring in
10 wantonness or recklessness, or whatever the case may
11 be. I think they intended, 'cause they could have
12 said it's okay for it to be reckless, because we
13 have reckless driving, we've got reckless operation
14 of a boat, we've got other crimes that talk about
15 recklessness. Involuntarily manslaughter talks
16 about recklessness, so if they wanted recklessness
17 to be the standard in ABHAN they could've written
18 that in there, they didn't do it. They specifically
19 got rid of all the common law offenses with their
20 previous -- with their previous standards, and we
21 know this to be the case because we've had cases
22 where previously, as you're aware, when we had
23 common law ABHAN it had traditionally, not by
24 Blockburger, but traditionally, being a lesser-
25 included of criminal sexual conduct. Well, when we

1 codified ABHAN, the Court said no, it's a different
2 -- it's a different animal, this is a different
3 ABHAN. So, it's not a lesser-included as it was
4 before, because this is completely sta -- different
5 statute and the legislature got rid of all the old
6 common law. Additionally, there are cases that say
7 ABHAN can have transferred intent. If you can have
8 transferred intent, then if it can be done
9 recklessly then there's no need to talk about
10 transferred intent. So, I think with all of that, I
11 think the legislature intended for there to be a
12 specific act to be done, although they did not state
13 that in the statute. I know the Solicitor is gonna
14 talk about the Clemons case, this was a case that
15 was certified from the Fourth Circuit about an issue
16 about whether some of these underlying charge --

17 JUDGE GIBBONS: That dealt -- that dealt with
18 assault and battery second degree and a CDV charge.

19 MR. FRICK: Correct, but -- but they were
20 talking about what intents are required for assault
21 and batteries overall in South Carolina, at least
22 that was the brief of the AUSA in that case, and
23 that's what they argued. I actually watched that
24 argument, 'cause I had been told by a friend of mine
25 that this case was coming up, and I watched it, and

1 that's what it was all about is just arguing about
2 the intents (inaudible). Judge, to sum it up, I
3 believe the legislature got rid of all the old law,
4 instituted this new statutory scheme, intended it
5 for -- for there to be specific conduct, specific
6 intent for something to happen. I don't think that
7 they can prove a specific intent in this case. I
8 don't think it's an appropriate charge. I do
9 recognize the State's going to talk about the
10 Clemons case, but that case they didn't answer the
11 question. The question was, can you commit an
12 assault and battery with an unintentional act, and
13 their response was, sometimes. And so, I don't
14 think we have a firm answer from that case, but I do
15 believe the legislative intent shows that the idea
16 was to make all of these assaults now specific
17 intent.

18 JUDGE GIBBONS: If attempted murder is a
19 specific intent of a crime, any lesser-included
20 offense, as each crime is in the State code lists,
21 each one specifically says it's a lesser offense of
22 the other, flowing all the way up to attempted
23 murder. So, you're saying that since attempted
24 murder is specific intent, each one of the assault
25 and batteries underneath attempted murder, as a

1 lesser offense, as codified, must therefore be
2 specific intent as well.

3 MR. FRICK: That's correct, 'cause I think
4 it's a nonsensical conclusion if you do otherwise.
5 Additionally, as we know, the statutes have to be
6 construed strictly against the State.

7 JUDGE GIBBONS: Correct. And the statute
8 construing attempted murder being specific intent of
9 the crime, the case law which finally held that was
10 decided how long ago? About five, six years ago?

11 MR. FRICK: I think it might've been four. I
12 think it was '19, '20, somewhere around there.

13 JUDGE GIBBONS: That's a Supreme Court case,
14 South Carolina Supreme Court?

15 MR. FRICK: Yes, sir.

16 JUDGE GIBBONS: Okay. But this issue has not
17 been decided by our State Court?

18 MR. FRICK: No, sir. There is no case law on
19 the intent specifically for an ABHAN.

20 JUDGE GIBBONS: Okay, thank you very much.
21 All right, Madam Solicitor, any response?

22 MS. LIVELY: Yes, sir, Your Honor. The ABHAN
23 law, whenever it changed in 2010, we've had now 14
24 years for the legislature to address some of these
25 issues in regards to the type of intent that is

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1 associated with each one of the lesser-included
2 crimes. So, in regards to the case that first
3 brought up the issue of specific intent, as to
4 whether or not the legislature should have addressed
5 that kind of intent whenever they switched
6 everything in the ABHAN, assault and battery second
7 degree, all of that with the way that it actually
8 set up the statute, they did not put whether it's a
9 general or specific intent. The reason why ABHAN
10 and lessers are different, in regards to how they
11 read, is because of the specific information that is
12 put in the details of the legislature how they wrote
13 the crime. Murder requires malice aforethought in
14 the killing of a human being. Then attempted murder
15 also includes that malice aforethought. So we have
16 a very specific intent. It's the malice towards an
17 individual. That malice is what ties those two
18 types of crimes together very clearly. And in 2019
19 in my -- and I remember I tried the Worthy case
20 here, and in that case the defendant shot at two
21 individuals in the bookstore down the street, and at
22 that time the issue was we had to show specific
23 intent, and that you could not imply specific intent
24 by the use of a weapon, okay. And so, that would --
25 I remember that now as to when that 2019 case came

1 down, or somewhere close to that, and that was a big
2 issue. The legislature at that time, has had until
3 now, to address whether or not ABHAN or any of the
4 other lesser-included crimes should be considered a
5 specific intent or a general intent crime. Now, the
6 different types of criminal intent, Your Honor, and
7 I actually reached out to get that language for jury
8 charges, 'cause I wanted to be sure that I mentioned
9 and I spoke of it correctly in front of the jury,
10 does include criminal intent is criminal negligence,
11 recklessness, wantonness, all of these things are
12 still a specific -- not specific intent the way that
13 we read it, but it is a part of the mindset of the
14 person who's actually end up (inaudible) --

15 JUDGE GIBBONS: The mens rea --

16 MS. LIVELY: The mens rea, thank you, I --
17 yes.

18 JUDGE GIBBONS: -- is what your federal case
19 talks about.

20 MS. LIVELY: Exactly, the mens rea is what
21 we're looking at for this particular event. Also,
22 when we look at ABHAN, for ABHAN, as well as A&B
23 second, when you look at the language, ABHAN says
24 whenever a person unlawfully injures another person,
25 and it doesn't say with malice aforethought, it just

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1 says unlawfully injures another person, and the act
2 is accomplished by means that could have resulted in
3 great bodily injury, you know, or death. Then when
4 you go to the next lesser on A&B second, which is
5 what the Clemons case specifically --

6 JUDGE GIBBONS: Or A&B first or --

7 MS. LIVELY: Or A&B first, I'm sorry, A&B
8 first, and you've got A&B second. So, what you have
9 as it's going down is it lessens the type of injury
10 that could lead to an actual conviction under that,
11 and there's nothing at all talking about malice
12 aforethought, it's just saying unlawfully. That's
13 the standard that they actually put into the statute
14 when they're talking about assault and batteries,
15 okay. So, I'm not saying that it was very artfully
16 written. I mean, unfortunately we have a lot of
17 statutes that aren't artfully written. But, because
18 of the way they actually put in a new standard,
19 unlawfully causes another person, and that act is
20 accomplished by means that could have caused great
21 bodily injury. When you get to A&B second, I think
22 it's moderate bodily injuries is what Clemons shows.
23 So, the State when it -- our Supreme Court when it
24 goes through and looks at, you know, what is the
25 mens rea for second degree, they're basically

1 telling us the same mens rea for ABHAN because the
2 only difference in those two statutes is the level
3 of harm that results from the unlawful act by the
4 person who's committing that act. So, Your Honor,
5 they go through all of this language in Clemons, and
6 specifically said that yes, if it's not stated, and
7 we wish they had, but now we're having to step in as
8 the Supreme Court to say that based on what we see,
9 based on the mens rea of what happens when we get
10 into the person who unlawfully injures another
11 individual, malice is not a part of that. It's not
12 one of those things that flows all the way through,
13 like murder and attempted murder does. So,
14 therefore the State Supreme Court has said that you
15 can be found guilty with the mens rea, and the
16 criminal intents that are not specific intent, like
17 it is for attempted murder. And that was just
18 decided by our Supreme Court. And so, when they
19 have to look at all the different mens rea of
20 criminal intent, of course, that includes
21 recklessness, wanton, that level of criminal
22 negligence that -- and they mention the Border --
23 the Borden case.

24 JUDGE GIBBONS: And let me ask you this.

25 MS. LIVELY: Yes, sir.

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1 JUDGE GIBBONS: Does the State concede that
2 criminal statutes are to be interpreted strictly in
3 favor of a Defendant, or against the State, against
4 the Government?

5 MS. LIVELY: Well, if you are going to
6 strictly interpret a statute to where it's going to
7 be against the Government, what you need to do --

8 JUDGE GIBBONS: Criminal statute.

9 MS. LIVELY: Criminal statutes, right. If
10 you're going to do that, then when you're looking at
11 it strictly, Your Honor, and based on what our Court
12 had to do, then strictly speaking, without there
13 being a mention of intent, that we have to look at
14 the language of that statute, which just says
15 unlawfully injures by the act, which results. And
16 that act was committed by the Defendant. It was
17 unlawful. And the injury -- so, if you're checking
18 all the boxes -- so, if we are strictly adhering to
19 the language of the statute, that is the language of
20 the statute. And because the legislature did not
21 provide us what intent to attach to it, then you
22 have to go into common law, you have to go into what
23 is really going on here, if we're going to try to
24 break down whether or not it's this kind of intent
25 or that kind of intent. Yes, that's why our courts

1 have to step in. So, if you're going to strictly
2 construe it against the State, then the State is
3 still going to be in the position that it is right
4 now, which is why I brought this statute to a Grand
5 Jury, and that is this was an unlawful act, it was
6 reckless, that's why he's charged with reckless
7 homicide. Now, I even did some more research, it
8 was like why don't we have some type of reckless
9 great bodily injury in South Carolina. Guess what,
10 they tried to put a statute through this past year.
11 So, the legislature is aware of issues related to
12 great bodily injury in cases and things that don't
13 fit necessarily the fact scenario that we have here
14 --

15 JUDGE GIBBONS: All right, and I get that.

16 MS. LIVELY: -- maybe this will change the
17 law.

18 JUDGE GIBBONS: I -- and I certainly get your
19 argument, and I've read the case you sent to me.
20 All right, and this maybe is kind of not right yet,
21 'cause I hadn't heard the evidence that's been
22 produced, and this could be a -- a directed verdict
23 issue, and as well as a possible jury instruction
24 issue. I mean, and let's take it to its logical
25 conclusion, if I deny the motion to quash, and allow

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1 the jury to possibly consider assault and battery of
2 a high and aggravated nature, which I'm going to get
3 to in a moment, it's assault -- what's the
4 difference between assault and battery first degree
5 and assault and battery of a high and aggravated
6 nature under your theory? 'Cause I know assault and
7 battery first degree is tied to the non-consensual
8 touching of the private parts of another, or it
9 occurs during the commission of a robbery, burglary,
10 kidnapping, which that isn't the case, or -- let me
11 see, commission of a robbery, burglary, kid -- no, I
12 mean -- and it's great bodily injury. So, if the
13 State proves great bodily injury, does the jury have
14 the choice between ABHAN and A&B first, where the
15 only diff -- it looks like it's exactly the same
16 thing. A person may also commit the offense of
17 assault and battery in the first degree, if the
18 person unlawfully offers or attempts to injure
19 another person with the present ability to do so,
20 and the act is accomplished by means likely to
21 produce death or great bodily injury. Isn't that
22 the same definition of ABHAN?

23 MS. LIVELY: Well, what they --

24 JUDGE GIBBONS: You see what I'm getting at?

25 MS. LIVELY: Well, no, I understand what

1 you're saying but the problem is, Your Honor, is
2 that with A&B first, and I have to -- I thought that
3 there was another -- let me just pull it up real
4 quick, let's see.

5 JUDGE GIBBONS: I mean, I guess that's the
6 problem I have with this whole statutory
7 construction. I read the statutes and Order as
8 well, and I -- you know, I understand how they say
9 ABHAN is a lesser offense of attempted murder.

10 MS. LIVELY: Right.

11 JUDGE GIBBONS: And ABHAN, Madam Court
12 Reporter, it's A-B-H-A-N, okay. Assault and battery
13 first degree, they specifically say --

14 MS. LIVELY: Right.

15 JUDGE GIBBONS: -- it's a lesser offense of
16 ABHAN.

17 MS. LIVELY: Right.

18 JUDGE GIBBONS: But it's the same definition.
19 So, I mean, and the jury doesn't decide the
20 punishment if he's convicted. So, that's what I'm
21 having my -- I mean, that's a problem there. And
22 then of course A&B second is where it talks about
23 moderate --

24 MS. LIVELY: Right.

25 JUDGE GIBBONS: -- bodily injury.

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1 MS. LIVELY: Right.

2 JUDGE GIBBONS: Okay? So, that may not be
3 appropriate in this case, as I understand the -- the
4 way the facts are with the injuries that the father
5 sustained in this --

6 MS. LIVELY: Correct.

7 JUDGE GIBBONS: -- accident. So, I don't
8 think you can get down to A&B second if I were to
9 deny the motion to quash. But I think this is -- I
10 mean, what's the different distinction between A&B
11 first and ABHAN here? You see what I mean?

12 MS. LIVELY: And, You Honor, if you -- if you
13 decide, which of course at the time whenever we get
14 to that point of the case, that A&B first should be
15 the appropriate lesser-included of ABHAN, then my
16 argument is going to be the same thing in regards to
17 why ABHAN is still an appropriate charge in this
18 case.

19 JUDGE GIBBONS: I get it, that's why I was
20 taking your argument to the next logical step, which
21 is --

22 MS. LIVELY: Right.

23 JUDGE GIBBONS: -- what -- what's the
24 difference here? He's arguing it's a specific
25 intent crime.

1 MS. LIVELY: Correct.

2 JUDGE GIBBONS: And you're arguing well, no,
3 it's a general intent crime.

4 MS. LIVELY: Yes.

5 JUDGE GIBBONS: And he brings up well, it
6 should be strictly construed. Well, I am trying to
7 strictly construe it, 'cause that's what the law
8 says to do. And then it just -- there's -- there's
9 a diff -- and I'm putting all this on the record, so
10 when my friends on the Court of Appeals of the
11 Supreme Court reads this, if it goes that way,
12 whatever happens in this trial, they can understand
13 my rationale and reasoning for what I'm going to do,
14 but I mean, that's a problem there.

15 MS. LIVELY: Right.

16 JUDGE GIBBONS: If the definition of A&B
17 first, other than the sex stuff, other than the
18 robbery and the burglary stuff --

19 MS. LIVELY: Right.

20 JUDGE GIBBONS: -- if it's the same thing as
21 ABHAN, well why is it a lesser offense? You
22 following me? And that goes to the whole intent
23 thing.

24 MS. LIVELY: Which is why the statute in and
25 of itself, in using it in the prosecution of this

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1 case, my specific arguments in regards to what
2 happened to Corey Shanks, obviously is he's got a
3 traumatic brain injury, it was -- it has to be
4 unlawful act of the defendant, based on general
5 intent, which is a recklessness, wantonness --

6 JUDGE GIBBONS: Which is the mens rea as to
7 find.

8 MS. LIVELY: Which is the mens rea, right.
9 So, what you're saying is at this point, which is
10 very frustrating for me as a prosecutor, is that the
11 A&B first has the same elements, but for the two
12 things you mentioned, which is the first part of
13 that A&B first definition, which is the non-
14 consensual touching and/or commission of, you know,
15 an A&B with the underlying other types of issues
16 like the kidnapping and all that type of stuff. So,
17 you're exactly right in that regard, I can't
18 disagree with that Your Honor, because the language
19 is very specific in regards to, it could have
20 produced death or great bodily injury.

21 JUDGE GIBBONS: Okay.

22 MS. LIVELY: Yes. I mean, it does. I mean,
23 it -- if I argued against that, it would be
24 nonsensical in and of itself, because I just now
25 read out what ABHAN is, great bodily injury to

1 another person and results.

2 JUDGE GIBBONS: Right, okay, I got --

3 MS. LIVELY: And it does say, or -- and -- or
4 -- no, it says or here; the act is accomplished by
5 means likely to produce death or great bodily
6 injury, which my situation, obviously with this
7 particular facts in this case, fits that argument.

8 JUDGE GIBBONS: Okay.

9 MS. LIVELY: So.

10 JUDGE GIBBONS: All right, understood. Let me
11 come back to Mr. Frick. Before I do that, I mean, I
12 -- I looked at this Clemons case, USA versus Clemons
13 that the State handed up; it's a Fourth Circuit
14 case. I don't have the cite.

15 MR. FRICK: It doesn't have a cite.

16 MS. LIVELY: It's 442 South Carolina 670.

17 JUDGE GIBBONS: Okay. And the Court, the US
18 Court of Appeals what mens rea is required for a
19 conviction of a statutory offense is a question of
20 legislative intent. And it goes into all that and
21 how do you determine legislative intent. And then
22 they go on to talk about what recklessness means,
23 and of course, y'all are aware of this. I mean, the
24 face of the indictment for the reckless homicide
25 says that, a person acts recklessly with respect to

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1 a material element of an offense when he consciously
2 disregards a substantial and unjustifiable risk that
3 the material element exist or will result from
4 misconduct. And then -- you know, and that's the --
5 the risk must be of such a nature and degree that,
6 considering the nature and purpose of his conduct,
7 and the circumstances which he knows or should know,
8 it's a gross deviation from the standard of conduct
9 -- standard of conduct that a law abiding person
10 would observe in this situation. And the Court went
11 on and talks about how assault and battery in the
12 second degree -- your point Mr. Frick, it says as an
13 assault and battery second degree, the legislature
14 has chosen to criminalize battery and attempted
15 battery, likewise we therefore hold that the
16 criminal acts prescribed in CDV high and aggravated
17 nature may be committed with general criminal
18 intent, including a mental state of recklessness,
19 which supports the State. And then it said -- they
20 go on to say, it's also possible that these sections
21 may require specific intents, and they don't really
22 answer to the question. But, I guess the point to
23 be made there is that they use their reasoning and
24 rationale saying that recklessness is -- goes toward
25 intent to support the charge, whether it's not --

1 and recklessness, by its very legal definition, it's
2 general, because it's based upon what a reasonable
3 person would've done under circumstances then
4 they're prevailing. So, anyway, I think you can see
5 kind of where I'm leaning, but I'll let you close
6 any other argument.

7 MR. FRICK: Judge, I would just simply say
8 that when they codified ABHAN they used the language
9 that says unlawful injury to -- unlawfully injures
10 another person. I think that in and of itself
11 speaks to requiring some specific conduct to occur.
12 I do go back and look at the Clemons case --

13 JUDGE GIBBONS: Why can't the specific conduct
14 be the recklessness of allegedly driving 100 miles
15 an -- whatever it is.

16 MR. FRICK: 'Cause that's not specific intent.
17 Specific intent is --

18 JUDGE GIBBONS: Oh, I understand, okay.

19 MR. FRICK: Specific intent is, I intended to
20 hit that car that was in front of me.

21 JUDGE GIBBONS: I got you. I understand.

22 MR. FRICK: Recklessness obviously would be --

23 JUDGE GIBBONS: Okay. I understand.

24 MR. FRICK: -- it happened, but there's a
25 question as whether it was reckless or not. Judge,

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1 I do -- I have a case, State versus Geiger, and I
2 have not provided it to the State. But in that
3 case, there was a jury charge where the -- it was an
4 ABHAN case, where the jury came back out and asked
5 to be recharged, the judge recharged, and the judge
6 stated to the jury, "The State must prove beyond a
7 reasonable doubt that the defendant intended to
8 unlawfully injure another person." Court of Appeals
9 upheld that jury charge. So, I think in that case,
10 the Geiger case, that they are starting to move to
11 the direction that requires that there has to be at
12 least some specific conduct, if not specific intent,
13 which I believe it is specific intent.

14 JUDGE GIBBONS: Understood. All right, I
15 think we've made a sufficiently good record to see
16 whatever happens to this. As the gatekeeper of the
17 evidence that's going to be received in this case, I
18 respectfully deny your motion to quash. I do
19 believe it's an appropriate charge under the
20 circumstances. Again, we'll revisit this issue at
21 the directed verdict stage, and most importantly for
22 me, if directed verdict is denied at the jury
23 instruction phase, 'cause I really don't know based
24 upon what I've read what the difference is, if we're
25 not talking about sex stuff, and we're not talking

1 about robberies or burglaries, well what's the
2 difference between assault and battery first and
3 assault and battery high and aggravated, when both
4 required great bodily injury. I mean, I don't know
5 what the issue is here. And in that -- in that
6 situation it may be that the jury only has a choice
7 of A&B first. I don't know, we'll have to cross
8 that bridge when it comes to it, okay. But that's
9 the ruling at this time and then of course, y'all
10 can try to educate me further when it comes to that
11 situation, okay. What other matters to be brought
12 pretrial?

13 MR. FRICK: I think I've covered everything at
14 this point.

15 JUDGE GIBBONS: All right. Madam Solicitor?

16 MS. LIVELY: That was all that I remembered we
17 had to have responded to. And I'll just ask, if
18 based on your ruling, if I could go ahead and make
19 the amendment to that indictment and --

20 JUDGE GIBBONS: Yeah.

21 MS. LIVELY: -- and then that will be the only
22 thing that --

23 JUDGE GIBBONS: All right.

24 MS. LIVELY: -- that's left to do.

25 JUDGE GIBBONS: All right, so ordered, and

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1 (JURY ENTERS)

2 JUDGE GIBBONS: All right, thank you ladies
3 and gentlemen. I hope you had a good lunch recess.
4 Before we get started with opening statements I'm
5 gonna have the Clerk of Court swear you in as a
6 trial juror. Madam Clerk?

7 THE CLERK: Please stand and raise your right
8 hands. Ladies and gentlemen of this jury panel, you
9 shall well and truly try the cases -- these cases
10 being 2023GS12248, and 249, and 317, and
11 2024GS12809; the State versus Jason Palmer, and a
12 true verdict rendered, according to the law and --
13 the law and the evidence, so help you God? You do?

14 JURY PANEL: I do.

15 JUDGE GIBBONS: Thank you, Madam Clerk. All
16 right, ladies and gentlemen, let me talk to you a
17 little bit before the lawyers get to talk to you,
18 kind of give you an idea of what you can expect
19 during the trial of this case. And let me tell you
20 that this trial is probably going to be a lot
21 different from what you might expect. Many people
22 don't have the chance to attend actual court
23 sessions, much less participate in them like you're
24 doing right now, and those people tend to think that
25 what they see on TV or in the movies or read in

1 novels is always the way the trials are, okay.
2 Those people tend to think the trials are always
3 full of high drama, intense action, and riveting
4 circumstances, you know, while that may be true from
5 time to time, this trial is not for entertainment,
6 ladies and gentlemen. This trial is a fundamental
7 part of our democracy to make sure that just --
8 justice, excuse me, is done between the parties
9 before the Court. Making sure that justice is done
10 can oftentimes be a slow, deliberate, and repetitive
11 process, the opposite of what you might be
12 expecting, okay. Now, this courtroom, this
13 beautiful courthouse, and courtroom, is a place of
14 honor, dedicated through protection and preservation
15 of citizens rights, through what many have called
16 the greatest justice system ever created. The
17 attorneys appearing before you are excellent
18 attorneys, and they are advocates for the parties
19 they represent. The Solicitor represents that State
20 of South Carolina seeking a conviction. The Defense
21 represents the Defendant. But first and foremost,
22 ladies and gentlemen, they are officers of this
23 Court, sworn to uphold the integrity in fairness of
24 our system, and to help you in your charge to reach
25 a verdict. You should expect them then to be

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1 professional, competent, and ethical in the
2 representation of their clients interest. Remember,
3 you've just taken an oath to try this case and to
4 reach a verdict; you're also expected to act the
5 same way. Thank you again for accepting this
6 important civic responsibility duty. Now, let me
7 tell you how a trial proceeds. First, the State is
8 going to make an opening statement to you. An
9 opening statement is not evidence, okay. It's
10 simply an outline of what the State believes the
11 evidence will show once they introduce all the
12 evidence to you. Basically it's a template of what
13 the State expects you to hear upon which you must
14 reach a verdict, okay. Now, the Defense can make an
15 opening statement to you as well, but they don't
16 have to for reasons I'll get to in a moment. Now,
17 following opening statements, that's when we'll
18 begin what I call the testimony and evidence phase
19 of a trial. That's where testimony will be received
20 from witnesses who will testify right here beside me
21 on your side, and you will also -- and certain
22 evidence, like pictures and videos, or diagrams or
23 pieces of paper, or whatever else may come into
24 evidence, okay. So, after the testimony and
25 evidence phase of the trial ends, that's when we go

1 into what's called closing arguments. That's when
2 both sides will be able to argue to you as to what
3 your verdict should be based upon what evidence has
4 come in. And at the conclusion of all that, ladies
5 and gentlemen, that's when I as the trial judge will
6 instruct you on the areas of law, which have arisen
7 in this case. And you must use that law whether you
8 agree with it or not in determining your verdict.
9 And that's how our roles are -- that's how our roles
10 are in this case. Your duty as the juror -- jury,
11 ladies and gentlemen, as each individual juror, is
12 to determine the facts are, okay -- determine what
13 the facts are. You, and you alone, are the judges
14 of the facts. You will hear the evidence, and you
15 will decide what evidence is significant to you, you
16 will discuss that with your fellow jurors, and then
17 you'll apply those facts as you find them to be to
18 the law that I give you, okay. Do not take anything
19 that I may say and do during this trial as
20 indicating what you think my opinion is of the
21 evidence, that's not my role. I'm the judge of the
22 law, you're the judge of the facts, okay. Let's
23 talk about the presumption of innocence. As you
24 know, this is a criminal case that's been brought by
25 the State of South Carolina who has charged the

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1 defendant with reckless homicide, assault and
2 battery of a high aggravated nature, excuse me,
3 possession of cocaine base, and possession of
4 marijuana. The charges against the Defendant are
5 contained in those pieces of paper called
6 indictments. Like I told you earlier this morning
7 that those documents aren't evidence of anything,
8 it's simply the written description of how the case
9 comes into Court, what the State has alleged against
10 the Defendant. The Defendant has pled not guilty to
11 these charges, and is presumed innocent, unless and
12 until proven guilty by the State beyond a reasonable
13 doubt. I will describe that to you in a much more
14 complex way about what a reasonable doubt is, but
15 have in your mind that a reasonable doubt is the
16 kind of doubt that would cause a reasonable person
17 to hesitate to act. A Defendant never has to prove
18 innocence. A Defendant has the right not to
19 testify, and a Defendant doesn't have to present any
20 evidence. That's why the Defense doesn't have to
21 make an opening statement if they don't want to,
22 okay. The burden of proof is always upon the State
23 of South Carolina. Now, ladies and gentlemen, just
24 like rules, we have rules which govern sports and
25 other activities, we have rules in court, it's

1 called the Rules of Evidence, okay. And the reason
2 we have these rules, and that we all learned these
3 rules in law school, okay, and the reason we have
4 these rules, ladies and gentlemen, is to not to keep
5 things from you, okay, it's so that the things you
6 hear, and the things that you get to use to base
7 your decision on, your verdict, is the best evidence
8 possible. That's why we have these Rules of
9 Evidence. So, if a lawyer on one side asks a
10 question of a witness and the lawyer on the other
11 side thinks that it may violate the Rules of
12 Evidence, that lawyer will say objection. Y'all
13 have seen it. Y'all understand kind of what that
14 is. And what that is is a statement to me, the
15 trial judge, that there is an issue of law
16 concerning whether or not the question can be
17 answered or the question cannot be answered. If I
18 overrule an objection, that means the question must
19 be answered, or the thing must come into evidence,
20 or may come into evidence. If I sustain an
21 objection that means the question cannot be answered
22 or the thing cannot come into evidence, okay. So
23 when I sustain an objection, you're not to sit there
24 and go, hmmm, I wonder what the answer would've
25 been, or hmmm, I wonder what that thing would've

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1 shown, because see, that's not evidence in the
2 record that you can consider, okay. And that's why
3 I tell you when you leave this courtroom, you can't
4 talk to anybody about this case, or even yourselves,
5 and you can't do any independent research. You
6 can't get on your phones and type in the names of
7 people and to see what they say happened or read
8 news accounts, if there are news accounts, or
9 whatever, because then you're taking stuff that's
10 not being offered as evidence; and your duty and
11 your oath is to try this case based on what you hear
12 in this courtroom, okay. So, having said that in
13 deciding the facts of this case, you may have to
14 decide which witnesses to believe, and which
15 witnesses not to believe, ladies and gentlemen.
16 That's called credibility of witnesses. You can
17 believe everything a witness says, some of it, or
18 none of it, okay. That is your power as a finder of
19 fact. Now, you're not going to be allowed to take
20 notes during the trial. So listen very carefully to
21 things as it develops. The reason I don't let
22 jurors take notes, again, I've been doing this a
23 long time, and if you're like me when you have
24 option of taking notes, you sit there and you
25 scribble around and doodle around, you may not pay

1 as good attention as you would be if you weren't
2 being allowed to take notes, and so that's why I
3 don't let that happen. Also, it's very costly and
4 time consuming at the end when you're in your jury
5 room deliberating your verdict to ask for
6 transcripts of testimony or what did the witness
7 say. You're not going to have the transcript, so
8 listen as it goes forward, okay. And lastly, ladies
9 and gentlemen, you have been given this opportunity
10 to serve as a juror in the trial of this case, it's
11 very important that you keep an open mind and not
12 decide anything until you've heard everything, okay;
13 and until the parties have made their closing
14 arguments until you know what the law is. It is
15 your solemn responsibility to determine the guilt or
16 innocence of the accused, and your verdict must be
17 based solely on the evidence that's presented to you
18 in this courtroom, and solely on the law as I
19 instruct you during and at the close of the trial.
20 Thank you for your attention. I'd ask for you to
21 give the same attention to the attorneys. Madam
22 Solicitor?

23 MS. LIVELY: Thank you, Your Honor. On the
24 weekend of July 8th, 9th, and 10th, 2022, you're
25 going to hear about an incident, and I say incident

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1 very lightly, it was an actual collision course
2 started by the Defendant, Mr. Palmer, on I-77 in
3 Chester County, South Carolina. He was on a
4 collision course that if he did not hit Jessica
5 Shanks and her family while they were traveling down
6 I-77, he was likely going to hit someone. And
7 you're going to hear from witnesses who are going to
8 tell you that. They thought, and their statements
9 to law enforcement and 911, that it could've been
10 them. So, why is that so different than what maybe
11 people see every day on the road, where you see
12 people just driving in and out of traffic in the
13 middle of the afternoon on a highway? This is
14 something that is seen all the time. But, let me
15 tell you, when it rises to the level of the
16 recklessness that this Defendant, Mr. Palmer, did on
17 that day, and the resulting carnage that he left of
18 this family, it is nothing less than reckless and
19 criminal. And the evidence is going to show you
20 that. The evidence is going to be given to you in
21 layers of the things that he did on that day that no
22 reasonable person on the road would've ever done.
23 So, let's talk about it. That weekend Jessica
24 Shanks was there with her husband Corey Shanks, and
25 they had their two sons with them on the Friday

1 before the crash and they dropped them off at The
2 Front Porch in Richburg, which is a family style
3 restaurant, and met the grandparents there because
4 Jessica and Corey decided, hey, let's have a weekend
5 where we can just get away; Max was seven, Griffin
6 was four. Typical family situation. They have a
7 wonderful weekend, and then the plan was we're going
8 to pick them up at the same place, The Front Porch,
9 which they did, had food, were getting in the car
10 and Max is running around the parking lot, he's got
11 this little blue like glider plane, and he's playing
12 around, they're like come on Max, we got to go, we
13 got to get home, they live in North Carolina, close
14 to Charlotte. Get in the car, three miles to
15 markers -- mile marker 67, three miles. And I'm
16 going to stop my timer here, 'cause when I got to a
17 little after three minutes I wanted to make sure
18 that's all I've been talking to y'all, and this is
19 where they were, three minutes from having a meal as
20 a family, get on the interstate, travelled less than
21 three miles, give or take a few feet. And Jessica
22 Shanks is going to tell you she was driving, her
23 husband Corey was sitting next to her, Griffin the
24 four-year-old was right behind her, Max was seated
25 behind Corey, the father, they were going down the

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1 road laughing, giggling, and out of the peripheral
2 of her eye, and when you're sitting in a car and
3 your eyes and you're paying attention as you're
4 driving, this is 5:00-ish, 5:15, on a Sunday on I-77
5 heading northbound towards Charlotte, driving your
6 family, which is what she's going to testify to, and
7 out of her peripheral vision she just sees this
8 white something coming at her and she says, oh, my
9 God, he's going to hit us. Three minutes later.
10 Oh, my God, he's going to hit us. And the thing is,
11 if they were the only ones on the road, ladies and
12 gentlemen, she would be the only person telling you
13 this now. But we've got witnesses who had already
14 avoided being the ones who ended up slammed in a
15 tree. Three minutes, three minutes. He -- the
16 evidence will show impacted the back of their car
17 going 98 miles per hour. 98 miles per hour. The
18 evidence is going to show that. The expert
19 witnesses who are going to testify this week, who
20 actually work with the specialized MAIT
21 investigation team for Highway Patrol, are going to
22 tell you in their evidence and their testimony that
23 the event data recorder, which is something like a
24 black box that they pull out of your car, and it's
25 amazing the stuff it records. If the airbags go

1 off, then that means that it backdates -- or not
2 backdates, it goes back in time about five seconds
3 before the airbags actually deployed. So, what
4 happens is you can almost see the step-by-step one,
5 two, three, four, five, what happened in that five
6 seconds before the impact and everybody's airbags
7 went off. I can tell you what the evidence is going
8 to show didn't happen. He never put on his brakes.
9 He slammed into the back of that family's car
10 without even attempting, from what the evidence is
11 going to show, to avoid them. You're going to hear
12 from witnesses who were also passed while they were
13 in or on I-77 traveling in the same fashion as in
14 the Shanks, doing their own thing, and they
15 witnessed and saw, and I actually wrote it down,
16 they're going to testify, he is going to him them,
17 referring to the Shanks white Ford Explorer.
18 Aggressive, reckless, he hit them and never slowed
19 down. They go off into the trees and unfortunately
20 after rotating multiple times the passenger side of
21 the vehicle slams up against a tree, after taking
22 out several others before it got there. And as a
23 result of that reckless act Max Shanks died
24 immediately. Corey Shanks, the father, on the
25 passenger side, had to be extricated by having the

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1 door removed to be able to get out of the vehicle;
2 and he's got traumatic brain injuries. And there
3 are many horrible accidents that happen on the
4 roadway, ladies and gentlemen, people run into deer,
5 accident; someone hydroplanes, accident. But when
6 you have someone who the evidence is going to show
7 is driving 98 miles per hour down the road in a van
8 going in and out of traffic where not using the turn
9 signals, not doing anything, and flying up on
10 people, basically pushing them off the road, that is
11 reckless. That is clearly what you're going to see
12 here this week, every bit of the evidence is going
13 to point to that. And the State has to prove
14 reckless homicide beyond a reasonable doubt. After
15 you hear from the witnesses who were there, who saw
16 his recklessness, then the next step is did
17 unfortunately Max Shanks die that day as a result,
18 yes, then the State's proven its case. Assault and
19 battery of a high and aggravated nature, is when
20 someone unlawfully injures another, and that -- or
21 they commit an unlawful act and it results in the
22 injury to another, and the Judge is going to read
23 the law to you at the end of the case, so what he
24 says the law is is what you apply the evidence and
25 the facts to. But what we have to show is there was

1 an unlawful act committed by the Defendant and that
2 as a result of that, Mr. Shanks had great bodily
3 injury, traumatic brain injuries, ladies and
4 gentlemen, still suffering from those today; you'll
5 hear from his doctor. She'll be here to tell you
6 about that. So, what I am trying to bring across to
7 you is that you're going to hear all of this
8 evidence, and this evidence is going to be
9 overwhelming, and at times it's going to be really
10 hard to hear, but that's your jobs. It's your job
11 to hear what happened to Max Shanks. It's your job
12 to hear what happened to Corey Shanks. And that's
13 extremely important. But also, you have to look at
14 what the Defendant did. I mean, was it something we
15 could have seen was unfolding. It's like that storm
16 you see coming from out in the, you know, coming --
17 it's a beautiful day outside, and you see this huge
18 cloud coming and you're like, uh, I probably should
19 get out of the way of that. You know, it's like
20 it's common sense, is it reasonable for someone to
21 be driving down I-77 going 98 miles an hour, never
22 letting off the gas and ramming into the back of
23 someone. Absolutely not. Whenever his van finally
24 came to a rest in the median, he almost crossed over
25 into oncoming traffic, which caused another

1 vehicular accident, which thank goodness no one was
2 injured in that, so that's why that's not before you
3 today. But, when law enforcement went and did an
4 inventory of his vehicle, they found crack cocaine
5 and they found marijuana. So, you're going to hear
6 evidence in that regard. And I feel like I need to
7 tell you this before I, you know, kind of leaving it
8 hanging out there, he -- you'll hear from the
9 evidence and from law enforcement, he was originally
10 charged with felony DUI for being impaired and --
11 death and great bodily injury. And once we sent off
12 the tox screen, the tox screen came back clean. But
13 at the front end whenever we had the case, probable
14 cause, you see someone driving erratically like
15 that, you see someone driving that reckless, and
16 then you find drugs in the car, that's probable
17 cause for an arrest in that form. And I don't want
18 to get too in the weeds, but here's the thing that's
19 important, so we charged him based on the law, based
20 on the facts and injuries, an unfortunate death of
21 Max, okay. Think about that. There wasn't even an
22 impairment, so that means he was driving that van
23 with no impairment, no I was stoned out of my mind,
24 I didn't know where I was, I pushed the pedal of the
25 gas and I thought I was pushing on the brake, no,

1 no, no. We have someone who is supposedly, based on
2 the tox screen, his full facilities, and he is
3 driving like a storm is going to take out anybody
4 and anything in its path. Ladies and gentlemen,
5 that is something (inaudible) and as a result their
6 family is forever changed. So, I'm just going to
7 ask you during this case to remember what's truly an
8 accident, and what is complete reckless disregard
9 for human life. And I believe at the end of this
10 case you'll find him guilty of all charges. Thank
11 you so much for listening to me.

12 JUDGE GIBBONS: Thank you, Madam Solicitor.
13 Mr. Frick?

14 MR. FRICK: Thank you, Your Honor. Ladies and
15 gentlemen of the jury. I'm a history nerd, so I'm
16 going to tell you a quick story about how we get to
17 this point, how you get to be in these -- the box,
18 captured here having to listen to me right now.
19 About 215 in England the Nobleman said we're tired
20 of the King deciding all the disputes, we want
21 people to listen to them. We want to bring citizens
22 in, now it's a far cry from what we have right now,
23 but that's how it began, with an idea of there is a
24 dispute of facts and we bring people in, disinterested
25 folks, and I don't mean disinterested meaning you're

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1 not interested in the case, I mean, you got no dog
2 in the fight; you've got no part of this case.
3 That's why we went through that whole thing, that's
4 why we ask you a whole bunch of questions to make
5 sure you didn't know anything about that case,
6 didn't have any bias about the case. And you come
7 and you listen, and you listen to the evidence that
8 the State will present, and you listen to my cross-
9 examination, the evidence that we will present, and
10 then you go back and you decide this is what
11 happened. Ladies and gentlemen, a tragedy occurred
12 on July 10th of 2022. There's no two ways about it.
13 It was a horrible event. But, as the evidence will
14 show you, I submit, once everybody got out of their
15 cars and started looking at the scene, the first
16 thing they all said was it was that guy that did it.
17 That guy. And it was a kneejerk reaction from that
18 point to come to the conclusion that Jason Palmer is
19 the reason that this all occurred. Ladies and
20 gentlemen, I submit to you that you're going to hear
21 evidence that everybody out there was speeding on I-
22 77, everybody. Anybody who's ever driven I-77 knows
23 how it is out there. I submit to you the State has
24 got to prove to you that it was the actions of Jason
25 Palmer that caused this horrific event. The State's

1 got to prove that to you beyond a reasonable doubt.
2 Now, at the end we're going to talk about what that
3 is, the Judge will charge you on it, I'll give you
4 my 10 cent summation of what it is. It is not, well
5 I looked at it and it looks like, yeah, maybe he was
6 the cause of this accident. It's not, well
7 probably. It's not maybe. It's there's no other
8 reasonable explanation, but that his actions caused
9 and rose to the level of criminality that bring us
10 here today. I submit to you ladies and gentlemen,
11 once you've weighed it all, once you've listened to
12 it all, and you've heard her, you're going to hear
13 witnesses, they're going to be on this very witness
14 stand right here, they're going to be sworn to tell
15 the truth, and you may have some experts that are
16 going to say, oh, yes, in my expert opinion this is
17 what happened. Ladies and gentlemen, you don't have
18 to take anybody's word for anything, that's your
19 decision. That's your decision as to whether you
20 want to believe what they're telling you. Even if
21 they've got some expert label behind their name, you
22 don't have to believe and take it as the gospel just
23 because they say it. You get to examine them, you
24 get to listen to them and you can decide whether or
25 you want to believe part, none, or maybe even all of

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1 it if you choose to. But that's how stuff's going
2 to get presented to you. Folks it's going to be
3 difficult, I understand that. I understand that.
4 It's always difficult in a case like this. But I'm
5 going to ask you to honor your oath, and I know you
6 will, to put emotion aside, look at the facts of the
7 case, look at how the evidence unfolds. I suggest
8 to you when law enforcement gets on the scene and
9 they start looking, they've been given the answer.
10 And then they start working backwards to make sure
11 that the math adds up to the answer that they were
12 given when they first got there. It's just like
13 when I was in high school, and I'm horrible at math,
14 and I look at the back of the book to get the answer
15 and then I would reverse engineer the math to get
16 there, it was always my arithmetic that got me in
17 trouble. But if you go that way you'll always come
18 up with that answer. I suggest to you ladies and
19 gentlemen, that's exactly what happened. They were
20 presented an answer and they reverse engineered it
21 to come up with the answer, and their answer was
22 Jason Palmer. And again, I submit to you that's not
23 correct. That's not what happened. Is Jason Palmer
24 really the proximate cause of this event? And I
25 submit to you, once you've listened to everything,

1 once you've weighed it, once you -- once you put
2 anything else aside and simply look at the facts,
3 you can come to the conclusion that he is not the
4 proximate cause of this, that he is not guilty for
5 these charges. Thank you for your time and
6 (inaudible).

7 JUDGE GIBBONS: Thank you, Mr. Frick. Is the
8 State ready to proceed?

9 MS. LIVELY: Yes, Your Honor.

10 JUDGE GIBBONS: Call your first witness.

11 MS. LIVELY: Yes, sir, thank you. The State
12 would call Brittney Dempsey to the stand.

13 JUDGE GIBBONS: All right, Brittney Dempsey.
14 Ma'am, just come on around here, the Clerk will
15 swear you in. I'll swear -- actually I'll swear you
16 in. I'm sorry, Ms. Sue and I always compete over
17 who's going to swear a witness in. I'll do this
18 one, you do the second one, okay.

19 THE CLERK: Okay.

20 JUDGE GIBBONS: Raise your right hand. Do you
21 swear or affirm that the testimony you give will be
22 the truth, the whole truth, and nothing but the
23 truth, so help you God?

24 MS. DEMPSEY: Yes, sir.

25 JUDGE GIBBONS: Thank you, have a seat there.

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1 And if you'll pull that microphone right there up to
2 you, that'd be perfect, thank you. Speak loudly.

3 MS. DEMPSEY: Okay.

4 BRITTNEY DEMPSEY

5 was called as a witness, and having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LIVELY:

9 Q. Thank you so much, Ms. Dempsey. Please tell the
10 jury who you are and where you live. You don't have to
11 give like an actual house address.

12 A. Brittany Dempsey, B-R-I-T-T-A-N-Y, Dempsey, D-E-M-P-
13 S-E-Y. I live just outside of Charlotte, North Carolina.

14 Q. And do you work?

15 A. I do.

16 Q. Where do you work?

17 A. I work for a large diagnostics company.

18 Q. And how long have you lived -- so are you still
19 living in South Carolina or you've relocated to North
20 Carolina?

21 A. I relocated. So, I've been in Charlotte about a
22 year and a half now.

23 Q. Do you travel on I-77 often?

24 A. I do, for work.

25 Q. And what kind of car do you drive?

1 A. I drive a 2017 black Honda Accord.

2 Q. Is that the same car that you had back in July of
3 2022?

4 A. Yes.

5 Q. All right. So, Ms. Dempsey, let's get to exactly
6 the date that's already been referred to, July the 10th
7 of 2022 about 5:00 or so in the afternoon. Tell the jury
8 where you were and where you were going.

9 A. So I was travelling north on I-77, headed towards
10 Charlotte, I travel a lot for work and I spend time in
11 different areas within the state both South and North
12 Carolina, and I was going to Charlotte for a work trip.

13 Q. Were you travelling alone or did you have someone
14 with you?

15 A. I was by myself.

16 Q. So, tell the jury, you know, how that trip was going
17 up until a point where you had some concerns.

18 A. Yeah, so, like I said, just travelling north toward
19 Charlotte, just right past the exit in Chester, I was
20 just traveling and all of a sudden I look in my rearview
21 mirror and this white car just comes up out of nowhere
22 tailgating me, and excuse my language, but he was riding
23 my ass. It was very scary and it -- it honestly felt
24 like he was trying to run me off the road. I at one
25 point calling *HP, but I was just so focused on making

1 sure I was avoiding him that, you know, I was just paying
2 attention and there was a car beside me, a car in front
3 of me, I mean at this time a lot of people were
4 travelling on the road. I don't know if it was 'cause it
5 was the holiday weekend or -- or what but there was a lot
6 of people on the road. And like I said he was tailgating
7 me, riding me very, very closely. I couldn't even see
8 his headlights. And the car beside me I couldn't get
9 over at the time so I waited, and almost immediately as
10 soon as I went to get over he immediately went around me
11 and I had to kind of swerve a little bit to get out of
12 his way. When he went around he was also very close to a
13 black truck that was near us doing the same thing to him,
14 and then everything happened so fast but the next thing I
15 see is the van going this way and the white SUV going
16 this way towards the tree.

17 Q. Did you actually see an impact between the two
18 vehicles?

19 A. I didn't see the collision, no.

20 Q. Okay. You said that you saw him going this way and
21 the white SUV going the other way. Could you just tell
22 us, you know what -- what you're talking about? Like did
23 somebody go into the median and did somebody go off the
24 road?

25 A. Yeah, so you could -- you could definitely tell that

1 a car got hit because there was a diversion between the
2 two cars, but the white van that the Defendant was in
3 went and crossed the median and then the white SUV I saw
4 it hit the tree.

5 Q. When the defendant passed you in the van, did you
6 see him doing anything inside the vehicle?

7 A. I made sure to just get a look -- a good look at him
8 because at first, I mean, he was in a white van, so I was
9 like is this someone in a work vehicle, I mean, it was
10 concerning. So when -- when he passed me I saw him and
11 it looked like he had something in his left hand like a
12 phone, something was in his hand, and he was close to the
13 wheel.

14 Q. And at any point when he passed you, did you ever
15 see him turn on like a signal or use any type of --
16 anything that you could have seen from the back of the
17 vehicle?

18 A. No.

19 Q. Whenever he passed you and you said that you thought
20 that it was a company van, did he -- was he in one lane
21 or was he going in different lanes?

22 A. He was all over the place.

23 Q. Have you ever seen or met the Defendant, Mr. Palmer,
24 at any point in time?

25 A. No.

JURY TRIAL

1 Q. And when this happened, did you actually end up
2 pulling off and calling someone?

3 A. I did. I called 911.

4 Q. And whenever you called 911 what did you -- what did
5 you tell them?

6 A. I just told them that there had been a wreck, and
7 they were already aware of it, 'cause they had gotten
8 several calls, and they asked me where I was, and told me
9 someone was on the way.

10 Q. And have I given you the opportunity to review your
11 911 call?

12 A. Yes.

13 Q. State's Exhibit Number 1 actually -- once again, I
14 sent this to you through an email; is that correct?

15 A. Yes.

16 Q. And after you listened to it was it -- did it
17 refresh your memory as to your call to 911 on that day?

18 A. It did.

19 Q. Okay.

20 MS. LIVELY: Your Honor, State's Exhibit
21 Number 1, I'd ask to be able to enter that into
22 evidence and also publish Ms. Dempsey's 911 call to
23 the jury.

24 JUDGE GIBBONS: Any objection?

25 MR. FRICK: No objection.

1 JUDGE GIBBONS: No objection, admitted into
2 evidence, permission to publish.

3 (State's Exhibit 1
4 was introduced into evidence)

5 MS. LIVELY: Okay. Thank you. All right,
6 what I'm going to do is I'm actually going to get it
7 close to the microphone so hopefully we don't have
8 to hook up the TV.

9 (AUDIO PLAYS)

10 911:

11 Chester 911, what's the address of your emergency?

12 MS. DEMPSEY:

13 Hey, I -- I am on 77 right now --

14 911:

15 Is this for a motor vehicle accident, ma'am?

16 MS. DEMPSEY:

17 Yeah, yes.

18 911:

19 On 69? Yup, we've got everybody going out there.

20 Were you involved?

21 MS. DEMPSEY:

22 I wasn't involved, I just --

23 JUDGE GIBBONS: All right, that's the Court
24 Reporter microphone. That's not like -- that
25 doesn't project, as I understand. Use the

JURY TRIAL

1 microphone right there. Yeah, yeah, yeah.

2 MS. LIVELY: Sorry.

3 JUDGE GIBBONS: Yeah, no worries.

4 MS. LIVELY: (Inaudible) problem. We'll try
5 this again.

6 JUDGE GIBBONS: Okay.

7 MS. LIVELY: Thanks, Judge.

8 (AUDIO PLAYS)

9 911:

10 Chester 911, what's the address of your emergency?

11 MS. DEMPSEY:

12 Hey, I -- I am on 77 right now --

13 911:

14 Is this for a motor vehicle accident, ma'am?

15 MS. DEMPSEY:

16 Yeah, yeah.

17 911:

18 On 69? Yup, we've got everybody going out there.

19 Were you involved?

20 MS. DEMPSEY:

21 I wasn't involved, I just witnessed it.

22 911:

23 Oh, okay, no problem. We've got everybody going out
24 there, thank you.

25 (AUDIO ENDS)

1 BY MS. LIVELY:

2 Q. Now, Ms. Dempsey, when you called 911, had you
3 pulled over at that point in order to make the call?

4 A. I did.

5 Q. Okay. How long did you stay at that location in
6 order to, I guess, either give a statement or talk to law
7 enforcement?

8 A. Probably 30 minutes to an hour.

9 Q. And do you remember actually providing a statement
10 to law enforcement regarding what you saw?

11 A. Uh-huh (affirmative), I do.

12 Q. Okay. And was that audio recorded? Do you remember
13 whether or not you actually gave a statement that had
14 been recorded?

15 A. That day, yes, we were in the car, the cop car.

16 Q. In the cop car?

17 A. Uh-huh (affirmative).

18 Q. Okay. All right, and did you receive a call from
19 some investigators a few days later to just discuss what
20 had happened?

21 A. I did.

22 Q. You did. Now whenever you were called a few days
23 later, is the information that you gave to us here today
24 and what you've told this jury, was it substantially the
25 same?

JURY TRIAL

1 A. Yes.

2 Q. Okay. Now, whenever you were describing how he was
3 driving and how -- did you mention how fast you were
4 driving? I don't think I asked you that question.

5 A. I did. So the speed limit is 70, and I was probably
6 going 75, 80.

7 Q. Okay. Fair enough. And based on you going between
8 75 and 80, how did he actually get around you?

9 A. Like I said there was a car beside us and once that
10 car cleared, because I was in the left lane and he was
11 right behind me as well, there was a car to the right of
12 us, he immediately went around me before I could even get
13 over. I was going to get out of his way.

14 Q. Did he pass you?

15 A. Yeah, he --

16 Q. Quickly, slowly?

17 A. No, he was very fast around me.

18 Q. Did you ever approach any of the vehicles after both
19 of them finally came to a rest after the collision?

20 A. I did not.

21 Q. Thank you. Answer any questions the Defense may
22 have.

23 JUDGE GIBBONS: Mr. Frick?

24 MR. FRICK: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. FRICK:

2 Q. Ms. Dempsey, where did you leave from that day? Not
3 a specific address, but a city.

4 A. I was living in Columbia, so at the time I was
5 leaving Columbia.

6 Q. Okay, all right. And you'd been on I-77 that whole
7 time?

8 A. I had, uh-huh (affirmative).

9 Q. And then when you passed, you called it the Chester
10 exit.

11 A. Yeah, the rest area, uh-huh (affirmative).

12 Q. When you passed there that's when you said you
13 noticed something come up behind you?

14 A. Yeah, give or take, I mean, that's the best like
15 pinpoint landmark I can think of, but, yeah, I mean, just
16 out of nowhere he approached my vehicle.

17 Q. Okay. And at that time you were in the left lane?

18 A. Correct.

19 Q. And you were doing 75 to 80, I believe?

20 A. Yes, uh-huh (affirmative).

21 Q. And then you were looking to move over, correct?

22 A. I was.

23 Q. But then he moved over before you did?

24 A. Right.

25 Q. But there was an opening there, correct?

JURY TRIAL

1 A. I mean, yeah. I mean, as soon as the car beside us
2 cleared I was going to get out of his way and he
3 immediately went around me.

4 Q. Okay. And then he goes up, do you know how far in
5 front of him that -- in front of you he was?

6 A. When the incident occurred?

7 Q. Yes, ma'am.

8 A. I -- I don't know.

9 Q. Okay.

10 A. 'Cause I -- I never physically saw him hit the
11 vehicle. I just saw the two cars --

12 Q. Gotcha. You just saw that the cars --

13 A. Right.

14 Q. -- started separating --

15 A. Yes. Uh-huh (affirmative).

16 Q. -- one went this way --

17 A. Right.

18 Q. -- one went that way.

19 A. Uh-huh (affirmative).

20 Q. Okay. And you were back a bit?

21 A. I was, uh-huh (affirmative).

22 Q. Okay. All right. Then you stopped, you called 911.
23 Did you ever see him get out of his car?

24 A. I did.

25 Q. Where did he go?

1 A. So it -- it looked like he was running somewhere. I
2 don't know where he went but he was -- he got out of his
3 vehicle to go somewhere.

4 Q. Okay. Do you recall telling that trooper that he
5 ran over to the wrecked car?

6 A. Yes.

7 Q. Is that what he did?

8 A. If I said it, I guess that's what he did.

9 Q. Okay. Do I need to replay it for you or --

10 A. No.

11 Q. -- do you agree that's what you said?

12 A. Yeah.

13 Q. Okay. He also asked you for a description of the
14 driver, do you remember that?

15 A. I do.

16 Q. Do you remember what you told him?

17 A. I do.

18 Q. What'd you tell him that the driver looked like?

19 A. So I'm a visual person, and I told him he reminded
20 me Bob Marley, he had long dreads and a beard, and he was
21 a black male.

22 Q. Okay. Beg the Court's indulgence, okay. Thank you,
23 ma'am, that's all the questions I have.

24 JUDGE GIBBONS: All right, any redirect?

25 MS. LIVELY: No, Your Honor, thank you.

JURY TRIAL

1 JUDGE GIBBONS: All right, thank you, ma'am,
2 you can step down.

3 MS. LIVELY: Your Honor, may she be released
4 from her subpoena?

5 JUDGE GIBBONS: You have any objection?

6 MR. FRICK: No objection.

7 JUDGE GIBBONS: Thank you, ma'am, you're free
8 to leave. The State can call its next witness.

9 MS. LIVELY: Yes, Your Honor, thank you. The
10 State would call Joseph Parker to the stand.

11 JUDGE GIBBONS: Joseph Parker, come on up
12 here, sir. Just pause right there while the Clerk
13 of Court administers the oath. Right here.

14 THE CLERK: Please raise your right hand,
15 place your left hand on the Bible. State your full
16 name.

17 MR. PARKER: My name is Joseph Matthew Parker.

18 THE CLERK: You do solemnly swear or affirm
19 the testimony you give will be the truth, the whole
20 truth, and nothing but the truth, so help you God?

21 MR. PARKER: I do.

22 THE CLERK: Be sure and speak through the
23 microphone, please.

24 MR. PARKER: Okay.

25 JOSEPH PARKER

1 was called as a witness, and having been first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. LIVELY:

5 Q. Mr. Parker, state your full name for the record and
6 tell the jury, you don't have to give me a house number,
7 but where you live.

8 A. My name is Joseph Matthew Parker. I live in Rock
9 Hill, South Carolina.

10 Q. And what do you do for a living?

11 A. I am a mechanic.

12 Q. Do you have a family at home?

13 A. I have two boys.

14 Q. And are you married?

15 A. Yes, I am.

16 Q. Now, when you say that you're a mechanic, what kind
17 of a mechanic are you?

18 A. I work on heavy -- all different types of things,
19 but heavy equipment, and some smaller stuff as well, like
20 small engines.

21 Q. Do you travel in that job?

22 A. I travel every day.

23 Q. Every day, okay. Now, Mr. Parker, did you have an
24 opportunity to be travelling on I-77 on July 10th, 2022
25 around 5:00 or 5:15 p.m. that day?

JURY TRIAL

1 A. I did.

2 Q. And who -- were you travelling with someone?

3 A. I was travelling with my wife and my two children.

4 Q. Two children. And what type of a vehicle do you
5 drive?

6 A. I drive a 2019 Silverado.

7 Q. And is that the same vehicle you were driving in
8 July of 2022?

9 A. Yes, it is.

10 Q. So, Mr. Parker, when you were driving you said that
11 -- so basically you had your family with you in the car -
12 -

13 A. Uh-huh (affirmative), yeah.

14 Q. -- in the truck? When you were driving, where were
15 you headed?

16 A. We were headed home. We were visiting my wife's
17 family in Florida.

18 Q. And while you were driving, tell the jury what --
19 what happened that kind of caught your eye that day of
20 significance while you were on the road, on I-77.

21 A. So we were driving back from visiting family. We
22 were just after the rest stop on 77 going northbound. I
23 had my cruise control set to 79, it's just a comfortable
24 speed especially for that road. I was in the fast lane,
25 just driving my normal pace, and all of a sudden, just

1 very observant, just always looking in my mirrors seeing
2 what's going on, I noticed a white van coming up on me
3 very quickly. And it wasn't necessarily just in the fast
4 lane, it was not like zigzagging in between traffic to
5 get around people, it was just like all over the road,
6 whether it was in the fast lane, right on the center
7 part, or going into the slow lane. Came upon me quickly.
8 I proceeded to -- I had an opening, I moved over, and he
9 just flew right by me. And at that point I looked at my
10 wife and I was like he's going to cause an accident or
11 they're gonna cause an accident. I didn't get to see who
12 was in the vehicle because I was concerned about making
13 sure there's no one on my right to pull -- or move over
14 safely.

15 Q. And you've already said how fast you were going, and
16 he blew past you?

17 A. Yeah.

18 Q. Now whenever he went past you, you said that you
19 couldn't see who was driving at that point?

20 A. No, ma'am.

21 Q. All right. About how far did you go before you
22 noticed anything else going on with -- with the person --
23 with the van itself?

24 A. So, I knew that there was something else going on,
25 'cause as soon as we had moved over, the van as it's

1 going past me it also kind of like cut in front of me as
2 well. So, I had to slam on my brakes to slow down, and I
3 tried to give myself some distance from the van. At that
4 point we were going up the hill before getting to mile
5 marker 67, and then when we went -- started cresting the
6 hill and coming down, I had one vehicle in front of me
7 and then the Shanks were -- the Explorer was in front of
8 that. When we were coming down the hill that's when I
9 had seen the van collide with the Explorer and it had
10 impacted the left rear quarter and pushed the Explorer
11 off the road. The van went into the median and that's
12 when that other accident was caused going southbound.
13 The Shanks' Explorer had went off the road and kind of
14 like slid towards the tree and it was just going full
15 rate. Once it hit the tree, the vehicle had such force
16 that the -- it rotated 180 degrees and was facing
17 oncoming traffic.

18 Q. Which would've been facing you?

19 A. Yes, ma'am.

20 Q. Now, what did you do when you saw that happen?

21 A. When we saw that happen, I told my wife to go ahead
22 and call 911. We put our hazards on, slowed down, and we
23 pulled off of the road onto -- we were on the -- like the
24 tree lined side. At that point my wife is already
25 calling 911. Luckily we were able to see the mile marker

1 sign 67 was right in front of us, which helped out with
2 telling the police exactly where we were at and EMS.

3 Q. Did you go to the Shanks' white Explorer?

4 A. I did. I was the first one to go up to it. As my
5 wife was calling 911, I had -- I just put my vehicle in
6 park, went up to the Shanks', and that's when I saw
7 Jessica she was screaming. I was letting her know that
8 we -- you were just in an accident, we called 911,
9 they're gonna get here as fast as they can.

10 Q. And did anyone else show up, not a like EMS person
11 or Fire, but did another person walk up and actually come
12 up to the vehicle as well?

13 A. There was another gentlemen, I don't know if I
14 caught his name or what direction, but he had came up as
15 well, yes.

16 Q. Now while you were there you said you spoke to
17 Jessica, did you speak to anybody else in the vehicle?

18 A. I didn't speak anyone else in the vehicle. I saw
19 that Corey was right there, and he was barely breathing.
20 And then I had noticed Max in the backseat and he was not
21 breathing.

22 Q. Do you have any type of medical or, you know, fire
23 or rescue experience at all?

24 A. I do not, no.

25 Q. You do not, okay. Did you actually go and attempt

JURY TRIAL

1 to at least see what the condition of Corey Shanks and
2 Max Shanks was?

3 A. We -- I did. I had -- I had went down to the
4 vehicle right away. The side of the road was wet. I
5 ended up going back to my -- I was in sandals, so I went
6 back to my vehicle, got my shoes, and then that's when I
7 went up and I had seen Corey and Max.

8 Q. What was the damage like to the vehicle?

9 A. It was very messed up. There was a lot of damage to
10 the structural components of it. The roof was I think
11 like peaked up. It looked pretty awful.

12 Q. Did you attempt to make any kind of contact with Mr.
13 Shanks by trying to speak with him or what -- could you
14 tell if he was conscious or anything?

15 A. He was not conscious and he was very shallow
16 breaths, wasn't breathing much at all.

17 Q. And what was your observation of Max?

18 A. Max had passed. It looked like it was
19 instantaneous.

20 Q. Now, Mr. Parker, where was your wife when all this
21 was happening?

22 A. My wife was still up at the vehicle trying to tend
23 to the kids 'cause they had seen something happen, they
24 didn't know what's happening, so trying to keep -- she
25 was trying to keep them away from it as much as possible.

1 Q. At some point did law enforcement and first
2 responders begin to arrive on the scene?

3 A. They did. Before the first responders had gotten
4 there, there was a couple other people who had came down
5 to the vehicles and I was just like it's pretty bad just
6 head back to your own vehicles. There was two women
7 coming over from the southbound side, said the same thing
8 to them, and the women had said that they were actually
9 nurses and they were ER nurses and wanted to help.
10 That's when I had said that Corey's obviously in the
11 front seat and he's not -- doesn't seem like he's
12 breathing too well. So one of the nurses was tending to
13 Corey, and then the other nurse had taken Jessica and
14 their other son Griffin to the side of the road and just
15 checking on them to see how they were doing.

16 Q. Did you provide a statement to any of the troopers
17 or law enforcement that day while you were on the scene?

18 A. I did.

19 Q. You did, all right. And was that done in the back -
20 - was it in a patrol car?

21 A. It was in -- it was in the patrol car, yeah.

22 Q. Do you remember who the trooper was that you
23 provided the statement to?

24 A. I believe his name was Dye or Day, it was like D-Y-
25 E, I think.

JURY TRIAL

1 Q. Cyteco Dye, maybe?

2 A. I'm not sure.

3 Q. That's okay. Don't worry about it, that's fine.

4 Did you also receive a call from law enforcement a couple
5 days later just to discuss what you had seen that day?

6 A. I did.

7 Q. Now, you've already told us that you were going --
8 you had your cruise control set at 79 miles per hour.
9 When the defendant went past you at that point, did he
10 pass you very quickly or was he kind of just creeping
11 around you?

12 A. He flew by me.

13 Q. He flew by?

14 A. Very fast, yeah.

15 Q. And you said that when he passed by you that he was
16 not even just in -- I think you said he was in a lane,
17 but that he was kind of --

18 A. Yeah, when he had -

19 Q. -- crossing --

20 A. When he went past me, I had -- I had move over to
21 the slow lane and he had went past me in the fast lane
22 and even at that point he started swerving.

23 Q. Could you see the rear of his van well enough prior
24 to the impact to see whether or not you saw any brakes or
25 blinkers or anything?

1 A. I could see the back of the van very clearly, there
2 was no brakes, nothing, no turn signals.

3 Q. Now, Mr. Parker, after that happened and you
4 provided your statement to law enforcement, did you have
5 any contact with the defendant at all?

6 A. I did not, no.

7 Q. You did not. Did you ever even see him? Do you
8 remember?

9 A. I saw him -- so when the impact had happened and I
10 was getting out of my vehicle, he had exited his vehicle
11 and was coming in the direction of where the incident
12 was, 'cause he was -- he was further ahead than where the
13 Explorer was. He had came a little bit, but I never saw
14 him actually come up to the vehicle.

15 Q. All right. So, did you ever make any kind of
16 contact with him whatsoever?

17 A. I did not. No, I stayed with the Explorer.

18 Q. Did you have any observations about the defendant
19 that you provided to law enforcement that you recall?

20 A. Did not.

21 Q. Okay. So was all the information that you gave
22 related to his driving and what you saw prior to the
23 actual impact with the Shanks' vehicle?

24 A. Yeah, I gave that all to the police officers.

25 Q. All right. Just a second. All right, thank you so

JURY TRIAL

1 much, Mr. Parker. Answer any questions the Defense may
2 have.

3 A. Okay.

4 JUDGE GIBBONS: Mr. Frick?

5 CROSS-EXAMINATION

6 BY MR. FRICK:

7 Q. Good afternoon, Mr. Parker.

8 A. Hello.

9 Q. So you were in the left lane when the van came up
10 behind you?

11 A. Yes.

12 Q. Okay. And then you did move over?

13 A. Yes.

14 Q. Okay. Goes around you, did you get back in the fast
15 lane then?

16 A. I stayed in the -- I was -- I stayed in the slow
17 lane.

18 Q. Okay. All right.

19 A. At that point.

20 Q. Okay. At some point you said that you actually
21 pressed your brakes after he passed you?

22 A. Yeah, and moved over.

23 Q. Okay.

24 A. When he had -- when -- when I had moved over he had
25 came up along side of me.

1 Q. Uh-huh (affirmative).

2 A. And then had started to swerve over a little bit,
3 that's when I pressed my brakes.

4 Q. You pressed your brakes after he had passed you and
5 you say he was --

6 A. Correct, when he was going into my lane.

7 Q. Coming back into your lane?

8 A. Yes.

9 Q. Okay. All right. And you're locked in at 79?

10 A. Yes.

11 Q. Okay. And you said he flew past you?

12 A. Correct.

13 Q. Okay. Did you see the impact?

14 A. Yes, I saw the impact.

15 Q. Okay. Now I believe you said it was the left rear
16 quarter panel?

17 A. Yes.

18 Q. Which would be the driver's side?

19 A. Yeah, driver's side rear was hit.

20 Q. Okay.

21 A. And then he hit it with his passenger front quarter
22 panel.

23 Q. Okay. All right. Now, obviously y'all were -- you
24 were out on the scene for a while, is that fair to say?

25 A. That's correct.

JURY TRIAL

1 Q. And everybody was kind of chatting about what had
2 taken place?

3 A. There were some people talking and some people just
4 quiet because of the scene itself.

5 Q. Right, okay. Did you know the Shanks' before this
6 incident?

7 A. I did not, no.

8 Q. Okay. Any idea about how many car lengths this
9 occurred in front of you or how far the van was in front
10 of you when --

11 A. I would say it was probably about five car lengths.

12 Q. Five car --

13 A. Between five and seven, it was very easily seen.

14 Q. Okay. All right. Beg the Court's indulgence for
15 one second. So, you had no contact with the driver,
16 correct, of the van?

17 A. Correct.

18 Q. Okay. Do you recall telling law enforcement that
19 you said he looked dazed?

20 A. I don't remember saying that at all.

21 Q. Okay.

22 A. Well, I -- let me retract that.

23 Q. Sure.

24 A. It -- after he got out of his vehicle he looked
25 distraught -- or, not distraught, just like confused on

1 like what had happened.

2 Q. Right.

3 A. Like he threw his hands up and like went like this.

4 That's what I was referring to. It wasn't a trying to

5 say he was on anything or --

6 Q. Okay.

7 A. -- anything of that nature.

8 Q. Looked like somebody that might've been in a bad
9 wreck?

10 A. Yes.

11 Q. Okay. But you had no conversation with him?

12 A. Did not.

13 Q. Okay. And you state that he did not come over to
14 the -- to the Explorer?

15 A. He did not come up to the Explorer --

16 Q. Okay.

17 A. -- from what I've seen, that -- if he came up when I
18 was back at my vehicle I did not see that.

19 Q. Okay. All right. So you did leave at some point
20 and go --

21 A. I had -- I left my -- I left the Explorer, because I
22 was in sandals and there was glass and all different
23 types of stuff on the side of the road. I went back to
24 my truck, grabbed my shoes just to make sure I didn't get
25 cut or anything like that.

1 Q. Gotcha, gotcha. One more second. Thank you, sir,
2 that's all the questions I have.

3 JUDGE GIBBONS: Any redirect?

4 MS. LIVELY: Not from the State, Your Honor,
5 thank you.

6 JUDGE GIBBONS: Thank you, sir you can step
7 down, you're free to leave.

8 MR. PARKER: Thank you.

9 JUDGE GIBBONS: Ladies and gentlemen of the
10 jury, let's take a brief recess to refresh
11 ourselves. Let you get you about out of here --
12 back out here, excuse me, in about 10 minutes, okay.
13 Don't talk about the case.

14 (JURY EXITS)

15 JUDGE GIBBONS: Anything before I leave the
16 courtroom?

17 MS. LIVELY: No, Your Honor.

18 MR. FRICK: No, sir.

19 JUDGE GIBBONS: All right, we're in recess.

20 (RECESS)

21 JUDGE GIBBONS: Going back to -- well, I do
22 have something, put it on the record. All right,
23 so, my rusty trusty law clerk has done a little bit
24 of research and getting to the point of what we
25 talked about with the general intent versus specific

1 intent, and I queried the State about the difference
2 between A&B first and ABHAN, specifically as it
3 relates to what I'm anticipating if it does make it
4 pass directed verdict what the instructions are
5 going to be. I have seen the answer now, and y'all
6 probably already knew that and just let me continue
7 to talk, but assault and battery first degree by
8 statute is a lesser offense of assault and battery
9 of a high and aggravated nature. And it does have
10 the same legal description under the statute of
11 ABHAN other than that description is only if a
12 person offers or attempts to injure another for that
13 thing -- or that same definition of ABHAN comes into
14 play. So, I -- what I'm telling you is, I don't
15 think assault and battery first degree under the
16 facts as alleged by the State, in this case is a
17 lesser offense to give the jury a choice of.

18 MS. LIVELY: Because of the language of offers
19 that (inaudible) --

20 JUDGE GIBBONS: Right. I mean, I -- the
21 statute says assault and battery -- okay, ABHAN and
22 again, Jenny for the Court Reporter, that's assault
23 and battery high aggravated nature, it's the -- the
24 -- whatever you call it is ABHAN, is when a person
25 unlawfully injures another with the present ability

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1 to do so, and great bodily injury occurs, or the act
2 is accomplished by means likely to cause great
3 bodily injury or death. That's where the
4 recklessness angle comes in, which I ruled on based
5 upon the Defense's motion to quash the indictment
6 and denying that, okay. Y'all follow me on that?

7 MS. LIVELY: Yes, sir.

8 JUDGE GIBBONS: Assault and battery first
9 degree by statute is a lesser offense of ABHAN, but
10 the definition of assault and battery first degree
11 is, a person unlawfully injures another person with
12 the present ability to do so, and it happens during
13 a sexual battery, or it happens during the robbery -
14 - during a robbery, burglary, kidnapping, or theft,
15 or a person offers or attempts to injure another
16 with means likely to cause great bodily injury or
17 death. All right, that's not here. There wasn't an
18 offer or an attempt going by the facts, you know,
19 presented by the State, so that's why I don't think
20 A&B first is at play here. I know we've only heard
21 from two witnesses, but I've heard this case, you
22 know, at several bond hearings before, and I just
23 wanted to get that out there early so y'all could
24 formulate whatever arguments you wish to make at the
25 time, okay. Does the State understand?

1 MS. LIVELY: Yes, much clearer, thank you for
2 -- for your -- for that information.

3 JUDGE GIBBONS: All right, Mr. Frick, you
4 understand? Certainly, I'm going to let you argue
5 it, I'm just telling you how I'm thinking, and I
6 wanted to give you an opportunity to rebut any
7 position I'm taking at this point.

8 MR. FRICK: I understand.

9 JUDGE GIBBONS: Okay, thank you. All right,
10 bring the jury out.

11 (JURY ENTERS)

12 JUDGE GIBBONS: Thank you ladies and gentlemen
13 of the jury. The State can call its next witness.

14 MS. LIVELY: Thank you, Your Honor. The State
15 would call James Logan to the stand.

16 JUDGE GIBBONS: All right, sir. I'll get this
17 one. Come on up here, sir, and walk around. Sir,
18 if you'll raise your right hand. Do you swear or
19 affirm the testimony you give will be the truth, the
20 whole truth, and nothing but the truth, so help you
21 God?

22 MR. LOGAN: Yes, sir.

23 JUDGE GIBBONS: Thank you, sir, have a seat
24 there. Watch that microphone and then I'm gonna
25 have you pull it closer to you. Just pull that

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1 microphone to you. All right, thank you, your
2 witness.

3 JAMES LOGAN

4 was called as a witness, and having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. LIVELY:

8 Q. Mr. Logan, please state your full name for the
9 record.

10 A. James Logan.

11 Q. And Mr. Logan, where do you live? Don't give me
12 like a street and house number, but just where are you
13 from?

14 A. Indian Land.

15 Q. Indian, okay, South Carolina, correct?

16 A. Yes, sir. I mean, yes, ma'am.

17 Q. All right, that's fine. And who lives with you in
18 your home in Indian Land?

19 A. My wife and my two sons.

20 Q. And what's your wife's name?

21 A. Felicia.

22 Q. Felicia Logan? And what are the ages of your sons?

23 A. Creden, my baby is eight-years-old, and my oldest
24 one is 11.

25 Q. Now, Mr. Logan, were you travelling on I-77 July

1 10th of 2022 about mid-day -- or, well late afternoon,
2 around maybe 5:00 p.m.?

3 A. Yes, ma'am.

4 Q. Do you remember that day?

5 A. Yes, ma'am.

6 Q. And Mr. Logan, what kind of vehicle were you driving
7 at that time?

8 A. A 2007 white Toyota Camry.

9 Q. And who all was in the vehicle with you?

10 A. My wife was in the passenger side. I was the
11 driver. And my two sons was in the back.

12 Q. So, where were y'all coming from or where were you
13 going to?

14 A. We were coming from Florida headed back home. And
15 then we were going to repack and head to DC to see more
16 family.

17 Q. When you were on I-77 and you got into Chester
18 County, did anything happen or did you see anything that
19 caught your eye?

20 A. Yes, ma'am.

21 Q. If you would please tell this jury what happened on
22 that day.

23 A. It was a two -- the lane we were on was two lanes.
24 I was in the left side. All of a sudden a white vehicle,
25 truck, sped past me. I know I was driving at least 70

1 miles an hour, 'cause I had my speedometer on lock grid
2 and I would make an assumption that due to the speed and
3 looking at time and the distance between my vehicle and
4 the other truck -- I mean the other vehicle, they had to
5 -- the white van that went past me I would say had to be
6 going between -- around maybe 95 to 100 miles an hour
7 because it sped by me -- by me very fast. It caught my
8 wife's attention to the point she started screaming at
9 the van to slow down as if they could hear it -- I mean,
10 the person could hear her, but of course our windows was
11 up and I know that was not going to occur. The van
12 immediately passed us so fast that it plowed into the
13 Ford Explorer that was in front of us. And I would say
14 the Ford Explorer was probably at least eight to -- eight
15 to nine car lengths, 'cause we were the only two vehicles
16 headed north, everybody else was behind us, and there was
17 a good amount behind us, but we were the -- we were the
18 only two in the front. When -- when that happened it
19 caused the vehicle to flip, if I'm correct, and ended up
20 going over to its right, immediately it caught my
21 attention that I slowed down without me getting in an
22 accident, to merge to the left. At that point I got out
23 of my car and ran across to the vehicle to check on the
24 individuals. And then upon getting there the first
25 person I saw was the little boy's brain. Yeah.

1 Q. You need some water?

2 A. No, I'm good. I'm good.

3 Q. Which -- where was he seated?

4 A. He was seated behind his dad. So it was Mom, Dad,
5 the baby, and then I think it's their oldest son was on
6 this side, because at the end I did recognize that when
7 Mom was able to get out of the car once everything got
8 kind of situated, we had to get the little boy through
9 the side because the door for the dad and the door for
10 the mom -- I mean, the door for the dad and the door for
11 the -- the son would not open at all. So, we had to look
12 at the other side of getting the young man out. So at
13 that point the -- the van would -- I mean, their -- their
14 car was to me it must have hit a tree or something that
15 it would not -- it was bent so we could not get nothing
16 on -- the seatbelts was locked. At that point I
17 realized, talking to another gentleman who was there, at
18 the same time we needed something to cut. So, I always
19 keep a blade in my car just in case we get in an accident
20 and we need to cut the seatbelts. So I screamed to my
21 wife and started running to her as best as I could,
22 'cause I had just recently had knee surgery myself, so
23 there's only so much I could do and she threw the
24 switchblade -- tried to throw the switchblade over. I
25 grabbed the switchblade, ran by -- ran back and during

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1 that time I know she was on I think my phone calling 911
2 and I brought the switchblade back so that we could cut
3 the seatbelt and then once we was able to cut the
4 seatbelt we was able to move the -- the car seat. So at
5 that point it was very emotional for me 'cause when I was
6 looking at him I was looking at my son, my baby. So I
7 went around, 'cause we realized we couldn't open up this
8 side and one of the gentlemen, they came in on the other
9 side I held -- and then I tried to push the door as far
10 open as I can and then we got to get the little one out
11 and then once they laid him down we -- me personally I
12 thought it was possibility because I heard him breathing,
13 but then as he started to breathe he started projectile -
14 - projectile blood at the time.

15 Q. Now, Mr. Logan, when you were helping the family,
16 did you get the chance to talk to the driver of vehicle,
17 Ms. Jessica Shanks? Do you remember at all the female
18 that was driving the Ford Explorer? I know there's a lot
19 going on, but I'm not sure if you -- did you ever get a
20 chance to talk to her?

21 A. So, it was -- it was a lot going on, but I would
22 just say I can't say yes and no. I would say what my
23 recollection was I remember that it was a white gentlemen
24 that he was helping and everybody just came toget --
25 collectively as a group. I remember there was three

1 nurses that was headed to the beach or something, they
2 came over. I remember they were in a SUV, whether it was
3 an Escalade or -- I knew it was a big SUV, they came over
4 and then they started directing us and stuff like that.
5 I know we got to a point that Mom -- the mother had the
6 oldest son and they were on the side and at the point
7 when we realize the state of where the little one was,
8 the nurses kind of said to us, let's kind of put
9 ourselves in a position that the mom does not see what we
10 see. So being that I'm a big guy I was the one that kind
11 of stood in the front to assist with that at that point
12 once he was laid down until the ambulance and all of that
13 came. But at that point the mom and her oldest son was
14 way ahead of -- was further behind us speaking I guess to
15 others, and the dad was still in the car but he was --
16 I'm gonna take it he was unconscious 'cause he really
17 wasn't responding at all.

18 Q. Now, Mr. Logan, have you got any type of like first
19 responder experience or anything like that?

20 A. No, ma'am.

21 Q. All right, so this -- was this the first time you've
22 ever experienced something of this nature?

23 A. Yes, ma'am.

24 Q. Now, Mr. Logan, going back to the van, you actually
25 -- have you and I ever talked about what you estimated

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1 the speed to be?

2 A. Not really.

3 Q. Okay. So, you just now said that, you know, 95 to
4 possibly 100 miles an hour, at that point did you notice
5 anything else about his driving (inaudible)?

6 A. It was -- it was very sporadic, there was no brakes.
7 No brakes at all. So whatever the situation was, he was
8 going so fast that he plowed straight into them.

9 Q. Now, Mr. Logan after -- so about how long did you
10 end up being there that day, do you even remember?

11 A. I stayed until the mother -- so I know a couple of
12 ambulance had come because they had to put them in
13 separate ambulance; the grandparents came back. So, I
14 stayed all the way 'till I knew that they were -- they
15 left the scene.

16 Q. Mr. Logan, did you ever speak with the defendant,
17 Mr. Palmer, that day? Do you even know who he is?

18 A. I know who he -- I know of him, 'cause I remember
19 seeing him sit on the grass. If I'm correct I know he
20 had locks.

21 Q. Locks, oh, you mean --

22 A. The hairstyle, if I'm correct. He did come over
23 trying to check on the situation to make sure -- to see
24 if everybody was okay. But at that point it was kind of
25 recommended to him you might want to kind of step back.

1 Q. And Mr. Logan, have you had any kind of contact with
2 the Shank family or anybody since that time?

3 A. No, ma'am.

4 Q. Were you able to provide your statement to law
5 enforcement that day regarding what you saw?

6 A. Yes, I spoke -- I don't know who I spoke to, but the
7 person I spoke to I remember them writing something down
8 on a pad, that's it.

9 Q. And did you receive a call a few days later
10 regarding doing an audio statement about what you saw on
11 that day and how you responded?

12 A. Yes, ma'am.

13 Q. Thank you so much, Mr. Logan. If you'll please
14 answer any questions the Defense may have.

15 JUDGE GIBBONS: Mr. Frick?

16 MR. FRICK: Thank you.

17 CROSS-EXAMINATION

18 BY MR. FRICK:

19 Q. Afternoon, Mr. Logan.

20 A. Good afternoon.

21 Q. I'm a little confused, when the van came up, were
22 you in the right lane or the left lane?

23 A. I was in the left lane.

24 Q. You were in the left lane?

25 A. Yes.

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1 Q. Did he come up behind you?

2 A. I can't say specifically came up behind me. I
3 recall when it was passing by me.

4 Q. Okay, so passing by you on the right?

5 A. Correct.

6 Q. Okay. All right. Did you see the contact with the
7 SUV?

8 A. Yes.

9 Q. Okay. All right. About how far in front of you was
10 that?

11 A. It was -- the car length was around maybe seven to
12 eight to nine car lengths.

13 Q. Seven --

14 A. So the -- my car between the family's car, 'cause it
15 was a good distance --

16 Q. Right.

17 A. So -- but it was very visible that you could see it
18 because it was clear skies and --

19 Q. I guess were there any cars in between y'all?

20 A. No, it was me --

21 Q. Okay.

22 A. -- I was here. And their -- their car was ahead of
23 ours about eight -- seven, eight lengths.

24 Q. Okay.

25 A. But it was on the right side.

1 Q. Okay, all right. So, you saw the impact and you saw
2 the cars go off, one goes in one direction and one goes
3 in other?

4 A. Correct, because his vehicle went to the left.

5 Q. All right.

6 A. Theirs went to the right.

7 Q. Okay. And you said in your view that the SUV
8 flipped over?

9 A. That I could recall.

10 Q. Okay. All right. In fact you told law enforcement
11 that that day, did you not?

12 A. That I recall.

13 Q. Okay, all right. Now you talked to a trooper on the
14 scene, on the side of the road; is that right?

15 A. Yes, sir.

16 Q. Okay. And then I think a day or so later they
17 called you?

18 A. Yes, sir.

19 Q. And you gave an interview with them, correct?

20 A. Yes, sir.

21 Q. Okay. During those interviews did you tell them
22 about going and cutting the seatbelt?

23 A. I'm not sure at that point.

24 Q. Okay. You didn't, did you?

25 A. I'm not sure. I can't say 'cause I'm not sure.

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1 Q. Okay.

2 A. 'Cause this was two years ago.

3 Q. Okay, all right. After this was over with did you
4 watch any media coverage of it?

5 A. No, I did not. The only thing I did was read one
6 article, that's it.

7 Q. Okay, all right. And in that article did it talk
8 about approximate speeds?

9 A. I don't recall, 'cause I wasn't looking at it from
10 that perspective.

11 Q. Okay.

12 A. I just wanted -- my wife and I wanted to know the
13 name of the family so we could pray for them.

14 Q. Sure.

15 A. So that's where -- that's the only thing that we was
16 looking for.

17 Q. Okay, all right. Beg the Court's indulgence.

18 JUDGE GIBBONS: Yes, sir.

19 BY MR. FRICK:

20 Q. You said that there were some other folks that were
21 around the car when you walked up there, the SUV, the
22 SUV.

23 A. When I first got there, I didn't recall. I think
24 the other gentleman and I either kind of got there around
25 the same time, because I was the only one that was in the

1 front.

2 Q. Okay.

3 A. So when I got to it I came from -- I was actually
4 coming -- if my car is over here, I'm coming over this
5 way, everybody else who came up they were coming from the
6 back of the vehicle. I was coming from the front of the
7 vehicle.

8 Q. Okay, all right. So you had gone down further?

9 A. 'Cause I had to pull over, yes.

10 Q. Okay, all right.

11 A. So I pulled over, the truck was actually in front of
12 me, a good phase in front of me once he pulled over, that
13 hit them, and then the Ford was to the right.

14 Q. Okay. One more second. I won't keep you much
15 longer, Mr. Logan. You said that the driver of the van,
16 Mr. Palmer, began to walk over towards the SUV, but it
17 was recommended that he stay back, correct?

18 A. Correct.

19 Q. Do you recall who recommended that he stay back?

20 A. I'm not sure, it was just so much going on. I just
21 remember seeing hand signals like man, you need to go
22 back, you need to go back.

23 Q. Okay, all right. It wasn't you?

24 A. No.

25 Q. Okay, all right. Thank you, sir. That's all the

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1 questions.

2 JUDGE GIBBONS: Redirect?

3 MS. LIVELY: Just real briefly.

4 REDIRECT EXAMINATION

5 BY MS. LIVELY:

6 Q. You keep saying, and I know that it's been a long
7 time, the truck that hit them, I'm going to show you your
8 statement, and I just want you to clarify what was the
9 defendant driving, unless you can clear that up for us
10 now, what was the defendant driving that hit the actual -
11 -

12 A. It was a white utility van.

13 Q. Okay.

14 A. I closed -- a closed white utility van.

15 Q. Okay, all right.

16 A. That the one I think of is -- recently within the
17 last couple of years you had people snatching people
18 kids, so that white -- so that's what comes to my head.

19 Q. So the large white utility van. Okay, I just wanted
20 to be clear for the record that that's what you did see
21 the defendant driving.

22 A. Yes, ma'am.

23 Q. Okay, thank you so much, Mr. Logan. That's all I
24 had, Your Honor.

25 JUDGE GIBBONS: Is there any --

1 MR. FRICK: Nothing further, Your Honor.

2 JUDGE GIBBONS: All right, thank you, sir, you
3 can step down.

4 MR. LOGAN: Thank you.

5 JUDGE GIBBONS: All right, call your next
6 witness. He needs to help his wife up.

7 MS. LIVELY: Felicia Logan.

8 JUDGE GIBBONS: All right, ma'am. I'll let
9 you do this one, Madam Clerk, if that's okay. You
10 want to -- I'll swear her in. All right. And,
11 Ma'am, if you'll raise your right hand, please. Do
12 you swear or affirm that the testimony you give will
13 be the truth, the whole truth, and nothing but the
14 truth, so help you God?

15 MS. LOGAN: Yes.

16 JUDGE GIBBONS: Thank you, have a seat there.
17 Watch out for that microphone, just pull it to your
18 face when you're seated. All right.

19 FELICIA LOGAN

20 was called as a witness, and having been first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LIVELY:

24 Q. Ms. Logan, you're married to James Logan, correct?

25 A. Yes.

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1 Q. And your first name is Felicia; is that right?

2 A. Yes.

3 Q. And I'm not going to get into some of the stuff I
4 know you have two boys, correct?

5 A. Yes.

6 Q. And y'all live in Indian Land?

7 A. Correct.

8 Q. All right. So, and so all the same information; so,
9 thank you. Do you work, Ms. Logan?

10 A. I do.

11 Q. Where do you work?

12 A. I work for -- you want the name of the company?

13 Q. Just what do you do?

14 A. I am a certified life coach, and a case manager; so
15 I work in the arena of social work.

16 Q. All right, thank you. And what are your sons ages
17 now?

18 A. So they are 11 and eight.

19 Q. Eleven and eight. And Ms. Logan, we've already
20 heard your husband testify, so I'm just going to go ahead
21 and get straight to that day on July the 10th of 2022. I
22 understand y'all were coming from Florida and heading
23 home and getting ready to go on another trip to DC, is
24 that pretty much it?

25 A. Yes.

1 Q. Okay. Now, Ms. Logan, where were you seated in the
2 vehicle when y'all were on I-77?

3 A. On the passenger side.

4 Q. And so your husband was driving, correct?

5 A. Yes.

6 Q. Please tell the jury what you remember happening
7 that particular day, a little after 5:00 p.m., that
8 immediately caught your eye?

9 A. So, immediately catching my eye was a white van. I
10 mean, if I describe it in my words it shot past us, so to
11 the point where like the wind would shake the car. And
12 so I'm sitting in the front seat and I see that van shoot
13 by and I said, oh, my God, he -- I say, he -- they need
14 to slow down, what are they doing. I mean, and it's just
15 accelerated from there and I was like oh, my God -- so
16 I'm telling my husband as the passenger/driver I am, you
17 need to slow down, they're gonna -- he's gonna hit them.
18 He's gonna hit them. And I -- and I say, he's not gonna
19 even stop. I mean, I was screaming, he's not gonna stop.
20 So I'm telling him, you need to slow down 'cause he's
21 gonna hit those people. I mean, he never braked. I was
22 sitting up in that car and I was screaming at that truck
23 -- van and I was like he's not gonna stop. He's not --
24 'cause there was no brakes, there was no lights. I
25 didn't see the car -- the Ford Explorer ahead of the van,

1 I didn't see them brake. I said, oh, my god they don't
2 see him. They don't see him. They don't see him. And
3 at this point I give everything a gender, boy, cat, any -
4 - anything is he. So, I was like he don't see him, he
5 don't see him. And that's when he made contact. I mean,
6 it seemed like it accelerated. I mean, it was just going
7 faster with no stop in sight, and that's when if I would
8 say anything maybe you know how when you first notice
9 something in the rearview mirror and you take your -- you
10 have just enough a second to take your foot off the gas,
11 maybe that's what I -- I mean, I was right standing there
12 looking and maybe that's probably could've what happened
13 to the Ford Explorer, but there was no stopping from that
14 van at all. I mean, that van hit that -- the Ford
15 Explorer, the Ford Explorer went to the right, the van
16 went to the left over the rail guard, and my husband came
17 to a stop in the road, and I -- I was in disbelief. My
18 children saw the whole thing, they witnessed the whole
19 thing, they were up out of those seats screaming. They
20 were in car seats as well, and they were screaming,
21 Mommy, Mommy, there's a accident. My husband jumped out
22 the car. He goes around, we're still like -- we pulled
23 over but not over, over, like on the shoulder of the --
24 we're in the middle of 77. Like there was no cars along
25 side of us. There was only cars in the back of us at a

1 complete stop. And it was the accident right ahead. And
2 at this point the Ford Explorer is to the right, the van
3 is to the left. I jump out the car. I go to the --
4 'cause my kids had that window down and they was like
5 they was gonna help out. And I said don't move. I go
6 around our car and I go -- 'cause they had already ran
7 over there, and I was like let me see if anybody is in
8 this van. So, that's when the guy who was driving the
9 van gets out and I said are you okay. I said, are you
10 okay, and he got down on the ground right -- my feet --
11 I'm standing there and he got on the ground and he was
12 just like what happened, what happened. Got up and went
13 over to go check on -- he came back, he said, ma'am, that
14 baby is dead. That baby is dead. And I said what do you
15 mean the baby is dead? What are you talking about? He
16 was laid out on the ground right at my feet. And I said,
17 were you asleep? Were you asleep? What were you
18 thinking? Did you see those people? Why did you hit
19 those people? I was screaming at him as though I was
20 just -- I -- I couldn't believe he hit those people,
21 'cause I was screaming the whole time as he shot by us,
22 like stop, stop, what were you doing? Are you on drugs?
23 I mean, I went in. And he was just like, what happened?
24 What do you mean what happened? Were you -- you had to
25 be had your eyes closed. You had to be on drugs. You

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1 had to be on something. So I'm going in while he's
2 saying -- 'cause I think it triggered when he said the
3 baby is dead, I'm thinking what baby, 'cause I had no
4 idea who was in the car. I had no idea it was so severe.
5 I had no idea 'cause I'm over there making sure that the
6 other little Logans that live in our house don't move out
7 of the car. So I'm just in shock at this point. I think
8 he used my husband's phone. Mine was destroyed on
9 vacation. He used my husband's phone. After I called
10 911 -- I'm calling 911 -- before I did all that I called
11 911. But he's using my husband's phone to call some
12 family and all of that and then -- I'm so -- making sure
13 that my kids I'm getting in and out the car with my kids
14 and making sure that they're okay, that they don't get
15 out, 'cause now he's saying there's a baby dead and, you
16 know, it --

17 Q. Ms. Logan, let me -- I know -- was this really hard
18 for you?

19 A. This affected us to the point where we didn't go as
20 planned -- we had to cancel our plans for two days. We
21 tried to get on the road to go to the rest of our
22 vacation with our children up to DC and Maryland, and we
23 cancelled. We made it past Concord and we turned back
24 around. We physically couldn't do it. We couldn't get
25 on the road and drive. So, we was delayed in our

1 vacations. We had to cancel all kinds of things. My
2 kids and my husband and I we slept in the bed together
3 for at least two weeks. It was days that went by. I had
4 to re-sleep train my son, the youngest one. This was
5 very hard for me to return back to work with the level of
6 work that I do and how I help families, but just looking
7 at my own children, this have affected us in a way that I
8 just wouldn't even -- I've never experienced anything so
9 traumatic to see, and then to know the outcome of that
10 was -- it's very difficult.

11 Q. Yes, ma'am. And let me ask you this, because you
12 said that you were sitting in the passenger seat yelling,
13 he's -- he's going to hit them, he needs to slow down, he
14 needs to slow down. Did you ever see him like swerve or
15 make any kind of evasive action like he was trying to
16 miss hitting the back of the Explorer?

17 A. No, not like he was trying to hit it. When he shot
18 past us, he wasn't -- I mean, it wasn't just like, you
19 know, going down a straight line. I mean, he was getting
20 down there, but it wasn't like it was straight like he
21 was attentive, no, not in any way.

22 Q. Now, whenever you called 911 -- and do you remember
23 at that point in time had any actual law enforcement or
24 first responders, fire, EMS, anyone shown up yet?

25 A. No.

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1 Q. All right, so you jumped on 911 to let them know
2 what was going on --

3 A. Yes.

4 Q. -- is that correct? Okay. Your Honor, at this time
5 the State would ask to publish -- well, let me move into
6 evidence her call, which is also on State's Exhibit
7 Number 1, which is her 911 call that day to dispatch.

8 JUDGE GIBBONS: Any objection?

9 MR. FRICK: No objection.

10 JUDGE GIBBONS: Without objection, admitted,
11 permission to publish.

12 MS. LIVELY: Thank you.

13 (AUDIO PLAYS)

14 911:

15 Chester County Dispatch. Hello? This is Chester
16 County.

17 MS. LOGAN:

18 Hello?

19 911:

20 This is Chester County.

21 MS. LOGAN:

22 Hi, I just witnessed a accident on 77 in Chester.

23 911:

24 So it'd be the 67 northbound?

25 MS. LOGAN:

1 It's in Chester. We -- my husband and I witnessed
2 (inaudible).

3 911:

4 Are you on interstate 77?

5 MS. LOGAN:

6 We're on the interstate 77.

7 911:

8 EMS 4, need you to respond I-77 northbound 67 mile
9 marker for a vehicle accident. EMS 4, respond I-77
10 northbound 67 mile marker for a vehicle accident.

11 MS. LOGAN:

12 (Inaudible) on both sides.

13 911:

14 I'm sorry, we're getting Highway Patrol and
15 everybody on the way, okay?

16 MS. LOGAN:

17 Yeah, y'all need to come quick.

18 911:

19 They're on the way.

20 MS. LOGAN:

21 (Inaudible) paramedic.

22 911:

23 Yeah, we're getting the ambulance and the fire
24 department on the way.

25 MS. LOGAN:

1 I'm sorry, what you say?

2 911:

3 We're getting the ambulance and fire department and
4 rescue on the way.

5 MS. LOGAN:

6 Yeah. Okay, all right.

7 911:

8 All right.

9 MS. LOGAN:

10 It's going towards Charlotte, it's on the side going
11 towards Charlotte.

12 911:

13 Right, northbound, we got it.

14 MS. LOGAN:

15 Okay.

16 911:

17 All right, thank you.

18 (AUDIO STOPS)

19 BY MS. LIVELY:

20 Q. And Ms. Logan, you testified just a little while ago
21 about what you saw in regards to what the Explorer --
22 what you saw from the back of the Explorer. did you ever
23 see the Explorer's brake lights come on?

24 A. I did not.

25 Q. And you never -- and did you say you never saw the

1 Defendant's brake lights come on?

2 A. He never braked.

3 Q. Braked, okay. I thought that's what you said. At
4 any time did you ever actually walk up to the Explorer at
5 -- to either join your husband or did you stay with your
6 children (inaudible).

7 A. I stayed with my children.

8 Q. And after Mr. Palmer, the Defendant, the driver --
9 you don't know Mr. Palmer do you?

10 A. No.

11 Q. Okay. So, when he used your phone or asked to use
12 your phone, did he say why he needed your phone? Did he
13 say anything about his phone or do you recall --

14 A. He was kind of mumbling and saying I -- I can't go
15 back to jail. I can't go back to jail.

16 MR. FRICK: Objection, Your Honor.

17 JUDGE GIBBONS: Sustained.

18 BY MS. LIVELY:

19 Q. What I'm asking is did he say anything about having
20 a phone?

21 MR. FRICK: Judge, can we --

22 JUDGE GIBBONS: Yeah, y'all can approach.

23 (BENCH CONFERENCE)

24 JUDGE GIBBONS: Ladies and gentlemen, I need
25 to take up a matter. Let me have y'all head on back

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1 to your jury room. Don't say anything about the
2 case, okay.

3 (JURY EXITS)

4 JUDGE GIBBONS: All right, Mr. Frick.

5 MR. FRICK: Your Honor, based on the testimony
6 that was just stated from the stand, that my client
7 could not go back to jail, I think that is referring
8 to him being released from custody out of North
9 Carolina. I don't think that that would -- one, I
10 don't think that would come in at all. I know the
11 Solicitor and I have some disagreement about that,
12 and we would litigated that would my client testify,
13 but it is has certainly not come up at this time. I
14 think it's inappropriate. I don't think that
15 there's any curative instructive that you can give
16 that would unring that bell, and I would ask for a
17 mistrial.

18 JUDGE GIBBONS: What's the State's -- I don't
19 need to hear anything from anybody in the audience.
20 I understand, this is a very tense and horrible time
21 for y'all, but please how you act in the courtroom
22 affects how the jury sees it, which goes toward the
23 issue of a mistrial. I want this over with just as
24 bad as y'all do, okay. Madam Solicitor, what's your
25 response?

1 MS. LIVELY: Yes, Your Honor. The -- the
2 statement she made going back to jail that could be
3 like a misdemeanor or someone gets, you know, like a
4 disorderly conduct. I mean, it was not specific to
5 any particular situation, and I didn't even know
6 that -- she's never said that in any of her
7 statements prior to now, so it's not one of those
8 things that was out there in regards to -- she
9 doesn't know --

10 JUDGE GIBBONS: You probably need to talk to
11 your witnesses and tell them to stick what their
12 statements are.

13 MS. LIVELY: I do.

14 JUDGE GIBBONS: Okay, well --

15 MS. LIVELY: And that -- and that's the thing,
16 and so really, it's kind of, you know -- it's one of
17 those things, Your Honor, I believe that it can
18 definitely be cured by curative instruction at this
19 point, because under the circumstances the defendant
20 -- you know, the fact that he -- whether or not he
21 said I can't go back to jail, I can't go back to
22 jail, it was not in relation to necessarily any
23 specifics as to what that particular situation was.
24 So, under -- you know, in that regard, I would ask
25 that the Court give a curative instruction at this

1 point and allow us to continue to go forward. I
2 don't think it's one of those things where I can't
3 go back to jail for, I'm just going to say it in the
4 sanctity of this room, for, you know, helping hide a
5 dead body. I mean, it's not like we got to the
6 level of what that was. It could've been a DUI. It
7 could've been a, you know, disorderly conduct. And
8 so, under those circumstances I think it's --

9 JUDGE GIBBONS: If he testifies, does he have
10 any criminal record that the State would try to use
11 to impeach his credibility.

12 MS. LIVELY: Yes, and that was one of the
13 things that I've already talked to about to Mr.
14 Frick and also the fact that he was on pre-trial
15 detention and was not even supposed to be out of the
16 state of North Carolina.

17 JUDGE GIBBONS: Well, I understand that.

18 MS. LIVELY: Right.

19 JUDGE GIBBONS: Of course, we're not going
20 into that.

21 MS. LIVELY: No, no, no.

22 JUDGE GIBBONS: But I understand that.

23 MS. LIVELY: Yes, sir.

24 JUDGE GIBBONS: But I mean as far -- he does
25 have then a criminal record. What's the offense

1 that he was convicted of that the State would seek
2 to impeach his credibility if he chooses to testify?

3 MS. LIVELY: Okay, I just wasn't prepared to
4 get into that right this moment. I think it was a -
5 - yeah, of moral turpitude, I think he's got like
6 larceny of a vehicle. I don't know if that was --

7 JUDGE GIBBONS: From what year?

8 MS. LIVELY: Breaking and entering. Oh, yeah,
9 that's the thing, is I'm looking at and it looks
10 like these are old, so I'd have to go back and look.

11 MR. FRICK: Your Honor, my client indicates it
12 was from 2004.

13 MS. LIVELY: Okay, I'm looking.

14 JUDGE GIBBONS: Okay.

15 MS. LIVELY: So, it looks like probably those
16 would be -- he's got a 2011 as well, which looks
17 like a driving without a -- I don't know what DWLR
18 is. And then he had a gun charge, it looks like
19 that one was still pending. So, yeah, he's got --
20 I'll have to just go into North Carolina and kind of
21 -- and ask to confirm what those actual charges were
22 'cause since we ran the actual NCIC right after this
23 happened I just need to make sure that there's
24 nothing else on here that I've missed.

25 JUDGE GIBBONS: So the conviction is from

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1 something more than 10 years old?

2 MS. LIVELY: More than 10 years old, correct.

3 JUDGE GIBBONS: But the State would seek to be
4 offering that --

5 MS. LIVELY: Absolutely.

6 JUDGE GIBBONS: -- as a crime of moral
7 turpitude.

8 MS. LIVELY: Moral turpitude, which I know
9 would be discretionary, and I know it's outside the
10 10 year range, that's something that the Court can
11 just decide whether or not it's something --

12 JUDGE GIBBONS: Well, you know, this is kind
13 of premature to go through this right now.

14 MS. LIVELY: Right.

15 JUDGE GIBBONS: But I'm asking that for the
16 purpose of me deciding whether or not the Defense
17 motion for a mistrial is --

18 MS. LIVELY: Right.

19 JUDGE GIBBONS: -- Mr. Frick had spoken with
20 this client about, you know, whether or not he
21 wishes to testify knowing that the State could
22 possibly cross-examine him on any prior convictions,
23 well, then maybe that's why he -- this witness said
24 what he blurted out or whatever. You understand
25 what my mind is thinking?

1 MS. LIVELY: Oh, absolutely, yeah, I do.

2 JUDGE GIBBONS: Anything else?

3 MS. LIVELY: No, that's it from the State,
4 Your Honor. It's just that we believe that a
5 curative instruction will handle that, and that was
6 something that we discussed pretrial obviously as to
7 whether or not he takes the stand and what could or
8 wouldn't come in.

9 JUDGE GIBBONS: Okay.

10 MS. LIVELY: We just had not addressed until
11 it became a factor.

12 JUDGE GIBBONS: Yes, sir.

13 MR. FRICK: And we had not reached a
14 conclusion on that.

15 MS. LIVELY: Right.

16 MR. FRICK: I'm not conceding that they can
17 get that in there. I'm not conceding to the 2004.
18 They have not complied with 609(b) which requires
19 them giving notice if they're going to do something
20 with a conviction that's more than 10 years or
21 older. So -- and I know none of us were at the
22 point where we're even really looking at that. But,
23 we are not on notice and that is required by 609(b).

24 JUDGE GIBBONS: Okay. While the jury is out,
25 proffer from this witness, anything else the

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1 Defendant may have said?

2 MS. LIVELY: Okay.

3 BY MS. LIVELY:

4 Q. Tell me, Ms. Logan, back to you. It's okay, you're
5 not in trouble.

6 JUDGE GIBBONS: You're not in trouble.

7 BY MS. LIVELY:

8 Q. You're not in trouble. What else did the Defendant
9 say? My question was asking about his phone, and that he
10 -- did he come up to you and ask you if he could use your
11 phone?

12 A. Yes.

13 Q. Okay. And then tell us everything that he said,
14 since the jury is not in here, tell us everything he
15 said.

16 A. What I just said is what he was saying as he sat on
17 the ground, and he said he needed to call his family.

18 Q. What did he say about going back to jail?

19 A. He just said I don't want to go back to jail. I --
20 I -- I can't go back to jail. I don't want to go back to
21 jail. That's all he said.

22 Q. That's all, so just specifically that statement?

23 A. Yeah, nothing else.

24 BY JUDGE GIBBONS:

25 Q. So other than saying that he said can I borrow your

1 phone I need to call my family?

2 A. Yeah, he was like I need to call whoever -- whatever
3 family it was. I don't -- I don't recall if it was his
4 brother or -- I don't -- I -- I can't remember who it
5 was, but the family kept --

6 JUDGE GIBBONS: Okay, what's her statement
7 say?

8 MS. LIVELY: Her statement, Your Honor, that I
9 have is --

10 JUDGE GIBBONS: Has she looked at the
11 statement?

12 MS. LIVELY: Oh, yeah, I emailed it to her.

13 JUDGE GIBBONS: Okay. I mean, that -- I know
14 you emailed it to her, that doesn't mean she looked
15 at it. That's why I'm asking --

16 MS. LIVELY: And actually --

17 BY JUDGE GIBBONS:

18 Q. Have you looked at your statement that you gave --
19 you're not in trouble. But have you looked at your
20 statement you gave law enforcement?

21 A. I don't -- I don't recall looking at my statement at
22 all, uh-uh (negative).

23 JUDGE GIBBONS: All right, well let her look
24 at the statement and then --

25 MS. LIVELY: And also the -- I let you listen

1 to the 911 call, correct?

2 MS. LOGAN: Anyone have any readers, 1.5?

3 JUDGE GIBBONS: You know, while the witness is
4 reading this, let's say I just outright -- well,
5 I've already sustained the objection, the question
6 is whether or not I give a curative instruction
7 versus the drastic remedy of a motion for mistrial,
8 why wouldn't him allegedly stating that if that's
9 what this witness has testified to and believe --
10 and remembers and of course I would -- and if a
11 written doesn't -- that's not on her written
12 statement, certainly that goes to her credibility
13 and we'd have the prior inconsistent statement
14 directed to the jury. I mean, why would that not be
15 a statement against the interest which would be
16 allowed in the rules?

17 MR. FRICK: 'Cause it's highly prejudicial
18 under 403.

19 JUDGE GIBBONS: Well, it is highly
20 prejudicial.

21 MR. FRICK: Well, it is unfairly prejudicial.

22 JUDGE GIBBONS: Okay. All right.

23 MR. FRICK: I can't go back to jail. I mean -
24 - and I'm already dealing with implicit bias from a
25 guy who's been described as looking like Bob Marley.

1 So, I mean, just when you put all those factors
2 together it becomes very problematic, and I think
3 when you put all that together it becomes unfairly
4 prejudicial.

5 JUDGE GIBBONS: Understood. All right. Did
6 you have a chance to review your statement?

7 MS. LOGAN: Yes.

8 JUDGE GIBBONS: All right, thank you. You can
9 take the statement back. Anything else you want to
10 proffer from this witness while the jury is out?

11 MS. LIVELY: Well, Your Honor, just in regards
12 to when Ms. Logan was actually interviewed briefly
13 by audio from one of the MAIT team -- I'm sorry, 15
14 minutes in.

15 BY MS. LIVELY:

16 Q. And do you recall, I mean, I don't want to have to
17 play everything, so do you recall ever saying that to
18 MAIT Investigator Rivett? Did he ever say anything about
19 I can't go back to jail?

20 A. I honestly can't remember if I said that during that
21 statement at that time.

22 Q. Isn't that a brief summary of what your statement
23 was to Rivett? And you may not know where to look and
24 that's -- and I understand you haven't been to Court
25 before, so I understand that, but I'm just going to just

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1 mention this came from the Multi-disciplinary Accident
2 Investigation Team.

3 A. So is that on the scene or was that --

4 Q. That's when he called you a few days later.

5 A. Okay, Uh-huh (affirmative).

6 Q. Okay. And the statement you just now read there's
7 no mention of Mr. Palmer, the Defendant, saying I can't
8 go back to jail (inaudible).

9 A. Not on that statement, no.

10 MS. LIVELY: And, Your Honor, you know as an
11 officer of the Court I can play (inaudible) and I
12 think Mr. Frick he could also play it where that
13 statement was never made in the accident audio
14 recording, and it's not in the notes from the MAIT
15 team that she ever made that statement.

16 JUDGE GIBBONS: All right, so the first time
17 this witness has made that statement about what the
18 defendant said or allegedly said was in this witness
19 stand in front of this jury?

20 MS. LIVELY: Yes, sir. I just think that
21 under the circumstances, like I said it -- I don't
22 think it's unfairly prejudicial. I under -- 'cause
23 it's not in the context of what that means or
24 anything that of us know in regards to what his
25 circumstance was from North Carolina. And I believe

1 that a curative instruction could handle it, or you
2 can attack her credibility in regards she never told
3 anyone that, we can even play her statement that
4 Rivett took --

5 JUDGE GIBBONS: Well then that just keeps the
6 -- that just keeps the unfairly prejudicial, as Mr.
7 Frick has argued, statement going.

8 MS. LIVELY: I know.

9 JUDGE GIBBONS: Whereas, if I could give the
10 jury a curative statement, and I just an hour and a
11 half ago, I told them if I sustain an objection,
12 that means the question cannot be answered and it
13 should be disregarded or them -- that they should
14 not set -- so -- all right, I'm gonna deny your
15 motion for mistrial, let me get to the heart of it,
16 okay. Your motion is noted for the record. You're
17 protected in the record. I am going to give this
18 jury a curative instruction and we will proceed --
19 don't answer that way I just told you not to answer,
20 since it wasn't on any previous statement or
21 anything. If it's repeated again that would be
22 grounds for a mistrial.

23 MS. LIVELY: Your Honor, that was going to be
24 my last question was why she let him use her phone.

25 JUDGE GIBBONS: Okay.

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1 MS. LIVELY: That's pretty much -- and like I
2 said, I just didn't know that was going to come. I
3 can ask that question again in a different --

4 JUDGE GIBBONS: No.

5 MS. LIVELY: Okay, that's (inaudible).

6 JUDGE GIBBONS: We're going to move on from
7 that.

8 MS. LIVELY: Yes, sir. I'm -- I'll just say
9 no further questions when they come back out.

10 JUDGE GIBBONS: Okay. Mr. Frick, anything
11 else?

12 MR. FRICK: Judge, I'll just make my
13 contemporaneous objection. I understand what you
14 have ruled, and I understand that we have been
15 advised that unless I make a contemporaneous
16 objection after you give the curative instruction,
17 then I am not protected on this.

18 JUDGE GIBBONS: Oh, you're right. And you can
19 do that without me looking at you funny. All right,
20 sounds good. All right, everybody straight?

21 MS. LIVELY: Yes, sir.

22 MR. FRICK: The only question I got is does
23 she need a pair of readers, 'cause I got (inaudible)
24 so I can read. I got a pair downstairs.

25 JUDGE GIBBONS: I got an extra pairs; I got

1 all I need. Go ahead and get your readers.

2 MS. LOGAN: Thank you.

3 JUDGE GIBBONS: If you need some more.

4 UNIDENTIFIED MALE: I got some.

5 JUDGE GIBBONS: All right. Everybody good?

6 MS. LIVELY: Yes, sir.

7 JUDGE GIBBONS: All right. Sounds good. All
8 right, bring the jury in.

9 (JURY ENTERS)

10 JUDGE GIBBONS: All right, thank you ladies
11 and gentlemen of the jury. Before we took a break I
12 ruled on an objection. I sustained an objection,
13 and remember what I told you, ladies and gentlemen,
14 I denied -- I sustained the objection after the
15 witness had answered the question, okay. And as I
16 told you earlier before you were -- before we
17 started this trial, when I sustain an objection,
18 that means the answer to the question cannot be
19 answered, okay, and you're not supposed to speculate
20 about what the answer would be, okay. I sustained
21 that objection after the witness had responded,
22 okay. So, what the witness shall not and cannot be
23 considered by you in any manner whatsoever. What
24 she said, if you recall, or if you heard it, is not
25 in evidence in this case and cannot be used by you

1 lights.

2 Q. Okay. And just to be clear, obviously, you heard
3 the 911 call, that is you on the 911 call?

4 A. That is me.

5 Q. And you made that phone call right after this
6 incident occurred, correct?

7 A. Yes.

8 Q. Okay. And you did let him use the phone, correct?

9 A. Yes.

10 Q. And he used that phone to call family?

11 A. Yes.

12 Q. To your knowledge?

13 A. Yes.

14 MR. FRICK: Beg the Court's indulgence one
15 second.

16 JUDGE GIBBONS: Okay.

17 MR. FRICK: Thank you, ma'am, that's all the
18 questions I have.

19 JUDGE GIBBONS: Any redirect?

20 MS. LIVELY: No, thank you, Your Honor.

21 JUDGE GIBBONS: Thank you, ma'am, you may step
22 down. You're free to leave. Y'all can leave.

23 Thank you, sir. Thank you, ma'am, watch your step.

24 All right, you can call your next witness.

25 MS. LIVELY: Yes, Your Honor. The State would

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1 call Latoya Parker to the stand.

2 JUDGE GIBBONS: Latoya Parker. Is she in the
3 back?

4 MS. LIVELY: I think either that or she's in
5 the -- if she's not in the side room she might be in
6 my office.

7 JUDGE GIBBONS: All right, ma'am, come up
8 here. Watch your step. If you'll raise your right
9 hand, please. Do you swear or affirm that the
10 testimony you give will be the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 MS. PARKER: I do.

13 JUDGE GIBBONS: Thank you, ma'am. Just have a
14 seat there and watch the -- yes, ma'am. Watch the
15 microphone as you have a seat. There you go. Now
16 pull it back to you. There we go. All right, yes,
17 ma'am.

18 MS. LIVELY: Thank you, Your Honor.

19 LATOYA PARKER

20 was called as a witness, and having been first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LIVELY:

24 Q. Ms. Parker, please tell the jury what your
25 occupation is.

1 A. A registered nurse.

2 Q. And what's your full name?

3 A. Latoya Parker.

4 Q. Latoya Parker. What was your name back in 2022?

5 A. Latoya Green.

6 Q. Latoya Green. And you've gotten married since then?

7 A. Yes, ma'am.

8 Q. Okay. And where are you currently working?

9 A. Piedmont Medical Center, Fort Mill.

10 Q. Prior to then, where did you work?

11 A. I was a travel nurse and I worked at MUSC Chester.

12 Q. So were you working at MUSC Chester on July the 10th
13 of 2022?

14 A. Yes, ma'am.

15 Q. And as a matter of fact did my office get in contact
16 with you because we were trying to find Ms. Latoya Green?

17 A. Yes.

18 Q. All right. So, Ms. Parker, once we were actually
19 able to locate you, did you recall actually being at work
20 at the time of an individual being brought in for a motor
21 vehicle collision?

22 A. Yes, ma'am.

23 Q. Tell the jury what you remember about that; I know
24 it's been a while.

25 A. Yeah.

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1 Q. But just tell them kind of what you remember
2 initially about what was going on.

3 A. I only remember him just coming in kind of
4 aggressive when they first brought him into the room,
5 that's kind of all I remember, kind of yelling. He --
6 well I do remember him yelling saying it doesn't matter
7 now, you know, it's already happened, stuff like that.

8 Q. And did you know anything about the incident that
9 occurred that actually brought him to your ER?

10 A. Before he came in they always give us like a brief
11 report about what happened, not really details, just kind
12 of like -- it was like MVC, restrained driver, stuff like
13 that, when they first come in.

14 Q. Okay. So, for them to give you that information is
15 that to help you assist him if he needs any kind of
16 treatment or medical attention?

17 A. Yes, ma'am.

18 Q. So, at that time -- have you had a chance, I think I
19 sent you his medical records, was there anything of
20 significance that he had injuries or anything that needed
21 to be handled?

22 A. I think he complained about some abdom -- abdominal
23 tenderness, so they had to do a CAT scan, and I think he
24 had like some injuries to his arm, maybe some abrasions
25 we had to like fix up, so.

1 Q. Was he conscious, coherent, talking?

2 A. Oh, yeah.

3 Q. Yeah?

4 A. Yeah, uh-huh (affirmative).

5 Q. All right. And I think you mentioned the words you
6 used was he was aggressive --

7 A. Uh-huh (affirmative).

8 Q. -- or he was --

9 A. Well he was kind of yelling at the staff and the EMS
10 workers when they brought him in and the officers that
11 was there.

12 Q. Now, what was your role once law enforcement -- or
13 once you actually had contact with the defendant, Mr.
14 Palmer, what was your role at that time regarding what
15 you were supposed to do with him?

16 A. We had to start a IV, get blood work, get urine, I
17 think like after the scans we kind of dressed his arm,
18 gave him something for pain.

19 Q. Do you recall whether or not you had to actually
20 sign a form in regards to the collection of any blood or
21 urine from the defendant?

22 A. I -- yes, ma'am, I did.

23 Q. Do you recall that?

24 A. Uh-huh (affirmative).

25 Q. Okay. I'm just going to show you just to refresh

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1 your memory, this document her, and I'm not actually
2 going to put it into evidence, I just want to ask you if
3 you recognize that form and if that established what your
4 role was in regards to collecting any kind of blood or
5 urine that day.

6 A. Yes, ma'am.

7 Q. And do you recall, by looking at that form,
8 approximately the date -- and I don't know if it has a
9 time on there or not, do you remember when that was that
10 you signed that?

11 A. It says 21:08, but I think he came in like a little
12 after shift change, so it was pretty early in the shift
13 when he came in.

14 Q. What time is shift change?

15 A. It's at 7:00 but I feel like he was there maybe like
16 -- maybe like 7:30 or something like, 'cause it was -- it
17 happened really early in the shift.

18 Q. Did he ever say anything to you about the actual
19 collision or what had happened that day?

20 A. I can't remember if he said -- yeah.

21 Q. I understand. I understand. And after you did what
22 this form required you to do, which was the blood and
23 urine draw, did you have any more conversation or
24 anything to do with Mr. Palmer while he was there?

25 A. After the blood draw?

1 Q. Yes.

2 A. What do you mean?

3 Q. Oh, I mean, did you -- in treating him or any type -
4 - anything, 'cause you were the nurse that was there --

5 A. Uh-huh (affirmative).

6 Q. -- while he was at the hospital, correct?

7 A. Yes.

8 Q. All right. So, after you did an assessment, which
9 you've already told us you did.

10 A. Uh-huh (affirmative).

11 Q. Is that correct?

12 A. That's correct.

13 Q. You had -- they did a CAT Scan --

14 A. Uh-huh (affirmative).

15 Q. -- 'cause he said his stomach was giving him pain.

16 A. Uh-huh (affirmative).

17 Q. Right? You have to answer out loud.

18 A. I'm sorry, yes, ma'am.

19 Q. You're fine. And so, after that and doing the blood
20 draw, did you have any more, professionally, any more
21 work that you had to do on behalf of Mr. Palmer while he
22 was at the hospital?

23 A. We had to dress his arm, and then I know I had to
24 give him something for pain, I think I gave him Motrin or
25 something like that. But he was -- he was kind of like -

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1 - I don't want to say belligerent, but he was just kind
2 of like yelling at us, cursing, and I remember him saying
3 that I don't give a F --

4 MR. FRICK: Objection, Your Honor, that'll be
5 hearsay.

6 JUDGE GIBBONS: Sustained.

7 BY MS. LIVELY:

8 Q. Let me ask you this.

9 A. Okay.

10 Q. Don't -- when I'm asking -- did you have to do --
11 other than -- anything else other than dressing his arm?

12 A. Uh-huh (affirmative).

13 Q. That's a yes?

14 A. That's a yes.

15 Q. And once that's done, do you -- were you there when
16 he was discharged whenever he left?

17 A. Yes.

18 Q. Okay, all right. Do you remember about how long he
19 had actually stayed at the hospital at that point?

20 A. Maybe two to three hours at the most.

21 Q. Okay.

22 A. Maybe not even three, yeah.

23 Q. Okay, all right. Thank you, answer any questions
24 the Defense may have.

25 JUDGE GIBBONS: Mr. Frick, your witness.

1 MR. FRICK: Very briefly.

2 CROSS-EXAMINATION

3 BY MR. FRICK:

4 Q. Ms. Parker, you said the medication you gave him was
5 Motrin?

6 A. Yeah.

7 Q. Okay.

8 A. Because he -- he was kind of -- when he came in he
9 seemed like he was kind of under the influence, so when
10 they're like that they don't give them any narcotics or
11 anything, they'll give them like Tylenol or Motrin.

12 Q. Okay.

13 A. Yeah.

14 Q. Okay, all right. But blood work was done?

15 A. We drew labs on him, yes, sir.

16 Q. Okay, all right. Do you recall if you found
17 anything?

18 A. I didn't -- I can't remember if we found anything.

19 Q. Okay, all right. Thank you, that's all the
20 questions I have.

21 JUDGE GIBBONS: All right, thank you, ma'am.

22 You can step down, you're free to leave. You ready
23 for your next witness?

24 MS. LIVELY: Yes, Your Honor. The State would
25 call Captain Scott Darby to the stand.

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1 JUDGE GIBBONS: All right.

2 MS. LIVELY: He should be -- or he might be in
3 my office. He's in my office.

4 JUDGE GIBBONS: Okay. Y'all good? Y'all need
5 a break or anything? At the next break or maybe
6 tomorrow I'll have y'all elect who your Foreperson
7 is going to be, and I'll go over that right before
8 you do it. It just can't be one of the alternates,
9 okay, but I will go over that. All right, sir,
10 raise your right hand. Do you swear or affirm that
11 the testimony you give will be the truth, the whole
12 truth, and nothing but the truth, so help you God?

13 MR. DARBY: I do, sir.

14 JUDGE GIBBONS: Thank you. Have a seat there.

15 All right, Madam Solicitor.

16 MS. LIVELY: Yes, thank you, Your Honor.

17 SCOTT DARBY

18 was called as a witness, and having been first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. LIVELY:

22 Q. Captain Darby, I'm going to ask an obvious question,
23 who do you work for?

24 A. I work for the South Carolina Highway Patrol.

25 Q. And how long have you been with the Highway Patrol?

1 A. February will be 15 years.

2 Q. And what is your actual role currently in -- we're
3 calling you Captain, so what does that mean? What does
4 that entail?

5 A. I am the troop commander of Troop 4, which consists
6 of Cherokee, Union, York, Chester, Fairfield, Lancaster,
7 and Chesterfield counties.

8 Q. And in 2022, like July of 2022, what was your role
9 and title at that time?

10 A. I was a Lieutenant. I served as an operational
11 lieutenant in Troop 4. I responsible for Post C and D,
12 which is Chester, Fairfield, Lancaster, and Chesterfield
13 counties.

14 Q. Did you receive a call on July 10th of 2022
15 regarding a collision that occurred on I-77, it was
16 approximately about 5:15 to 5:30 that day?

17 A. Yes, ma'am, I did.

18 Q. All right, please tell the jury what your response
19 was to that particular collision.

20 A. As a lieutenant, I won't respond to the collision
21 scene itself. Corporal Warlick, who is the supervisor in
22 York County, that was listening out for Chester County at
23 the time, called and told me that they were responding to
24 a collision on the interstate and it was reported to
25 involve a fatality.

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1 Q. And so once you learned that information, who is it
2 that you then contact or what is your next step in making
3 sure things are proceeding the way they should?

4 A. Depending on the circumstances involved in the
5 collision, I'll ask Corporal Warlick some questions that
6 he would be able to answer due to being on the scene.
7 And based on his answers to those specific questions it
8 would determine whether we're going to use our
9 reconstruction unit or not. And if I get certain
10 information from him involving the collision I will get
11 the MAIT team involved, which is our reconstruction unit.

12 Q. And just to kind of cut to the chase, did the MAIT
13 team end up getting requested by you in this particular
14 matter?

15 A. Yes, ma'am, they did.

16 Q. All right. Now, let me ask you about -- you already
17 said you didn't go to the actual scene of the collision
18 on I-77, but what if anything did you respond to and do
19 to assist in this case?

20 A. Due to the fact Corporal Warlick was a brand new
21 supervisor, and there's a lot of things on the
22 administrative side that we had to take care of in
23 serious collisions, I responded to the Chester County
24 hospital where he and Trooper Dye were at the time, to
25 just provide assistance to him on the administrative

1 side.

2 Q. Okay. And administratively what was one of the
3 things that had to be done based on the information --
4 well, let me back up a minute. Did you actually get the
5 chance to see the nurse, Ms. Parker, before she left here
6 today -- or did you see the nurse, Ms. Parker, that
7 worked for Chester Regional Medical Center that was there
8 on the night whenever you were there?

9 A. Yes, ma'am.

10 Q. Okay. And based on information that you were
11 gathering in real time, as this case was unfolding, was
12 there a need at that point for you to make an assessment
13 of the Defendant, Mr. Palmer?

14 A. Yes, ma'am, there was.

15 Q. Okay, so please tell the jury then what you did as a
16 result of the information that you were receiving and
17 your own personal observations?

18 A. In serious wrecks the first thing that we need to
19 determine if there's any impairment involved in the
20 collision, because that can transition it from being a
21 misdemeanor wreck to a felony wreck, which would involve
22 felony DUI. So we start to have ask questions about
23 impairment. I made contact with the Defendant in one of
24 the trauma bays at the Chester ER, and just in normal
25 conversation I was talking to him about the collision, if

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1 he was okay. Normally we would try to do a standardized
2 field sobriety test, but due to the fact that he was in
3 the hospital bed itself and unable to stand up at that
4 time due to being treated, I couldn't do a standardized
5 field sobriety test. So, what I did was some modified
6 things. One of the tests we look for when they're
7 standing is the horizontal gaze nystagmus test, which is
8 just fancy for saying you're looking for the involuntary
9 jerking of the eyes, which can suggest or indicate that
10 they either have a central nervous system depressant or
11 alcohol in their system. I did not see any horizontal
12 gaze nystagmus. Then I also checked him for vertical
13 gaze nystagmus; I did not see any vertical gaze
14 nystagmus. And I'm a certified drug recognition expert,
15 which allows me to conduct an evaluation on someone to
16 determine if there is impairment caused by a drug
17 category. One of the things that we can do during that
18 evaluation is look for lack of convergence. Basically,
19 that's fancy for saying you look to see if they can cross
20 their eyes or not. You start with your finger 12 to 15
21 inches in front of their face, you go in a circle, and
22 then you come close to the bridge of their nose and you
23 tell them if the eyes feel like they want to cross, go
24 ahead and let them do that. When I did it on the
25 defendant I did see lack of convergence, which is an

1 indication that may be some drugs are in their system.

2 Also, another thing we do is look at the conjunctiva of

3 their eye, which is the pink on the backside of the

4 eyelid. Normally it's pink. We have them pull down

5 their eyelid and we look to see if it's red or not. And

6 I compared the redness to tomato soup, that's the color

7 that it typically is, and that's an indication of drugs

8 in the system as well.

9 Q. So, is this something that you would do standard in
10 any case where it's a collision of this, where there's a
11 possibility where you need to possibly rule out an
12 impairment?

13 A. We typically do it to rule out impairment when a
14 fatality is involved. But, based on other information
15 that I was given at the hospital and while en route to
16 the hospital it kind of led us to believe that possibly
17 there was some impairment involved in the collision so it
18 -- it caused us to dig a little bit deeper than we
19 normally would have.

20 Q. That was going to be my follow-up question to you,
21 Captain Darby, what other information, like you said was
22 kind of coming out in real time, regarding things that
23 were being found on scene of the collision and
24 specifically the defendant's vehicle?

25 A. While they were processing the vehicle on scene,

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1 some narcotics were located in the defendant's vehicle.

2 Q. And based on the fact that those narcotics, or what
3 were believed to be narcotics, obviously at the time, was
4 that another layer to you doing the testing and in order
5 to determine whether or not there was a possibility of
6 impairment by the defendant?

7 A. Yes, ma'am. In conjunction with the drugs being in
8 the vehicle, and it was my understanding at the time
9 there were several witnesses of the defendant's driving
10 prior to the collision, which would lead to someone
11 believing bad driving took place, it's fair to assume
12 that impairment was in place and that's why we went with
13 the additional steps.

14 Q. Based on that information that you gathered, and the
15 totality of those circumstances from both the scene, the
16 bad driving you just mentioned, the narcotics found in
17 the defendant's vehicle, did you then go to a Magistrate
18 in regards to a search warrant for a blood and urine --
19 for a blood draw?

20 A. Yes, ma'am. I drafted a search warrant, wrote the
21 synopsis and the reason I was requesting the blood draw,
22 made contact with Judge Williford, it was after hours at
23 that point, she met me at the Chester County Magistrate's
24 office and signed the search warrant.

25 Q. And just to explain to the jury, Captain Darby, is

1 there also concern with regards to timing from whenever
2 you actually have to do a blood draw of a defendant if
3 you do have concerns that there's a possibility of
4 impairment?

5 A. Yes, ma'am, there is.

6 Q. So, is that also something that you take into
7 consideration in regards to getting that blood drawn from
8 the defendant?

9 A. Yes, ma'am.

10 Q. Was the blood actually drawn then at the Chester
11 Hospital?

12 A. Yes, ma'am, it was.

13 Q. Okay. The search warrant itself, was it provided to
14 either Warlick, who was the supervisor, or Dye who was --
15 and do you recall if it was Dye, he was the lead
16 investigator, the Trooper, at that time?

17 A. Yes, ma'am, once I got the search warrant signed by
18 the Magistrate I returned to the Chester County Hospital,
19 and at that point I handed it all to Corporal Warlick who
20 was still on the scene, and Trooper Dye is the one that
21 actually served the warrant.

22 Q. At any time when you were with the defendant,
23 without telling me anything he said, all right, don't
24 tell me anything he said, but did you make any
25 observations about his behavior in your presence?

1 A. Yes, ma'am.

2 Q. Okay. Tell the jury what you observed.

3 A. While I was at the hospital either in the room
4 itself where the defendant was, or just outside the room,
5 it was clearly evident that the defendant was having
6 drastic mood swings, going from one end of the spectrum
7 to the other. At one point he would be weeping and
8 sobbing, carrying on a conversation, then screaming and
9 yelling.

10 Q. And was this something also that you know that in
11 regards your concerns about any kind of possible
12 impairment or something else going on with the defendant?

13 A. Yes, ma'am.

14 Q. Now, after this blood was actually taken by -- it
15 was actually Nurse Parker there, where was the blood sent
16 for toxicology screening?

17 A. It would've been entered into evidence and
18 ultimately sent to SLED for processing.

19 Q. So after you did that part, what was your role in
20 regards to a plan for follow-up investigation from any
21 specialized team with Highway Patrol?

22 A. I would communicate with the MAIT team and let them
23 know that -- what we were actually looking for in their
24 reconstruction of the collision. And I would also make
25 contact with the Highway Patrol Victim's Advocate.

1 Q. And at any point in time did you give your
2 recommendation as to what exactly a MAIT investigation
3 needed to include?

4 A. Yes, ma'am.

5 Q. And what was that? Can you tell the jury that,
6 please?

7 A. To map the scene, which is they'll come out with all
8 their equipment and they'll fly drones and stuff, take
9 pictures, and they'll do a CAD mapping, which is an exact
10 representation of the scene where the vehicles were.
11 They'll process each vehicle, do a mechanical evaluation
12 of each vehicle, and then they'll download the airbag
13 modules, that will give you speeds of -- of both of the
14 vehicles, and they will do follow-up interviews in
15 reference to the collision itself.

16 Q. Once you gave your recommendation, do you basically
17 hand off the baton to the MAIT team to follow-through
18 with all those recommendations?

19 A. Yes, ma'am. Once I do the request and let them know
20 that what we're actually looking for, they take it over
21 from that point, and they just report back when they're
22 complete with their investigation.

23 Q. Were you involved with deciding what the charges
24 were going to be for Mr. Palmer at that time, based on
25 the totality of the circumstances you had related to the

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1 drugs that were found, his behaviors, the bad driving,
2 and the possibility, you didn't know at that time what
3 the blood might actually come back as?

4 A. Yes, ma'am.

5 Q. And what were those charges?

6 A. Due to the evidence that we had at that time, the
7 indicators of impairment that the defendant was
8 displaying, we pursued charges for felony DUI death and
9 felony DUI great bodily injury at that time.

10 Q. And the felony DUI with death, was that for the
11 death of John Maxwell Shanks?

12 A. Yes, ma'am.

13 Q. And as for the great bodily injury, was that for
14 Thomas Corey Shanks?

15 A. Yes, ma'am.

16 Q. Were there other charges brought in regards to the
17 drugs that were seized?

18 A. Yes, ma'am, there were.

19 Q. Now, you obviously are (inaudible) by being here
20 today that those charges did change in regards to the
21 defendant prior to us coming here to court today; is that
22 right?

23 A. Yes, ma'am.

24 Q. I'm not going to ask you about the toxicology, we'll
25 wait for the toxicologist on that. But other than that,

1 in kind of some of follow-up that you did in regards to
2 this case, is there anything else that you did or were
3 involved in regarding the investigation of this case?

4 A. No, ma'am.

5 Q. And whenever you gave your recommendation to the
6 actual MAIT team, do you even have anything to do with an
7 overview of their final reports actually provided to the
8 State as well as the Defense?

9 A. No, ma'am. Once they take over the case, they're an
10 independent unit within the Highway Patrol. They will
11 complete their investigation, send it through their chain
12 of command, and it has to go through a vetting process
13 with the Incident Review Committee. Once that IRC
14 confirms or approves that report, they submit it --
15 submit their findings to all the stakeholders.

16 Q. So all of that would be provided through the MAIT
17 team who you make the recommendations to?

18 A. Yes, ma'am.

19 Q. Is there anything else that you did that I haven't
20 asked you about here today that you think would be
21 important for this jury to be aware of?

22 A. No, ma'am.

23 Q. Okay. Thank you so much, Captain Darby. Please
24 answer any questions the Defense may have.

25 JUDGE GIBBONS: Mr. Frick?

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1 MR. FRICK: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. FRICK:

4 Q. Captain Darby, at the time when this incident
5 occurred you were a Lieutenant, you were still supervisor
6 over what occurred in Chester County, correct?

7 A. Yes, sir.

8 Q. Okay. And of course, you're briefed about what
9 occurred in this incident, you're getting phone calls
10 from Corporal Warlick from the scene, correct?

11 A. Yes, sir.

12 Q. And while you didn't respond to the scene on I-77
13 you did go to Chester Hospital, correct?

14 A. Yes, sir, I did.

15 Q. And then you interacted with Mr. Palmer, correct?

16 A. Yes, sir.

17 Q. I'm going to -- I'm going to ask you to look at a
18 report. As a supervising officer over Chester are you
19 aware what that is?

20 A. Yes, sir, it's a SCIBRS report.

21 Q. And kind of what is that?

22 A. It's an incident report that is submitted to SLED
23 for arrest data.

24 Q. Okay. All right, and solely observation, I know
25 you're not the officer that made this report; is that

1 correct?

2 A. That's correct.

3 Q. Who is the officer that actually made that report?

4 A. Trooper Dye is the originating officer.

5 Q. Okay. But you testified under direct examination --
6 you good?

7 A. Yes, sir.

8 Q. You testified under direct examination the -- when
9 you were looking for the lack of convergence under your
10 drug recognition, that was you, correct?

11 A. Yes, sir, it was.

12 Q. At the hospital?

13 A. Yes, sir.

14 Q. Okay. I'm going to show you page two of that same
15 report. Is that your observations?

16 A. No, sir, it's not mine.

17 Q. Okay. Who made those observations?

18 A. It was the person who did this report.

19 Q. All right. So did you do a report of your
20 observations?

21 A. I did not.

22 Q. Okay. All right. Any of your interactions with Mr.
23 Palmer at the hospital are they on body cam?

24 A. No, sir, I've never had a body cam.

25 Q. Okay. All right. In fact was it a policy not to

1 have body cam?

2 A. Due to my position, when we started getting body
3 cams, I think I was a first sergeant at the time when we
4 got body cams, and people in my position and above were
5 not issued body cams, just due to the number that we had
6 a the time.

7 Q. Okay.

8 A. And I've never had one since we -- we've been issued
9 body cams.

10 Q. Okay. All right. So all of your observations about
11 Mr. Palmer's demeanor, they are not captured on any
12 recording to your knowledge? You didn't record it?

13 A. My -- not my observations, no, sir.

14 Q. Okay. All right. Now, I'm not going to ask you
15 about toxicology reports, but are you aware that SLED did
16 test the blood?

17 A. It's my understanding that they did.

18 Q. Okay.

19 A. Yes, sir.

20 Q. After that test came back are you aware that there
21 was some subsequent testing?

22 A. Say that again, sir.

23 Q. After the SLED results of the blood from Mr. Palmer
24 came back, are you aware that there was additional
25 testing that was performed?

1 A. No, sir.

2 Q. Okay. If there was, who would've ordered it?

3 A. I don't know.

4 Q. Okay. And it was based on your observations -- was
5 it as a drug recognition expert?

6 A. Say that again?

7 Q. Your observations of Mr. Palmer, when you were
8 making observations to make the determination that he was
9 under the influence, is that based on your training as a
10 drug recognition expert?

11 A. Yes, sir.

12 Q. Okay. Is that the one that says if you got a green
13 streak on your tongue it means that you've been smoking
14 weed, and you got red eyes it means you're -- I mean, is
15 that -- is that the drug recognition --

16 A. There's a lot of different indicators.

17 Q. Right. And it's all based on just observation of
18 the person, correct?

19 A. That's correct.

20 Q. Okay. No actual testing, it's just -- in this case
21 you looked at his eyes, said his conjunctiva was red, and
22 you said that that would be indicative of being under the
23 influence, correct?

24 A. It can be an indicator of impairment.

25 Q. Can -- well you determined it was, right?

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1 A. In conjunction with the totality of the
2 circumstances I made that determination.

3 Q. And that was his demeanor?

4 A. Well that -- that came into play.

5 Q. Okay. Well did you smell any alcohol?

6 A. No, sir.

7 Q. Did you smell any marijuana?

8 A. I did not.

9 Q. But when you looked at his eyes and they looked red,
10 after he had been crying, you determined he might be
11 under the influence?

12 MS. LIVELY: Objection, he's adding testimony
13 to his question, Your Honor.

14 JUDGE GIBBONS: All right, sustained.

15 BY MR. FRICK:

16 Q. Had he been crying?

17 A. Yes, sir.

18 Q. You said he had been weeping, correct?

19 A. Yes, sir.

20 Q. Okay. When did you look at this eyes?

21 A. When he was laying in the hospital bed.

22 Q. And he was crying just before you looked in his
23 eyes?

24 A. At some point, yes, sir.

25 Q. Okay. And when you looked at his eyes after he had

1 been crying, they were red?

2 A. No, sir, his eyes, the conjunctiva was red.

3 Q. The conjunctiva, okay.

4 A. Yes, sir. Which is the inner --

5 Q. And that --

6 A. -- lining of the eyelid.

7 Q. -- how do you -- I'm not going to ask you to do it
8 to me, 'cause I don't want you to poke me in the eye, is
9 that -- do you just kind of pull down their eyelid like
10 that?

11 A. No, sir, you ask them to pull their eyelid.

12 Q. Okay. And then you look at it?

13 A. Yes, sir.

14 Q. Okay. And I believe you said y'all attempted some
15 kind of field sobriety test, it was a modified test, I
16 mean, because he was in the hospital?

17 A. No, sir, we --

18 Q. It was --

19 A. -- we didn't attempt a field sobriety test. A field
20 -- a standard field sobriety test is a very specific
21 battery of tests that is conducted to determine
22 impairment.

23 Q. Right.

24 A. If someone's laying in a hospital bed you can't do
25 that standardized battery.

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1 Q. Right, but you still conducted an HGN test, right?

2 A. Yes, sir.

3 Q. Okay. And you saw there was smooth pursuit,

4 correct?

5 A. Yes.

6 Q. That was no indication that he was under the

7 influence?

8 A. There was no HGN.

9 Q. Okay. Is it possible that your eyes could be red
10 from crying -- or conjunctiva could be red from crying?

11 A. Based on my understanding I don't -- I don't think
12 so. Your eyes can be bloodshot due to crying, but that
13 doesn't affect the conjunctiva, as far as my
14 understanding is.

15 Q. As far as your understanding goes, all right. I
16 mean, you've had some training in this drug recognition
17 thing, but you're not -- not a medical professional,
18 correct?

19 A. I am not.

20 Q. Okay. Thank you, that's all I got.

21 JUDGE GIBBONS: Redirect?

22 MS. LIVELY: Just briefly.

23 REDIRECT EXAMINATION

24 BY MS. LIVELY:

25 Q. I'm gonna just show you your affidavit in regards to

1 the search warrant, 'cause you had mentioned -- I'm just
2 gonna -- is there one -- is there anything else in that
3 report, you said the totality of the circumstances, you
4 mentioned bad driving, marijuana and crack cocaine found
5 in the car, the conjunctiva, what else?

6 A. Lack of convergence was mentioned in the synopsis,
7 slurred speech.

8 Q. So at that point based on everything you had, is
9 that something, just based on if you were just going to
10 write a ticket, would that be something you just write a
11 ticket for reckless driving at that point?

12 A. No, ma'am. It's -- it's not one of these things
13 would make a determination on what route we take or what
14 charge that we pursue. We look at the whole story and
15 all the -- the bits of information that we have at hand
16 to make a determination. And like I said, we don't make
17 a determination based on just one of these things. We
18 look at all the information that we're provided, the bad
19 driving, the drugs in the vehicle, lack of convergence,
20 redness of the conjunctiva, the -- the drastic mood
21 swings. We make a determination based on all those
22 things put together and paint a picture that there
23 possibly can be some impairment here. And based on what
24 I'm seeing in my opinion I believed that impairment was
25 there at that time.

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1 Q. Thank you. No further questions.

2 MR. FRICK: One question.

3 JUDGE GIBBONS: Yes, sir.

4 RECROSS-EXAMINATION

5 BY MR. FRICK:

6 Q. But ultimately those conclusions were incorrect
7 weren't they?

8 MS. LIVELY: Objection, Your Honor, that's
9 argumentative. And also he's --

10 JUDGE GIBBONS: Objection overruled. You can
11 ask him --

12 BY MR. FRICK:

13 Q. We're not here today on a felony DUI are we?

14 A. We are not. It was later determined to pursue other
15 charges, due to the ability to prove the impairment at
16 the time. But at the time the decision was made I think
17 it was the right decision.

18 Q. Thank you, sir, that's all the questions I have.

19 JUDGE GIBBONS: All right, thank you, sir.
20 You can step down. All right. Y'all good? Y'all
21 need a break? You ready for another witness? Yeah,
22 y'all can leave, thank you, sir. Let me see the
23 lawyers real quick.

24 MS. LIVELY: Yes, sir.

25 (BENCH CONFERENCE)

1 JUDGE GIBBONS: All right, call your next
2 witness.

3 MS. LIVELY: Thank you, Your Honor. The State
4 calls Terry Tinker.

5 JUDGE GIBBONS: All right, raise your right
6 hand, sir. Do you swear or affirm that the
7 testimony you give is the truth, the whole truth,
8 and nothing but the truth, so help you God?

9 MR. TINKER: Yes, sir.

10 JUDGE GIBBONS: Thank you, sir. Have a seat
11 there. Watch the microphone and then pull it to
12 your face.

13 TERRY TINKER

14 was called as a witness, and having been first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. LIVELY:

18 Q. Mr. Tinker, please tell this jury what your official
19 duties are here in Chester County.

20 A. I'm the Chester County Coroner.

21 Q. How long have you been the Coroner?

22 A. Almost 20 years.

23 Q. And you obviously live in Chester County, correct?

24 A. Yes, ma'am.

25 Q. Now, Coroner Tinker, whenever you get a call, just

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1 kind of give the jury an idea of what your

2 responsibilities are and what you actually have to do?

3 A. I respond basically when your first responders get
4 there, whoever is there first, whether it be your fire,
5 EMS, once they do the observation of the scene, if there
6 is a death, I'm notified by either 911, EMS, or I have
7 directly had a phone call from the first responder since
8 I am a retired fireman; they have my number so they just
9 call me.

10 Q. Are y'all a pretty tight knit working together
11 group?

12 A. Yes, ma'am. After 25 years of fire I've got some,
13 you know, friends, dear friends, that are first
14 responders and fireman and whenever they call me they'll
15 -- they'll let me know that it's a bad situation or
16 whatever.

17 Q. All right. So, with these individuals that you've
18 worked with, you kind of know what you're walking into
19 sometimes before you get there; is that what you're
20 saying?

21 A. In a wreck, yes.

22 Q. Okay. And that takes us to what we're talking about
23 here today. Coroner Tinker, would you please just tell
24 the jury how you got the call and what information you
25 received and -- before you actually responded to the

1 collision site?

2 A. Well I get a -- I get a phone call from 911, telling
3 me they have a MVA on the interstate, and we have a
4 fatality; and I don't know age, race, whatever. I don't
5 know.

6 Q. All right, and what was the location that was
7 provided for you to actually respond to?

8 A. I-77 near mile marker 70 -- 67.

9 Q. Sixty-seven, all right. Now, whenever you arrived
10 on the scene, was it just you from your office or who all
11 would've been there?

12 A. I was the first. I have a man that -- that was
13 dispatched but he would be there a little bit later. I
14 was the initial person.

15 Q. And when you got there was there already several --
16 was first responders, EMS, law enforcement present at the
17 collision site?

18 A. Yes, ma'am.

19 Q. And just describe the scene to the jury as to what -
20 - you know, what was going on.

21 A. Whenever I got there, like I said I'm a 25 year
22 fireman, I -- I'm met by some first responders and -- and
23 they're telling me what we have, we have a seven-year-old
24 child, and most of the time they'll describe to me it's
25 bad. And the body was out of the vehicle whenever I got

1 there, and it was covered with a sheet; and they took me
2 to the body.

3 Q. Did you have the name of the -- the actual child at
4 that point in time?

5 A. No, ma'am.

6 Q. Just one second. Coroner Tinker, did you actually
7 have photos taken of the vehicle and the -- the deceased?

8 A. I did.

9 Q. And I'm not going to show any pictures. I'm going
10 to show you this one, which I know we have not actually
11 added to our list, and ask you if you recognize this
12 based on the statements that you just now provided to --
13 and if you, I'm going to have it marked.

14 A. That's my -- that's my picture.

15 Q. That's your picture, okay.

16 A. Yes, ma'am.

17 Q. Let me grab that back. I just wanted to be sure I
18 had it right.

19 MR. FRICK: Judge, I have a matter of law I
20 need to put on the record.

21 JUDGE GIBBONS: Okay.

22 MS. LIVELY: All right.

23 JUDGE GIBBONS: All right, could I see it?

24 MS. LIVELY: Sure.

25 JUDGE GIBBONS: All right, ladies and

1 gentlemen of the jury, let's take a brief recess and
2 then we'll get you right back out here. This is the
3 last witness of the day, okay, so don't talk about
4 the case, all right.

5 (JURY EXITS)

6 JUDGE GIBBONS: All right, the jury is out,
7 what's the matter of law?

8 MR. FRICK: Judge, the picture the Solicitor
9 was showing me there is of the decedent, I recognize
10 that it does not show the actual body, it does not
11 show any blood, I recognize that, but I mean, we all
12 gonna know that that is the deceased seven-year-old
13 who is under that sheet. I do not think it's
14 necessary for them to introduce that picture. I
15 think it's unfairly prejudicial, and it's not
16 necessary for a presentation of the case. We've
17 already had testimony about the condition of the
18 child. So the picture, while not gory, I will
19 admit, just is inappropriate and I think it should
20 be disallowed under 403.

21 JUDGE GIBBONS: All right. Madam Solicitor?

22 MS. LIVELY: Your Honor, the thing is is that
23 the -- Mr. James Logan talked about how they
24 actually cut the seatbelt and removed the child from
25 the vehicle, that's kind of an unusual thing that

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1 happened. Usually what will happen is if the child
2 is deceased, normally it would be like a first
3 responder or a Coroner is there, kind of, you know,
4 they're assessing the situation. He has to actually
5 go up to the body and see the body and make a
6 determination legally about the child actually being
7 deceased.

8 JUDGE GIBBONS: Well ask him that.

9 MS. LIVELY: I'm going to. And I what I
10 wanted to do is I wanted to show -- that's where
11 when they were saying they were trying to shield the
12 child from being seen by anyone, that's where the
13 child was. That's what the -- what the witness
14 actually said. It doesn't show any blood. It
15 doesn't show anything at all. What we're showing is
16 that's where he was whenever the Coroner had to go
17 and actually make his assessment of the child.

18 JUDGE GIBBONS: Okay.

19 MR. FRICK: Can I see it again, real quick?

20 JUDGE GIBBONS: Yeah.

21 MS. LIVELY: You don't see any shoes, you
22 don't see feet, you don't see anything.

23 JUDGE GIBBONS: I get it.

24 MR. FRICK: I mean, Judge, I -- I just don't
25 know that it shows a clear picture of location even.

1 JUDGE GIBBONS: All right. I'm going to
2 sustain the Defense objection. You know, the
3 Coroner can testify about everything you just said.
4 He can testify about the condition of the body. He
5 can testify about how the restraint was -- he can
6 testify about all of that, but I tend to agree with
7 the Defense that it's more prejudicial than it is
8 probative. So I'm not going to allow in State's
9 Exhibit 83. The information that the State is
10 seeking to get in, and get into evidence without
11 this photo coming in, okay. Understood?

12 MS. LIVELY: Well, I understand, Your Honor.
13 I don't necessarily -- I understand what you're
14 saying, and I will question him about it based on
15 your ruling, but I just think that that is not
16 prejudicial. I think in fact it goes in line with
17 everything that's already been testified to, but I
18 agree -- I agree I understand your ruling.

19 JUDGE GIBBONS: Proffered exhibit -- Madam
20 Court Reporter, this is State's Proffered Exhibit, I
21 guess for the purpose of a proffer Number 1, so the
22 record would be clear. So, Madam Clerk, hand that
23 to the Court Reporter, and have her mark that as
24 Proffered Number 1. I think that's how we do it.

25 (State's Proffered Exhibit 1

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1 was introduced into evidence)

2 JUDGE GIBBONS: All right, anything else that
3 is kind of a gray area for this witness --

4 MR. FRICK: Yeah, I would just ask could we go
5 over what other pictures we might -- I know we kind
6 of shuffled everything around and we're all kind of
7 --

8 MS. LIVELY: These I think have already been
9 marked, right. No, they have not. These are --

10 UNIDENTIFIED FEMALE: No, similar ones, but
11 not these.

12 MS. LIVELY: All right. So this is where he
13 is seated in regards to -- and Griffin was sitting
14 here, and then this just shows the actual
15 (inaudible) into the vehicle. And then this one
16 where Corey had to be extracted -- extricated from
17 the vehicle. These are the ones (inaudible).

18 MR. FRICK: Can I ask (inaudible).

19 MS. LIVELY: No, that's fine, go ahead.

20 JUDGE GIBBONS: Are there going to be any
21 issues with those?

22 MR. FRICK: Judge, I do not object to these.
23 There is one that does show I would say a minimal
24 amount of blood, but I -- it shows where the child
25 is seating, I don't object to that particular photo.

1 It doesn't show the child at all, it just shows --
2 shows some blood.

3 JUDGE GIBBONS: Sure. All right. And again,
4 I'm not limiting this witness's testimony at all,
5 except to the fact of that photo coming in. I want
6 the record to be clear on that. Okay.

7 MR. FRICK: And just for purposes of cross-
8 examination, I got a couple that I would like to ask
9 him about just to make sure that I've got the right
10 ones.

11 JUDGE GIBBONS: Okay. Y'all want to do it
12 outside the presence?

13 MR. FRICK: If I could just go ahead and do
14 it, it won't take me two minutes here.

15 JUDGE GIBBONS: Okay.

16 MS. LIVELY: Are these ones he took?

17 MR. FRICK: That's my understanding.

18 MS. LIVELY: Okay.

19 JUDGE GIBBONS: All right, go ahead and do
20 that and then out of order. This is proffered
21 testimony outside the presence of the jury. Mr.
22 Frick, go ahead and ask Mr. Tinker --

23 PROFFERED EXAMINATION

24 BY MR. FRICK:

25 Q. Coroner Tinker, did you --

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1 A. Yes, sir.

2 Q. -- did you go down to the van?

3 A. I did.

4 Q. And you took some pictures there --

5 A. I did.

6 Q. -- correct? I'm going to show you three pictures
7 that I have not yet marked, but I'm going to see if you
8 recognize them. Are those --

9 A. Yeah.

10 Q. -- pictures that you took?

11 A. That's probably mine. That one's mine. And this is
12 probably mine.

13 Q. Okay, all right, thank you, sir.

14 A. Since I was the only person up there, other than the
15 two highway patrol taking pictures.

16 Q. All right, thank you, sir. Those are the questions
17 I got on that.

18 MS. LIVELY: He does recognize those?

19 MR. FRICK: Yes.

20 MS. LIVELY: Okay.

21 MR. FRICK: Can I please go ahead and pre-mark
22 these?

23 COURT REPORTER: (Inaudible) Defendant's or
24 State's

25 MR. FRICK: Defendant.

1 JUDGE GIBBONS: Anything else?

2 MS. LIVELY: No, sir.

3 JUDGE GIBBONS: All right, bring the jury in.

4 MS. LIVELY: All right, I'm going to get you
5 to mark these next three.

6 (JURY ENTERS)

7 JUDGE GIBBONS: All right, thank you ladies
8 and gentlemen, all jurors are present. Resume your
9 questioning.

10 MS. LIVELY: Yes, thank you, Your Honor.

11 BY MS. LIVELY:

12 Q. I believe the last question I asked you Coroner
13 Tinker was where the deceased child was found; is that
14 right?

15 A. He was laying on the ground right beside the
16 driver's door of the -- the Explorer.

17 Q. Okay. Were you the one who -- well, obviously, you
18 got there he was already out of the vehicle; is that fair
19 to say?

20 A. Yes, ma'am.

21 Q. All right. So, I'm just going to show you, before
22 we continue on a little bit further, what's been marked
23 as State's 84, 85, and 86. And ask you are these three
24 pictures three of -- a packet of photos that you provided
25 to the State and to the Defense from when you arrived on

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1 the scene of the motor vehicle collision?

2 A. Yes, ma'am.

3 Q. All right, thank you. Your Honor, the State would
4 move State's Exhibits Number 84, 85, and 86 into
5 evidence.

6 MR. FRICK: No objection.

7 JUDGE GIBBONS: Without objection, introduced
8 into evidence.

9 (State's Exhibits 84, 85, and 86
10 were introduced into evidence)

11 MS. LIVELY: Okay.

12 BY MS. LIVELY:

13 Q. So what I want to do, if you could please, just
14 state to the jury in Number 84, what are we seeing in
15 that particular picture? And then we'll get it back to
16 what you saw when you got there.

17 A. This is the passenger side of the vehicle. The door
18 laying on the ground is the one that was wrapped around
19 the tree, and that's what they had to -- to cut it off to
20 actually get to Corey.

21 Q. Corey.

22 A. The child was -- was taken out of the car, I think
23 they needed the extra space for the fireman to get up in
24 there to actually work on Corey. So, they removed him
25 and put him on the ground, and that's when they covered

1 him with that sheet.

2 Q. Okay. But you weren't there when any of that
3 happened --

4 A. No, ma'am.

5 Q. -- correct? All right.

6 A. No, ma'am.

7 Q. I just wanted to be clear about that. So -- and
8 we'll -- now, I'm going to show you State's Number 85.
9 Were you told where Max Shanks was seated in the vehicle
10 at the time of the collision?

11 A. I was not.

12 Q. You were not. How did you find out where he was
13 seated, once you got there and took those pictures?

14 A. Through the fireman, and first responders, and EMS.

15 Q. Okay. So once you found that out what does State's
16 Exhibit Number 85 show?

17 A. It shows me the middle seat where both children were
18 sitting.

19 Q. Okay.

20 A. The car seat where Griffin was at was -- is removed,
21 and I think the booster seat is actually where Max was
22 sitting on the booster seat.

23 Q. Is where Max was sit -- and that's what that picture
24 Number 85 --

25 A. It shows the --

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1 Q. -- it shows --

2 A. -- the booster seat where he was sitting.

3 Q. And then I'm going to show you State's 86, you just
4 mentioned the booster seat where Max was sitting, is that
5 from the opposite angle?

6 A. That's -- that's standing at the door on the -- the
7 side that's damaged the worst, the passenger side.

8 Q. The passenger side --

9 A. Yes, ma'am.

10 Q. -- which is what you said was damaged the worst?

11 A. Yes, ma'am.

12 Q. Okay. And I'll publish these in just a minute. All
13 right. Now, back to when you got there. And your job as
14 the Coroner -- as Coroner, Coroner Tinker, what do you
15 have to do once you arrive and you learned where Max was?

16 A. The first responders took me on the other side of
17 the car where he was at. He was covered with a sheet.
18 It is my job to -- to come up with cause and manner of
19 death. And when I took the sheet I've got some other
20 photographs of him up under that sheet.

21 Q. And what were your conclusions, Coroner Tinker?

22 A. He died from blunt force trauma.

23 Q. And as a result of that blunt force trauma, and I
24 know this may be an obvious question, is that why no real
25 resuscitative efforts or anything was done by the EMT's

1 when they arrived?

2 A. Yes, ma'am.

3 Q. And would you have received all of those reports and
4 made it a part of your actual investigation and your
5 records of your response that day?

6 A. I did.

7 Q. Was the blunt force trauma to Max severe? You don't
8 have to get into a lot of detail, but was it --

9 A. I think -- I think the whole damage to Max was on
10 the same side that Corey was sitting on. I think his
11 head actually hit the tree.

12 Q. And I understand.

13 A. Causing the severity of his damage.

14 Q. Thank you.

15 A. I'm just trying to be --

16 Q. I know. You've said enough, thank you so much. And
17 his age at the time of his death was, I think it was
18 seven.

19 A. Seven, yes, ma'am.

20 Q. All right. So, while you were there you do all the
21 things in your duties as the Coroner, did you also have
22 an opportunity to be a part of when the troopers went to
23 the defendant's van?

24 A. I was.

25 Q. You were. And were you still taking photographs at

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1 that point in time?

2 A. I was.

3 Q. All right, so tell the jury what you actually saw
4 whenever you were at the van along with the troopers who
5 were also there.

6 A. One trooper actually got up in the van, and he was
7 removing some -- some articles, some cases, and passing
8 it through, and whenever they opened it up there had --
9 there was drug paraphernalia in one of those cases.

10 Q. Okay. All right, is it your job to assist in
11 collection of evidence or drugs or anything like that?

12 A. Whenever -- whenever -- it was not the -- it was not
13 the vehicle that the fatality came in, so I have really
14 nothing to do with whatever is in that other van.

15 Q. I understand.

16 A. My job is cause and manner of the deceased.

17 Q. Okay. However, because that vehicle was a part of
18 the collision, is that the information that you had
19 received?

20 A. Yes, ma'am.

21 Q. So once you received that information is it
22 important for you to also document whatever you can for
23 part of your complete file?

24 A. It was. When -- whenever we open that -- the
25 leather case --

1 Q. Okay.

2 A. -- I actually took pictures of the drug
3 paraphernalia.

4 Q. Okay. So, after you were there, you took those
5 pictures, do you remember which troopers were present
6 whenever those -- whenever those items were collected or
7 they were found?

8 A. I think it was Trooper Dye and Trooper Holland.

9 Q. Okay. And Trooper Holland is sitting here today?

10 A. Yes, ma'am.

11 Q. Okay. Now, Coroner Tinker, once that took place
12 were you present whenever the drugs were actually taken
13 out of the vehicle and -- and Trooper Dye and Holland
14 were actually, I guess, just trying to, I don't know, put
15 the drugs in some type of a container or tried to
16 actually make sure that they had the drugs where they
17 needed to be?

18 A. Once I photographed I was -- the actual one -- one
19 packet was laying on the tailgate, and it was --

20 Q. The tailgate of what?

21 A. Of the vehicle, one of their vehicles.

22 Q. Okay.

23 A. And I made a -- I made a comment, you better hold
24 that piece of tinfoil because it's gonna blow off.

25 Q. Okay.

1 A. And when I photographed that then I was pretty much
2 done with -- with the drugs.

3 Q. Okay. Do you remember what the weather had been
4 that day?

5 A. I think it had rained during the day and the -- the
6 grass and the debris where we was at was muddy.

7 Q. All right. And were you able to actually see any
8 tire marks or anything as a result of that condition that
9 was readily -- that you could readily see yourself --

10 A. Yes, ma'am.

11 Q. -- as you're walking to the van?

12 A. I've got -- I've got photos of that also.

13 Q. Okay, all right. Now, once you actually did what
14 your role was on the scene of the collision, did you have
15 to go anywhere else after that -- after doing that part
16 of your job?

17 A. I went to Piedmont.

18 Q. And who was at Piedmont?

19 A. The entire family.

20 Q. And what is the next thing that you have to do as
21 the Coroner for Chester County whenever you see the
22 family?

23 A. Before I went to Jessica's room, the patrolman and
24 myself, we met with the family. It had been several
25 hours and I think they had been asking questions and

1 Jessica may have been answering questions, you know,
2 wanting to know where -- where Max was, but I met with
3 the family, went over all the details with them, and then
4 we all went to -- to Jessica's room. And myself and the
5 patrolmen were the last two to walk in the room. And
6 Griffin was down on the floor playing and when -- when it
7 was our time to approach the bed where she was at she
8 just -- she told me, she said I know. So, it's -- that's
9 the tough part.

10 Q. And is that one of the things you have to do as the
11 Coroner is the death notification?

12 A. Yes, ma'am.

13 Q. I know you've had other contact with the family
14 since then, but based on the investigation and your role
15 as the Coroner for Chester County, were those your
16 required I guess duties that you had to --

17 A. That was my duties, yes, ma'am.

18 Q. Thank you so much, Coroner Tinker. If you would,
19 please just answer any questions that the Defense has.
20 Your Honor, at this time I just want to publish --

21 JUDGE GIBBONS: Yeah, they're in. You can
22 publish those.

23 MS. LIVELY: Okay, thank you.

24 JUDGE GIBBONS: Just pass those around, ladies
25 and gentlemen, and look at them as long as you want

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1 to. All right. Mr. Frick, your witness.

2 MR. FRICK: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. FRICK:

5 Q. Coroner Tinker, you did a report in this case, as
6 you do in any case, correct?

7 A. Yes, sir.

8 Q. And you document details about what the situation is
9 and --

10 A. Yes, sir.

11 Q. Okay. I'm going to show you this, take a look at
12 it, do you recognize that?

13 A. Yes, sir.

14 Q. And is that your report in this particular case?

15 A. Yes, sir.

16 Q. Okay. Specifically, I want to ask, did you document
17 height and weight in this case?

18 A. Let me see (inaudible).

19 Q. All right.

20 A. It's just a guesstimate.

21 Q. Guesstimate, okay.

22 A. Yes, sir, height and weight.

23 Q. What was your guesstimate?

24 A. Four foot.

25 Q. Okay.

1 A. 70 pounds.

2 Q. All right, thank you, sir. And the Solicitor asked
3 you about taking pictures, it was a hectic scene, there
4 were two other cameras out there; is that fair to say?

5 A. I would guess.

6 Q. Okay.

7 A. I don't know who all was taking pictures.

8 Q. Well, but you volunteered to help take some
9 pictures, correct?

10 A. I always photograph pictures, yes, sir.

11 Q. All right. And the Solicitor asked you about going
12 down to the van. I'm going to show you what's been pre-
13 marked State's -- Defense's 1, 2, and 3. Do you
14 recognize those pictures?

15 A. I would say those are my pictures because I take
16 pictures my -- the highway patrol and myself we both take
17 pictures.

18 Q. Okay.

19 A. The markings are after the highway patrol --

20 Q. Right.

21 A. -- marks every wheel.

22 Q. Right.

23 A. But we try to go back and mark every -- every wheel,
24 every north, where the -- where every four corners are.

25 Q. Right.

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1 A. And that was the travel of the van.

2 Q. I got you. And then I think that's Number 3 there,
3 that's a photograph of -- of a trooper is going through
4 that front part of the van; is that fair to say?

5 A. Right, yes, sir.

6 Q. Okay, all right. And does this fairly and
7 accurately depict what you saw down there at the van?

8 A. Yes, sir.

9 Q. Okay. Defense move 1, 2, and 3 in.

10 MS. LIVELY: No objection.

11 JUDGE GIBBONS: Without objection, entered
12 into evidence.

13 (Defendant's 1, 2, and 3

14 were introduced into evidence)

15 BY MR. FRICK:

16 Q. Now, where you saw the child, you were told that's
17 where he was placed, correct?

18 A. Right. I think they were -- I was told by the first
19 responders that they had moved him where they could work
20 on Corey.

21 Q. Okay.

22 A. And that was from the first responders. They did
23 not take him far from there. They just brought him out
24 and laid him out there beside --

25 Q. Got you.

1 A. -- the driver's door.

2 Q. The first responders indicated that they're the ones
3 that got him out of the car?

4 A. Yes, sir.

5 Q. Okay.

6 MR. FRICK: Beg the Court's indulgence.

7 JUDGE GIBBONS: Yes, sir.

8 MR. FRICK: Judge, I would just ask to publish
9 my pictures as well.

10 JUDGE GIBBONS: Okay.

11 MR. FRICK: And that's all the questions I
12 have.

13 JUDGE GIBBONS: All right, permission to
14 publish granted. Any redirect?

15 MS. LIVELY: No, Your Honor, that's all for
16 the State.

17 JUDGE GIBBONS: All right, thank you, sir, you
18 may step down. You are free to leave as well. And
19 I think I indicated earlier that -- well, okay,
20 let's let them pass that around and then we'll go
21 from there. All right, Madam Solicitor, I believe
22 you indicated that the next witness will be somewhat
23 lengthy, so we wanted to do him in the morning; is
24 that correct?

25 MS. LIVELY: Yes, sir, Your Honor, I think

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1 that'd be a good idea.

2 JUDGE GIBBONS: All right, given the time that
3 it is, they're doing some renovations here ladies
4 and gentlemen, that's why I didn't notice the clock
5 was normally where it is, they're totally renovating
6 the whole area, making it a little bit more secure
7 and everything for Court functions; so that's why
8 it's kind of offset back there. So, what we're
9 going to do is go ahead and break for the evening,
10 and let me instruct you and emphasize again, that
11 while you're away from this courtroom, ladies and
12 gentlemen, you cannot talk with anybody about your
13 service as jurors on this case. Now, I'm not naive,
14 all you may live with or some -- most of you may
15 live with your significant other, and certainly you
16 can say well I'm on a jury, I'm on a jury, I'm on a
17 trial. What kind of trial is it. Well, you can say
18 it's a criminal case that's being prosecuted, and
19 that's it, all right. And just -- and if your
20 person keeps, you know, trying to talk to you about
21 it, you simply say look, the Judge told me I can't
22 talk about it, and I'm not going to talk about it.
23 And I'm -- you cannot pull up any information. You
24 know, all of us have smart phones, most of us do,
25 it's easy to find information these days, but

1 remember your solemn responsibility is to determine
2 -- to determine a verdict from the evidence received
3 in this courtroom and only this courtroom, okay.
4 So, you cannot look up any information about this
5 case, any of the parties involved in this case, or
6 listen to any other news reports or media reports
7 that may go on about this case. Everybody
8 understand? All right, so what we're going to do in
9 the morning when you get here, I want you back in
10 the jury room tomorrow morning at 9:00, okay. I
11 want to hopefully get started soon thereafter. The
12 witness who was supposed to be here today, his wife
13 is in labor as we talk, okay. And that was one of
14 the issues that took us a while to get started,
15 okay. And hopefully he'll have a daughter sometime
16 today and he'll be able to come down here to testify
17 real quick and then head on back, all right. So,
18 that was one of the issues today. So, that's the
19 first witness we'll do. When you get here, ladies
20 and gentlemen, if you're not an alternate and you,
21 you know, consider serving as the Foreperson of the
22 jury, I'll let y'all decide who the Foreperson is
23 going to be. The Foreperson of the jury is the jury
24 spokesperson here in Court. He or she presides over
25 the deliberations, whenever y'all get the case, to

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1 start talking about it, and he or she is the only
2 one who writes on the verdict form whenever that
3 happens. But of course, I'll go over all of -- go
4 over all of that with you. So when y'all get here
5 tomorrow morning, go ahead and start talking about
6 who should be it and who y'all want to be the
7 Foreperson of the trial jury, remember it can't be
8 an alternate, but don't talk about anything else
9 involved in the case, okay. Y'all have a great
10 evening. We'll see you tomorrow morning, all right.

11 (JURY EXITS)

12 JUDGE GIBBONS: Anything else from the State?

13 MS. LIVELY: No, Your Honor.

14 JUDGE GIBBONS: Anything else from the
15 Defense?

16 MR. FRICK: No, Your Honor.

17 JUDGE GIBBONS: All right, thank you. We are
18 in recess until tomorrow morning, 9:00 a.m.

19 (The proceedings were adjourned
20 until 9:00 a.m., October 29, 2024)

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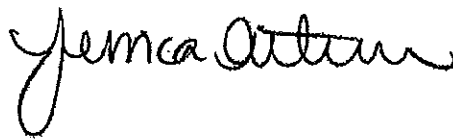
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CERTIFICATE OF TRANSCRIBER

I, Jessica Antonucci, a court-approved transcriber, do hereby certify that I transcribed the electronic recording of the foregoing proceedings in Docket Nos. 2023GS12317, 2023GS12248, and 2023GS12249 held on October 28, 2024, before the Honorable Brian M. Gibbons, and that said transcript is true and correct, all to the best of my knowledge and ability.

I further certify that I am not related to nor the employe of any of the parties or witnesses hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

January 20, 2025



Jessica N. Antonucci

Transcriber

1 October 29, 2024

2 JUDGE GIBBONS: We're on the record, what you
3 got?

4 MS. LIVELY: Yes, sir.

5 JUDGE GIBBONS: Mr. Frick, is it your motion
6 or is it the Solicitor's motion? Or what are we
7 doing?

8 MS. LIVELY: No, it's not a motion. What it
9 is is we need to address some information that could
10 potentially come out with my next two witnesses.

11 JUDGE GIBBONS: Okay.

12 MS. LIVELY: I do not want to take any chances
13 of any potential, you know, inflammatory statements
14 being made about the --

15 JUDGE GIBBONS: Have you talked to your people
16 there about --

17 MS. LIVELY: I've already handled that.
18 That's been handled.

19 JUDGE GIBBONS: -- outbursts.

20 MS. LIVELY: Yes, outbursts and all that, and
21 I told them if it -- if it happens again and Ally
22 can give me some type of a little signal, because
23 I'm not paying attention, she will be removed from
24 the courtroom.

25 JUDGE GIBBONS: Okay.

1 MS. LIVELY: So we've handled that and so
2 we're good. All right, so --

3 JUDGE GIBBONS: As long as that TV there
4 blocking the jury's view, that would be good.

5 MS. LIVELY: Well, it's going to today because
6 I've got a lot of pictures and videos. And, you
7 know, Julia's not here, so be a little patient with
8 me if I look like I can't find what I'm looking for.

9 JUDGE GIBBONS: Of course.

10 MS. LIVELY: Okay, so what we're talking about
11 is we've got Warlick here and Dye's going to be
12 testifying. Both of them were the ones that went
13 back after Darby showed up in the ER with the search
14 warrant, and they were the ones who actually were
15 there whenever the blood was drawn. That's whenever
16 the Defendant became belligerent, aggravated, and he
17 started saying things that were pretty bad towards
18 the child. And so, one of the things, Warlick was
19 in there whenever he was saying stuff like, you
20 know, "So what, I killed a white, kid,
21 you know, "So what that he's dead," and things like
22 that. And the reason why -- you know, he says some
23 other things and, you know, he uses the F word, I
24 mean, there was just -- he was going basically -- he
25 was just very belligerent when he realized he's

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1 potentially being arrested at this point. So, the
2 point that the State is making in regards to wanting
3 with -- is however the Judge wants to limit it,
4 having some of that come in is because there's going
5 to be -- there's testimony that's going to come out
6 through the EMT's and has already kind of come out
7 from some of the lay witnesses, that he was crying
8 and weepy on the side of the road initially, and
9 even ran across the road to see what had happened,
10 and he was saying the baby's dead. Then we've got
11 him going to the hospital, and part of what you're
12 going to see on the recording today with Warlick, is
13 that he's sitting there and he's -- he's kind of
14 very kind of just laying there, talking, he's just
15 very calm. So, whenever he realizes he's being
16 arrested, all of a sudden he showing a completely
17 other dynamic of his personality where he's cursing,
18 he's -- he's showing no remorse. So, I think that's
19 very important, because one of the things that I
20 have to show to the jury is that this defendant,
21 whenever he was acting recklessly, wantonly, he
22 doesn't care about the other people that were on the
23 road.

24 JUDGE GIBBONS: All right, so it goes to his
25 mens rea --

1 MS. LIVELY: Absolutely.

2 JUDGE GIBBONS: -- it goes to his intent.

3 MS. LIVELY: It took me a long time to get
4 there, yes, sir.

5 JUDGE GIBBONS: Which supports the State's
6 theory of recklessness. What's the Defense's
7 position? I mean you've known that -- you've seen
8 the videos.

9 MR. FRICK: Well there's no video of that.

10 MS. LIVELY: There's not a -- no, there's not
11 -- they had the videos turned off.

12 JUDGE GIBBONS: It's just their testimony.

13 MS. LIVELY: Yeah, it's testimony of Warlick,
14 and it's testimony of Dye, he's not here yet because
15 he's going to be here about 9:30, he should be here
16 any minute.

17 JUDGE GIBBONS: Okay. All right, what's the
18 Defense's position?

19 MR. FRICK: I mean, I certainly -- I certainly
20 intend on if the State's not going to play the
21 videos of him being calm at the hospital --

22 JUDGE GIBBONS: Okay.

23 MR. FRICK: So, I -- I would think that the
24 Court would allow her to get into it to some degree.
25 I just would be concerned about what language we're

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1 allowed to talk about.

2 JUDGE GIBBONS: Well, I mean, it's -- it's --
3 it's classic statements against interest. I mean,
4 it is what it is. And certainly witnesses can
5 testify about what the defendant said, you know, and
6 it goes towards the State's theory. Ms. Lively, you
7 indicated to me at the pre-trial conference that we
8 had down in chambers on Friday when we were figuring
9 the witness situation and stuff like that, that you
10 did not intend to elicit the statement he allegedly
11 made saying "F that little kid" or --

12 MS. LIVELY: Yes, sir.

13 JUDGE GIBBONS: -- something like --

14 MS. LIVELY: I don't -- I don't think that
15 that serves any purpose at this point to show that
16 that statement was made. We can show through what
17 was said in regards to his -- I don't even want to
18 say his flippant response or just saying why are --
19 basically he was saying, you know, he's dead, who
20 cares, I killed a white kid, so what. Those types
21 of things to me just shows like I said his mental
22 state, mens rea. And also, I have to prove beyond a
23 reasonable doubt what that state was and for
24 recklessness, I mean, I have to show that he just
25 didn't care.

1 JUDGE GIBBONS: It's prejudicial, but it's
2 probative. So, I mean --

3 MS. LIVELY: But I will not use --

4 JUDGE GIBBONS: -- you can make -- you can
5 make a contemporaneous objection.

6 MR. FRICK: I'm just concerned about the
7 racial issue there. I mean, obviously, I mean, he -
8 - he -- it's an issue, obviously. So, I mean, if --
9 you got to say what you said.

10 JUDGE GIBBONS: Well, you got good jury.

11 MR. FRICK: Do what? I'm sorry.

12 JUDGE GIBBONS: You got a good jury. They can
13 hear that and weigh that. But, I mean, it -- I
14 can't keep a witness from saying what they say the
15 defendant said, you know. I mean --

16 MR. FRICK: I'll just make my objections as
17 appropriate.

18 JUDGE GIBBONS: Of course. And I will make
19 sure your client gets a fair trial, and that's all I
20 can do, you know. But, I mean, I can't keep a
21 witness from saying what they said he said if -- I
22 mean certainly if the State is going to agree to
23 walk him through it finely, then -- and then I think
24 that would be in -- in the long run the best for
25 both sides but, you know, we'll see where it goes.

1 All right, now, Candice, having said that, are your
2 people, being the victim's family, aware of what
3 these witnesses are going to say?

4 MS. LIVELY: No, sir.

5 JUDGE GIBBONS: All right, well --

6 MS. LIVELY: And I need to go tell them 'cause
7 I need -- no, sir. I'm going to tell them right
8 now. Now, the attorney that just walked in here
9 that's kind of helping me with them, she's aware of
10 it, I talked to her about it. But, no, I have not
11 talked to the actual family, so I need to go in
12 there and just tell them real quick.

13 JUDGE GIBBONS: All right, thank you. Ma'am,
14 what's your name?

15 MS. LAWSON: Good morning, Your Honor. May
16 it please it the Court, Jodie Lawson, from
17 McGuireWoods in Charlotte. I'm the civil attorney
18 for the family.

19 JUDGE GIBBONS: Okay, understood. Have you
20 talked to the family about refraining from outbursts
21 and things like that, which could hurt these
22 proceedings?

23 MS. LAWSON: Yes, Your Honor, I have.

24 JUDGE GIBBONS: Okay, good. You know, it's
25 hard to control ones emotions, especially given the

1 subject matter of what we're dealing with, I
2 understand that, okay. There's going to be some
3 testimony this morning, right now, with the first
4 two witnesses who are going to testify about what he
5 allegedly said to them in their presence about, you
6 know, so I killed a -- a white kid, you know, who
7 cares, or whatever, something to that extent. Do
8 they know that? Have you told them that?

9 MS. LAWSON: I will make sure, Your Honor, and
10 everybody understands that we don't want to be
11 disruptive to the proceedings. As you can imagine
12 this is an emotional time for the family.

13 JUDGE GIBBONS: Of course.

14 MS. LAWSON: But I'll -- I will double check
15 that right now, Your Honor.

16 JUDGE GIBBONS: The important thing is, as you
17 understand, as inflammatory this is to the victim's
18 family, and I'm trying to walk a fine line here, we
19 got to make sure this man here gets a fair trial.

20 MS. LAWSON: Understood, Your Honor.

21 JUDGE GIBBONS: Okay? And if they're going to
22 act out like that, that hurts those proceedings on
23 down the line in the event he is convicted.

24 MS. LAWSON: We are on the same page, Your
25 Honor.

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1 JUDGE GIBBONS: And you understand that.
2 We're on the same page.

3 MS. LAWSON: Yes, Your Honor.

4 JUDGE GIBBONS: All right. Why don't you take
5 this moment then, and Candice you take this moment,
6 y'all go speak with them and then we'll get started.
7 Anything else from you Mr. Frick?

8 MR. FRICK: I want to take a bathroom break.

9 JUDGE GIBBONS: Okay, take a bathroom break.
10 Mr. Palmer, you need to go to the restroom or are
11 you good to go?

12 MR. PALMER: I'm okay.

13 (BREAK)

14 JUDGE GIBBONS: Anything else before I bring
15 the jury back out?

16 MS. LIVELY: Not from the State, Your Honor.

17 JUDGE GIBBONS: From the Defense?

18 MR. FRICK: No, sir.

19 JUDGE GIBBONS: The jury has elected juror
20 number 44 to be the Foreman -- Foreperson of the
21 jury. I've made that Court Exhibit Number 1. All
22 right, let's bring the jury out.

23 (Court Exhibit Number 1
24 was introduced into evidence)

25 MS. LIVELY: We've redacted everything on

1 Warlick, State's 2, and it's both of them have been
2 redacted where he says anything about North
3 Carolina.

4 MR. FRICK: And that's the roadside and the
5 hospital?

6 MS. LIVELY: Roadside and that --

7 MR. FRICK: Hospital?

8 MS. LIVELY: -- the ER, yes.

9 MR. FRICK: That's fine.

10 (JURY ENTERS)

11 JUDGE GIBBONS: All right, you're Mr. Elkin?

12 JUROR NO. 44: Correct.

13 JUDGE GIBBONS: All right, thank you, sir.

14 Thank you for agreeing to serve as the Foreperson of
15 the jury. As the Foreman of the jury, you'll be the
16 presiding juror in your jury room during
17 deliberations. You'll also be the jury spokesperson
18 here in court, for like if I ask if y'all need a
19 break or anything I'll look to you. So, you kind of
20 hold the group. And you'll be -- it'll be your duty
21 to write the verdict on the verdict form, whatever
22 your verdict should be, and I'll go over that at the
23 end of the process, okay. So, thank you for
24 agreeing to serve. All right, ladies and gentlemen,
25 we will start this trial this morning. Madam

JURY TRIAL

1 Solicitor, call your witness.

2 MS. LIVELY: Your Honor, may we approach?

3 JUDGE GIBBONS: Yes.

4 (BENCH CONFERENCE)

5 JUDGE GIBBONS: All right, ladies and
6 gentlemen, an issue of law has arisen right when
7 y'all entered the room, and I unfortunately have to
8 send you back out to deal with it. I'll get you
9 back out here just as soon as I can, okay. So, head
10 on back to the jury room.

11 (JURY EXITS)

12 JUDGE GIBBONS: All right, Madam Solicitor,
13 put on the record what you just disclosed to me.

14 MS. LIVELY: Yes, Your Honor, thank you.

15 Whenever the jury came in Trooper -- former Trooper
16 Dye, Cyteco Dye, who was actually on the witness
17 list for the State as a witness, told me that the
18 two gentlemen, the two African American gentlemen
19 that were seated in the very front row, were his
20 cousins. And I asked him when you say cousins, tell
21 me how close, he said first cousins. And I -- I
22 mean, I don't know any other Cyteco Dye's. He's
23 told me -- I mean, you can ask him yourself what he
24 told me, but that is what he told me, and that's
25 when I asked if I could approach, and that's

1 whenever I mentioned it to Mr. -- in Mr. Frick's
2 presence.

3 JUDGE GIBBONS: Mr. Dye, if you'll please
4 stand and raise your right hand. Do you swear or
5 affirm the testimony you give will be the truth, the
6 whole truth, and nothing but the truth, so help you
7 God?

8 MR. DYE: I do.

9 JUDGE GIBBONS: All right, so, which two
10 jurors are your -- do you recognize as your first
11 cousins?

12 MR. DYE: Perez and Jeffrey.

13 JUDGE GIBBONS: Who?

14 MR. DYE: Perez and Jeffrey.

15 JUDGE GIBBONS: Perez, is the last name
16 Colvin?

17 MR. DYE: Uh-huh (affirmative).

18 JUDGE GIBBONS: All right, so that's juror
19 number 26, and who's the other one?

20 MR. DYE: Jeffrey.

21 JUDGE GIBBONS: Ferguson?

22 MR. DYE: Yes, sir.

23 JUDGE GIBBONS: That's juror number 10. And
24 how -- you're first cousins with them through how?
25 They're your momma's brother's children or what?

JURY TRIAL

1 MR. DYE: Father's.

2 JUDGE GIBBONS: They're your father's
3 brother's children or --

4 MR. DYE: Yes, sir.

5 JUDGE GIBBONS: On both sides?

6 MR. DYE: Yes, sir.

7 JUDGE GIBBONS: All right. Thank you, sir.

8 MR. FRICK: Judge, what was the number on the
9 second one?

10 MS. LIVELY: Yeah, what were the juror
11 numbers?

12 JUDGE GIBBONS: Okay, juror number 5-0 and
13 juror number 2-6.

14 MR. FRICK: Judge, I'm just looking at the
15 jury list, those two jurors have the same address of
16 [REDACTED] in Richburg; for whatever
17 purposes that might serve.

18 JUDGE GIBBONS: I don't know what that means.

19 MS. LIVELY: They live together. Or they --
20 well, I don't know what it means either, but now it
21 just kind of adds to the issue that they're at the
22 same address, and they're related to Mr. Dye.

23 JUDGE GIBBONS: What's the State suggest I do?

24 MS. LIVELY: Well, it bothers me one way or
25 the other. I don't need this to be an issue,

1 honestly. I don't think the Court needs this to be
2 an issue for -- we've gotten this far in the trial.
3 We have two alternates and at this point I think the
4 best safest scenario is to replace them with the two
5 alternates, Your Honor.

6 JUDGE GIBBONS: Okay. All right. Mr. Frick?

7 MR. FRICK: Judge, I would ask that we bring
8 them out and question them about their relationship
9 with Mr. Dye, and perhaps question them about their
10 having the same address, and see if that has any
11 effect on their ability to be fair and impartial.

12 JUDGE GIBBONS: Okay, we can do that. Bring
13 me juror 50, Mr. Ferguson, Jeffrey Ferguson.

14 BAILIFF: Judge, you want him in the witness
15 stand here?

16 JUDGE GIBBONS: I just want him to -- yeah,
17 just have him come right here beside me, thank you.

18 (JUROR NO. 50 ENTERS)

19 JUDGE GIBBONS: All right, sir, you're not in
20 any trouble, just come up here for me. All right,
21 and you swear or affirm that the testimony you give
22 will be the truth, the whole truth, and nothing but
23 the truth, so help you God?

24 JUROR NO. 50: Yes, sir.

25 JUDGE GIBBONS: All right. Thank you. And

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1 you are juror number 5-0, Jeffrey Ferguson, correct?

2 JUROR NO. 50: Yes, sir.

3 JUDGE GIBBONS: All right, one of the
4 witnesses here this morning that the State is about
5 to call is a person by the name of Cyteco Dye, that
6 used to be with the Highway Patrol, is not with the
7 Highway Patrol anymore, but he's here to testify.
8 And one of the questions I asked during -- when I
9 was questioning y'all yesterday, all the jurors,
10 was, is any juror related by blood or marriage or
11 have any close personal or social relationship with
12 any of the following names, and I read out -- I read
13 out a different names, one of the names I read out
14 was Cyteco Dye. You didn't stand. You didn't
15 reply. Mr. Dye here, when he walked in, saw you and
16 indicated to the Solicitor's office that y'all are
17 first cousins.

18 JUROR NO. 50: I didn't know -- well, I didn't
19 know his name. I don't know his name.

20 JUDGE GIBBONS: Okay. Do you have any
21 relation whatsoever with Cyteco Dye?

22 JUROR NO. 50: Yeah, we're cousins.

23 JUDGE GIBBONS: All right, what does that mean
24 though? Do y'all -- do y'all get together at family
25 functions --

1 JUROR NO. 50: No.

2 JUDGE GIBBONS: -- or hang out together?

3 JUROR NO. 50: No.

4 JUDGE GIBBONS: When's the last time you
5 talked to him?

6 JUROR NO. 50: We -- I see him at work.

7 JUDGE GIBBONS: Okay, where do you work?

8 JUROR NO. 50: At Giti Tire.

9 JUDGE GIBBONS: Okay. Does he work at Giti
10 Tire?

11 JUROR NO. 50: Yeah.

12 JUDGE GIBBONS: And y'all work in the same --

13 JUROR NO. 50: No, we don't work in the same
14 department.

15 JUDGE GIBBONS: Okay, y'all on the same shift?

16 JUROR NO. 50: No. I work 7:00 to 7:00.

17 JUDGE GIBBONS: Okay. All right, so even
18 though you're blood related -- your dad is related
19 to his dad?

20 JUROR NO. 50: Yeah.

21 JUDGE GIBBONS: Okay. Is your dad and his dad
22 close?

23 JUROR NO. 50: No, my dad's deceased.

24 JUDGE GIBBONS: Okay, your dad is deceased,
25 okay. Who resides in your household, Mr. Ferguson?

JURY TRIAL

1 You have an address of [REDACTED] and does a --
2 does James Colvin live with you?

3 JUROR NO. 50: Yes, sir.

4 JUDGE GIBBONS: Y'all live together?

5 JUROR NO. 50: Yes, sir.

6 JUDGE GIBBONS: How long have y'all been
7 living together?

8 JUROR NO. 50: For a while.

9 JUDGE GIBBONS: And y'all are cousins?

10 JUROR NO. 50: Yeah.

11 JUDGE GIBBONS: Okay. Did you know that Mr.
12 Colvin is also cousins with Cyteco Dye?

13 JUROR NO. 50: Yes, sir.

14 JUDGE GIBBONS: Okay. Have y'all discussed
15 this matter at all --

16 JUROR NO. 50: No, sir.

17 JUDGE GIBBONS: Okay. All right. Can you be
18 fair and impartial?

19 JUROR NO. 50: Yes, Your Honor.

20 JUDGE GIBBONS: All right. Thank you. Thank
21 you, sir, you can go -- head on back to the jury
22 room. Before he gets back in there, send me Mr.
23 Colvin.

24 (JUROR NO. 50 EXITS)

25 JUDGE GIBBONS: While they're out, any

1 additional questions y'all want me to ask Mr.
2 Colvin?

3 MR. FRICK: No, sir, I think that covered it.

4 MS. LIVELY: That's fine.

5 JUDGE GIBBONS: Okay.

6 (JUROR NO. 26 ENTERS)

7 JUDGE GIBBONS: All right, Mr. Colvin, just
8 stand right there. You're good; you're not in any
9 trouble. Raise your right hand. Do you swear or
10 affirm that the testimony you give will be the
11 truth, the whole truth, and nothing but the truth,
12 so help you God?

13 JUROR NO. 26: Yeah.

14 JUDGE GIBBONS: All right, thank you. Again,
15 you're not in any trouble. All right, it's come to
16 my attention, the State let me know this, one of the
17 witnesses they're calling this morning is an
18 individual by the name of Cyteco Dye. Mr. Dye used
19 to be with the Highway Patrol, and he's not with the
20 Highway Patrol anymore, but when he walked in he
21 noticed you and the other gentleman, Mr. Ferguson,
22 and he told the Solicitor that y'all are all first
23 cousins; is that correct?

24 JUROR NO. 26: Yeah (inaudible).

25 JUDGE GIBBONS: Okay. Your father is related

JURY TRIAL

1 to Mr. Dye's father.

2 JUROR NO. 26: My grandfather.

3 JUDGE GIBBONS: Your grandfather.

4 JUROR NO. 26: Yes, sir.

5 JUDGE GIBBONS: Okay. How close are you with
6 Cyteco Dye?

7 JUROR NO. 26: (Inaudible).

8 JUDGE GIBBONS: I'm sorry?

9 JUROR NO. 26: Every (inaudible) I see him
10 (inaudible).

11 JUDGE GIBBONS: Okay. I mean, do y'all get
12 together at family functions?

13 JUROR NO. 26: (Inaudible).

14 JUDGE GIBBONS: All right.

15 JUROR NO. 26: (Inaudible).

16 JUDGE GIBBONS: How close would you say y'all
17 are?

18 JUROR NO. 26: We ain't super close.

19 JUDGE GIBBONS: Okay. Well, one of the
20 questions I asked during when I was questioning
21 about, you know, this case was is any member of the
22 jury panel related by blood or by marriage to any of
23 the following people, and I listed out names, and of
24 course I said Mr. Dye's name, and you didn't stand.
25 Can you tell me why you didn't stand?

1 JUROR NO. 26: I know him as Teet. I ain't
2 knowing his full name.

3 JUDGE GIBBONS: You know him as what?

4 JUROR NO. 26: Teet.

5 JUDGE GIBBONS: Teet?

6 JUROR NO. 26: Yeah, Teet.

7 JUDGE GIBBONS: Okay. All right. And the
8 next issue, your address of [REDACTED], and
9 Mr. Ferguson just told me that y'all -- you and Mr.
10 Ferguson live together; is that right?

11 JUROR NO. 26: Yeah.

12 JUDGE GIBBONS: All right. How long have
13 y'all lived together?

14 JUROR NO. 26: I think I've been there about
15 15 -- 15 years.

16 JUDGE GIBBONS: Okay. Have y'all talked about
17 this case?

18 JUROR NO. 26: No.

19 JUDGE GIBBONS: Can you be fair and impartial?

20 JUROR NO. 26: Yeah.

21 JUDGE GIBBONS: All right, thank you, sir.
22 You can head on back. Get -- if I could get Mr. --
23 you're Mr. Colvin, get Mr. Ferguson out as well,
24 just have them stand out there in the hallway, okay.

25 (JUROR NO. 26 EXITS)

JURY TRIAL

1 JUDGE GIBBONS: All right, Mr. Frick.

2 MR. FRICK: Judge, I mean, you inquired, and
3 they said that they could be fair and impartial.
4 They said they weren't terribly close with him.
5 However, I have concerns that they are cousins with
6 him. They did say that they would see him at
7 gatherings. I also have issues that they live in
8 the same home together. I -- I -- I -- they said
9 they could be fair and impartial, but I don't know.

10 JUDGE GIBBONS: I agree, they did say they
11 could be fair and impartial, but my job as the trial
12 judge is try to ensure a fair trial for everybody,
13 particularly this defendant who's been charged with
14 these crimes. I mean, I -- you know, we have two
15 alternates, ready, willing, and able to move up,
16 okay. The State has suggested, you know, y'all
17 picked this jury, did you use all five -- I can't
18 remember whether you used all five --

19 MR. FRICK: Yes, sir.

20 JUDGE GIBBONS: Yes, you did.

21 MR. FRICK: Yes, sir, I did.

22 JUDGE GIBBONS: But these are the alternates
23 you wanted, so you're replacing two jurors with two
24 jurors you wanted.

25 MR. FRICK: And I did -- I had to use all my -

1 - I didn't use all my strikes on alternate one, I
2 did use all my strikes on alternate two.

3 JUDGE GIBBONS: Right.

4 MR. FRICK: So, for the record.

5 JUDGE GIBBONS: All right. I'll come back to
6 you. What's the State want me to do, disqualify
7 those two jurors?

8 MS. LIVELY: Yes, sir, Your Honor. I just --
9 yes, sir.

10 JUDGE GIBBONS: Okay. I think that's where
11 I'm leaning. Anything else from the Defense?

12 MR. FRICK: No, sir.

13 JUDGE GIBBONS: All right, bring those two
14 jurors out.

15 MS. LIVELY: And whenever you explain to the
16 other juror members what happened I think you might
17 want to discuss how that's going to be -- how you
18 plan on --

19 JUDGE GIBBONS: Oh --

20 MS. LIVELY: -- I just want to --

21 (JUROR NO. 50 AND 26 ENTER)

22 JUDGE GIBBONS: All right. Y'all are not in
23 trouble. Okay, we're going to -- here's what we're
24 going to do, Mr. Colvin and Mr. Ferguson, I'm going
25 to excuse you from the trial of this case, and of

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1 course we'll just move the alternates up to where
2 y'all were. You know, the concerned thing, I know
3 both of you told me you could be fair and impartial,
4 and I'm sure you can, okay, but y'all live together
5 and, you know, what -- I know you both told me y'all
6 aren't discussing this, but it's just like you can't
7 have a husband and wife on the same jury, okay,
8 that's just a -- that's just a rule that we judges
9 have to go by. So, I'm going to excuse you from the
10 trial of this case. We're going to transfer your
11 jury service to sometime in the spring or the summer
12 and you'll get a summons, okay. Good luck to you,
13 sir, y'all are free to leave. Y'all don't have any
14 personal effects in the jury room do you?

15 JUROR NO. 50: I got to get my coat.

16 JUDGE GIBBONS: All right, help him get his
17 coat out of there. And then y'all go ahead and send
18 me the jury down here. All right, good luck to you
19 guys.

20 MR. FRICK: Judge, could I -- before the jury
21 --

22 JUDGE GIBBONS: Yes, sir.

23 MR. FRICK: Could I put something on the
24 record?

25 JUDGE GIBBONS: Yes, sir.

1 MR. FRICK: Judge, as you correctly stated I
2 did use all my strikes, if this information would
3 have come out I would've probably exercised my
4 strikes differently. I would ask at this time for a
5 mistrial because of the failure of those jurors to
6 disclose this information so I could exercise my
7 strikes in a different manner.

8 JUDGE GIBBONS: All right. What's the State's
9 position?

10 MS. LIVELY: Your Honor, I'd like -- you know,
11 whenever we went through the entire process in
12 regards to these individuals, what they've already
13 said is something that they should have disclosed
14 and I agree, he may have exercised his strikes
15 differently, but at this point in time the ones that
16 he did choose are ones that he agreed to and did not
17 ask for any other, you know, extra attempt to bring
18 or --

19 JUDGE GIBBONS: Cause.

20 MS. LIVELY: Thank you, I know, my brain's a
21 little slow this morning 'cause I've been here like
22 all night. So, he did not show or ask a strike for
23 cause, those alternates -- we went through a
24 thorough jury selection whenever we went through
25 everyone that was on the list and for that reason,

1 Your Honor, I believe we both had the opportunity to
2 use our strikes efficiently on who -- or who we
3 thought was in -- you know, someone who would be
4 potentially a good juror for this particular case.
5 So, I know we're -- what Mr. Frick is saying in
6 regards to he may have done it differently. We may
7 all would do it differently at this point knowing
8 what we know. But, I still believe that the jurors
9 that we picked, and the ones that are going to be
10 put onto the jury were properly selected and, Your
11 Honor, there was nothing that I'm hearing now, thank
12 goodness, we're in the second day of trial, where
13 they would be -- there would be a problem with
14 putting those two jurors on our jury.

15 JUDGE GIBBONS: All right. Anything else, Mr.
16 Frick for this record?

17 MR. FRICK: Yes, sir, I -- I would say that we
18 did have core strikes, we had conferences up there.
19 If I had a reason to ask for a strike for cause, I
20 would have. I did on a couple of jurors. So, I
21 didn't have any additional. But that -- it
22 completely changes the game of how I would have
23 exercised my strikes, and I think that is sufficient
24 enough for me to have problems that would request a
25 mistrial at this point.

1 MS. LIVELY: Your Honor, that's an extreme
2 remedy. And also a trial strategy is not really a
3 reason for -- well, it's not a reason for a
4 mistrial, and at this point I think that that would
5 be an extreme remedy with what we're dealing with
6 here, very effectively and very --

7 JUDGE GIBBONS: What about -- what about your
8 witness yesterday blurting out for the first time in
9 two and a half years that, I don't want to go -- he
10 said, "I don't want to go back to jail."

11 MS. LIVELY: Absolutely, I agree with you.

12 JUDGE GIBBONS: For the first time without you
13 knowing about it she just --

14 MS. LIVELY: Yes, sir.

15 JUDGE GIBBONS: -- volunteered that
16 information and the jury heard it, what about that?
17 That combined with this.

18 MS. LIVELY: Right.

19 JUDGE GIBBONS: Tell me.

20 MS. LIVELY: Well that's the reason why I said
21 I don't want -- I didn't want to keep those two
22 jurors because I was concerned even more so by what
23 Mr. Frick brought up to my attention and that these
24 two people are going home, there's no way they're
25 not talking about this case when they go home. I

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1 appreciate them being under oath and saying they're
2 not discussing this case, but just like you said you
3 wouldn't put a husband and a wife on a jury and
4 there's -- because you don't want to take that
5 chance that they're already deliberating and making
6 decisions that's going to influence the rest of our
7 jury. So, I think out of an abundance of caution we
8 had to remove them, plus the fact that they're first
9 cousins with someone -- I can't think of everybody -
10 - I don't know people's nicknames.

11 JUDGE GIBBONS: Well let me throw this back on
12 y'all some, you know, 'cause I'm on the hot seat
13 here, but I mean, you know, y'all have -- y'all have
14 a duty in preparing your case for trial to
15 investigate potential jurors, and of course you do
16 by pulling their rap sheets. I mean, a simple look
17 at the -- I mean, y'all should've seen that they had
18 the same address, and that should've been a red flag
19 that y'all told me about. So, you know, the error
20 just ain't on the Clerk's office or ain't on them,
21 it's a combination of things. So, I'm -- I don't
22 need to say that. Motion for mistrial denied. All
23 right, bring the jury in.

24 (JURY ENTERS)

25 JUDGE GIBBONS: All right, sorry for the

1 delay, ladies and gentlemen. Let me explain to
2 y'all what happened. We had two jurors, and of
3 course y'all can see they're not here anymore,
4 that's because I excused them from the trial of the
5 case. We had one -- one of the witnesses for the
6 State, who is going to be testifying this morning,
7 when he walked in noticed that they were his first
8 cousins. Now why they didn't disclose that, I don't
9 know, okay. Not only that, they also live at the
10 same address, you know, and that's why husbands and
11 wives can't be on the same jury, 'cause you know, I
12 know I instruct y'all and tell you you can't talk
13 about the case when you leave here, but certainly
14 when you have two jurors on the same trial jury,
15 that's an issue, okay. So, my question to you, have
16 y'all had any discussions with them at all about
17 this case? Have y'all had -- and the jury indicates
18 no. Have y'all had any discussions at all with each
19 other about this case? The jury says no. Other
20 than, of course, electing you, sir, as the
21 Foreperson of the jury. All right, well that's kind
22 of where we are at this point in time, so it's just
23 the 12 of you, all right. So, again, I'm going to
24 emphasize, remember one of the things I asked at the
25 very get-go was anybody related by blood or marriage

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1 or have any close, personal, social relationship,
2 with any of the following witnesses, and I listed
3 out names, okay. So, I take you at your word for
4 it, all right, and we're going to go forward with
5 this, okay. Y'all ready? All right, call your next
6 witness.

7 MS. LIVELY: Thank you, Your Honor. The State
8 would call Kenneth Warlick to the stand.

9 THE CLERK: Please raise your right hand,
10 place your left hand on the Bible, and state your
11 full name.

12 MR. WARLICK: Kenneth Warlick.

13 THE CLERK: You do solemnly swear or affirm
14 the testimony you give to be the truth, the whole
15 truth, and nothing but the truth, so help you God?

16 MR. WARLICK: I do.

17 THE CLERK: Thank you, sir. Now if you'll --

18 JUDGE GIBBONS: All right.

19 MS. LIVELY: Thank you, Your Honor.

20 KENNETH WARLICK

21 was called as a witness, and having been first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. LIVELY:

25 Q. Please state your full name for the record.

1 A. Kenneth Warlick.

2 Q. And I see you're wearing your uniform here today.

3 Please tell us where you work.

4 A. South Carolina Department of Public Safety.

5 Q. Where did you work prior to working for the

6 Department of Public Safety?

7 A. I was in South Carolina Highway Patrol division.

8 Q. Okay, so were you in a different division in 2022

9 then you're in now?

10 A. I was.

11 Q. You are, okay. So, and that was -- what was your

12 job duties in 2022?

13 A. As a shift supervisor on Highway Patrol.

14 Q. So you were a trooper. How long had you been a

15 trooper?

16 A. At that point five years.

17 Q. Five years.

18 A. A little over five years.

19 Q. Okay. So when you were working as a trooper, you

20 said something about being a shift supervisor, was that

21 what your position was on July 10th of 2022?

22 A. It was.

23 Q. And what troop did you work for at that time?

24 A. Troop 4.

25 Q. Troop 4. And just tell the jury who -- what actual

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1 counties were included in that troop.

2 A. Troop 4 is made up of seven counties, it's York,
3 Chester, Fairfield, Chesterfield, Lancaster, Cherokee,
4 and Union County.

5 Q. And was there an incident that happened on I-77
6 around 5:00 on July 10th that required your response?

7 A. There was.

8 Q. And you were the shift supervisor, so what did that
9 mean in regards to what you had to do whenever you
10 responded?

11 A. I had to respond to the scene, start delegating what
12 different troopers do, help to keep scene security, make
13 the proper phone calls, notifications, and assist in any
14 other way.

15 Q. All right.

16 JUDGE GIBBONS: Pull that microphone up to
17 you, sir. Thank you.

18 BY MS. LIVELY:

19 Q. So, just want to make sure the jury can hear your
20 responses, okay. All right, so approximately where was
21 the location of the -- of the incident or the collision
22 that you received notice of?

23 A. It was around about the 68 mile marker northbound on
24 77.

25 Q. And so did you go -- was that the first thing you

1 did whenever you got this call was to go to the scene?

2 A. It was.

3 Q. And whenever you arrived there, were there other
4 first responders who were already present?

5 A. Yes, ma'am.

6 Q. Who did you make contact with whenever you first got
7 there?

8 A. Trooper Holland.

9 Q. And is he also part of your Troop 4 group?

10 A. He is.

11 Q. And at that point when you arrived on the scene,
12 just kind of give a general description to the jury, what
13 was the scene like that you were -- that you actually
14 visually saw for yourself?

15 A. It was very chaotic. There was numerous different
16 civilian vehicles stopped. There was numerous different
17 first responder vehicles, as far as fire trucks, EMS,
18 Sheriff's Office. The road was pretty wet, it had been
19 raining some before. There was a white Explorer off the
20 right side of the roadway and right at the wood line, up
21 against a tree, that had took out some trees. There was
22 a van that was in the median in the cable barriers, and
23 there was a bunch of people walking around trying to
24 treat people.

25 Q. And Warlick, at the time whenever you arrived on the

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1 scene, did you active your body worn camera?

2 A. I did.

3 Q. And has that body worn camera been provided to the
4 State and to the Defense as evidence in this case?

5 A. It has.

6 MS. LIVELY: Your Honor, at this time the
7 State would move State's Exhibit Number 2 into
8 evidence at this time.

9 MR. FRICK: No objection, Your Honor.

10 JUDGE GIBBONS: Introduced.

11 (State's Exhibit 2

12 was introduced into evidence)

13 MS. LIVELY: Your Honor, permission to publish
14 to the jury.

15 JUDGE GIBBONS: Permission granted.

16 MS. LIVELY: Thank you.

17 MR. FRICK: Your Honor, I'm going to --

18 JUDGE GIBBONS: Absolutely. There's an extra
19 chair over there.

20 MS. LIVELY: Trooper Warlick, if you'll just
21 sit there, I'm going to play your body worn camera
22 for you for the jury. Let's see here.

23 (VIDEO PLAYS)

24 MALE VOICE:

25 Did you walk through any?

1 MALE VOICE:

2 Say what?

3 MALE VOICE:

4 Did you just walk through (inaudible)?

5 MALE VOICE:

6 Yeah, (inaudible).

7 MALE VOICE:

8 So from what I can gather -- did you say it's a
9 confirmed?

10 MALE VOICE:

11 Confirmed (inaudible).

12 MALE VOICE:

13 Okay.

14 MALE VOICE:

15 -- child on the other side of that --

16 (AUDIO STOPS)

17 BY MS. LIVELY:

18 Q. I'm just going to stop it for a minute. Warlick, if
19 you'll just tell the jury who it is that you're talking
20 to, these two other troopers, so they'll know who they
21 are.

22 A. The one in the traffic vest is going to be Trooper
23 Holland, the one without the vest is going to be Trooper
24 Gordon from Lancaster.

25 Q. Lancaster, okay. All right, so Trooper Holland, is

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1 he the one that's talking to you now?

2 A. He is.

3 Q. Okay. All right, just want to be clear.

4 (PLAYS VIDEO)

5 MALE VOICE:

6 (Inaudible) outside of the car covered up. From

7 what I can gather, that van passed they said --

8 those are witnesses down there.

9 TROOPER WARLICK:

10 Okay.

11 MALE VOICE:

12 In the white car, passed them, struck that car.

13 TROOPER WARLICK:

14 That was moving?

15 MALE VOICE:

16 Yeah.

17 TROOPER WARLICK:

18 Okay.

19 MALE VOICE:

20 That struck that SUV.

21 TROOPER WARLICK:

22 That's over here?

23 MALE VOICE:

24 Yeah.

25 TROOPER WARLICK:

1 Okay.

2 MALE VOICE:

3 They left the roadway, overturned up in the wood
4 line there, came to rest. He went across the center
5 lane, from what witnesses are saying, over the cable
6 barrier, up that side of the median, he was able to
7 steer before he went into oncoming traffic, causing
8 that white car to slam on brakes, that car to rear
9 end that white car, and then he came to rest down
10 there when he was steering back towards the cable
11 barrier.

12 TROOPER WARLICK:

13 All right, thank you. So, this car slams on brakes
14 to be -- avoid getting hit by the van --

15 MALE VOICE:

16 Yeah.

17 TROOPER WARLICK:

18 -- that's already out of control.

19 MALE VOICE:

20 Yeah.

21 MALE VOICE:

22 (Inaudible) based off that he was going to go on the
23 other side (inaudible).

24 TROOPER WARLICK:

25 Right.

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1 MALE VOICE:

2 And I don't even know where a point of impact is.

3 I've got (inaudible) debris in the roadway back

4 there. But I (inaudible) this is where she's

5 (inaudible) that I could see.

6 TROOPER WARLICK:

7 You got a name for the kid who got --

8 MALE VOICE:

9 No, I haven't made it that far.

10 TROOPER WARLICK:

11 Or how old or anything? What's the status of the --

12 was his parents in the car?

13 MALE VOICE:

14 Yeah. I asked one of the passengers, they don't

15 know. They were both transported to Piedmont.

16 TROOPER WARLICK:

17 Okay.

18 MALE VOICE:

19 (Inaudible).

20 TROOPER WARLICK:

21 I saw both of our (inaudible).

22 MALE VOICE:

23 (Inaudible) that one.

24 MALE VOICE:

25 He's right there, that gentleman (inaudible) in the

1 red shirt, he's the driver of the van.

2 TROOPER WARLICK:

3 The one sitting on the ground?

4 MALE VOICE:

5 Yeah.

6 MALE VOICE:

7 Is he the only in the car?

8 MALE VOICE:

9 Far as I know, from what witnesses say. But Dye is
10 interviewing the witnesses down there, put them in
11 their car, 'cause they're kind of emotional right
12 now 'cause they're -- they got two kids. (Inaudible)
13 down there helping. The nurses and bystander that
14 were trying to assist these folks. All right, I'm
15 trying to paint and figure out where that point of
16 impact is. (Inaudible) over there this Ford is
17 leaving the road.

18 MALE VOICE:

19 (inaudible). You need me to do -- or are you gonna
20 (inaudible) this first?

21 TROOPER WARLICK:

22 Do me a favor, since you're (inaudible) southbound
23 (inaudible).

24 MALE VOICE:

25 All right.

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1 TROOPER WARLICK:

2 Or I'm sorry, northbound, yeah. See where he's at,
3 let me know.

4 MALE VOICE:

5 Okay, and then come back up here?

6 TROOPER WARLICK:

7 Yeah, and then just come back over here on this
8 side. And I'm going to get (inaudible).
9 (Inaudible). If you'll make your way towards the
10 county line (inaudible).

11 MALE VOICE:

12 10-4.

13 MALE VOICE:

14 This is the child's name.

15 MALE VOICE:

16 Okay.

17 MALE VOICE:

18 They don't know (inaudible) yet, (inaudible) seven.

19 And I don't -- she's not a -- she's not aware.

20 TROOPER WARLICK:

21 Where is she at?

22 MALE VOICE:

23 She went to Piedmont.

24 TROOPER WARLICK:

25 Okay, she's at Piedmont.

1 MALE VOICE:

2 Uh-huh (affirmative). She's not aware yet, I don't
3 think. They kind of shielded her from what was
4 going on here while they loaded into --

5 TROOPER WARLKICK:

6 So Whiskey Mike.

7 MALE VOICE:

8 She's (inaudible) seat (inaudible).

9 MALE VOICE:

10 (Inaudible) the child.

11 MALE VOICE:

12 (Inaudible).

13 MALE VOICE:

14 They're going to Piedmont?

15 MALE VOICE:

16 I think so (inaudible).

17 (VIDEO STOPPED)

18 BY MS. LIVELY:

19 Q. So at this point, Warlick, when you turn off your --
20 when you turn off your body worn camera sound, are you
21 speaking with other troopers or shift -- not shift
22 supervisors, but other people in charge to report back,
23 do you recall?

24 A. At that time I'm on the phone with, then it would've
25 been Lieutenant Darby, but now Captain Darby.

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1 Q. Captain Darby.

2 A. Yes, ma'am.

3 Q. Okay, all right. He was here and testified
4 yesterday. So, he would've been the one you were
5 reporting back to at that point?

6 A. That's correct.

7 Q. Okay. Is that the -- is that going to be all the
8 sound that we hear from your body worn camera from this
9 actual location?

10 A. Yes, ma'am.

11 Q. Okay. All right. I'll let it play just a little
12 bit longer and then I can turn that off.

13 (VIDEO PLAYS)

14 (VIDEO STOPS)

15 BY MS. LIVELY:

16 Q. So, when you get back into your vehicle at that
17 point, where did you go from there?

18 A. Chester ER.

19 Q. So, was what we saw -- or what we all saw here in
20 the courtroom that was on that body worn camera video,
21 did it reflect what you saw in regards to the pathway of
22 the Explorer after it had been hit by the van?

23 A. Yes, ma'am.

24 Q. And once again, you had already testified that the
25 weather, it had been raining and the roadway was wet; is

1 that right?

2 A. That's correct.

3 Q. Okay. Were you able to, we're not seeing it very
4 closely on here, but were you able to see the pathway of
5 where the van went, and where it ended up whenever you
6 were there, before you left?

7 A. Yes, ma'am.

8 Q. And do you remember what the condition of the van
9 was, could you tell from where you were?

10 A. It had heavy front end damage and wrapped in the
11 median cable wire.

12 Q. It was wrapped in the median cable wire?

13 A. Yes, ma'am.

14 Q. All right. At that time, you -- they were talking
15 about the driver of the van, did you talk to him or make
16 any contact with him before you left to go to the Chester
17 ER?

18 A. No, ma'am.

19 Q. When you did leave, at that time had he already been
20 transported to Chester Regional ER?

21 A. He has been -- or had been.

22 Q. All right. So, whenever you leave the scene of the
23 collision, where did you go?

24 A. Chester ER.

25 Q. And who was there whenever you arrived?

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1 A. Chester -- at the time Chester County Deputy Toal
2 and Mr. Palmer.

3 Q. While he was there did you make initial contact with
4 him?

5 A. I did.

6 Q. And whenever you made initial contact with him, what
7 was the purpose of that initial contact?

8 A. To further the investigation, see where he was
9 coming from, where he was going, if there was any signs
10 of impairment, check on his status, make sure he's okay.

11 Q. So, at this point in time you're just trying to
12 gather additional information for the investigation?

13 A. That's correct.

14 Q. And whenever you went to the ER were you able to
15 actually make contact with him and document that
16 conversation with the defendant by your body worn camera?

17 A. I was.

18 Q. And so has that body worn camera been provided to
19 the State as well as the Defense as evidence in this
20 case?

21 A. It has.

22 Q. Your Honor, this is also part of State's Exhibit
23 Number 2. At this time, and I've already discussed it
24 with Defense counsel, we would ask to publish the actual
25 video of Warlick and Defendant Palmer at the ER.

1 JUDGE GIBBONS: This is part of the exhibit?

2 MS. LIVELY: Yes, sir, it is.

3 JUDGE GIBBONS: All right, permission to
4 publish.

5 MS. LIVELY: Okay.

6 (PLAYS VIDEO)

7 BY MS. LIVELY:

8 Q. Before we get started, who is this that we're seeing
9 in this video? Can you tell?

10 A. Toal.

11 Q. Toal, that would be now Trooper Toal, but he was
12 with Chester County Sheriff's Office prior to that,
13 correct?

14 A. That's correct.

15 Q. Okay, all right. So he was there. And who did we
16 just see to the left side of the screen?

17 A. That was Trooper Dye.

18 Q. Trooper Dye, okay. So he was present as well.

19 (PLAYS VIDEO)

20 MALE VOICE:

21 That's fine. That's fine.

22 MALE VOICE:

23 (Inaudible) apologetic and they're going to go ahead
24 and (inaudible). Best of luck to you man, I'm sorry
25 this happened to you (inaudible).

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1 MALE VOICE:

2 (Inaudible).

3 MALE VOICE:

4 (Inaudible).

5 MALE VOICE:

6 (Inaudible).

7 TROOPER WARLICK:

8 Mr. Palmer, right? Okay. I don't want to --

9 MALE VOICE:

10 All right, boss man, step out of here.

11 TROOPER WARLICK:

12 I don't know right now. I know the other troopers

13 already talked to you on the scene. I'm just going

14 to re-talk, okay, 'cause I'm the on-scene

15 supervisor, all right. It's tight in here. Can you

16 tell me where you were coming from?

17 MR. PALMER:

18 Lugoff, I was helping some people move.

19 TROOPER WARLICK:

20 Okay.

21 MR. PALMER:

22 If I ever find my phone, their address is in here.

23 TROOPER WARLICK:

24 Okay.

25 MR. PALMER:

1 I was trying to find it and call them and tell them
2 (inaudible) turn around (inaudible).

3 TROOPER WARLICK:

4 Okay. Where were you heading to?

5 MR. PALMER:

6 Back to Charlotte or Gastonia, worked up there
7 (inaudible) van and stuff like we took a couch
8 (inaudible).

9 TROOPER WARLICK:

10 Okay. You still living on Belmont?

11 MR. PALMER:

12 No, I never really lived there. That's my pastor's
13 address (inaudible).

14 TROOPER WARLICK:

15 Okay. Where do you live now?

16 MR. PALMER:

17 I (inaudible) address.

18 TROOPER WARLICK:

19 Where you live at?

20 MR. PALMER:

21 Nowhere, in the van.

22 TROOPER WARLICK:

23 You live in the van?

24 MR. PALMER:

25 I got the air mattress and all that (inaudible) and

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1 all my clothes are at that address in Gastonia.

2 TROOPER WARLICK:

3 Okay.

4 MR. PALMER:

5 I took that out so I could help them move.

6 TROOPER WARLICK:

7 All right.

8 MR. PALMER:

9 We were going back to pick up the second load and
10 take it back to Lugoff.

11 TROOPER WARLICK:

12 South Carolina I guess (inaudible).

13 MR. PALMER:

14 We went from Gastonia to Lugoff.

15 TROOPER WARLICK:

16 You don't know the address though, it's in your
17 phone? You said the address for Lugoff is in the
18 phone?

19 MR. PALMER:

20 (Inaudible). (Inaudible) to Gastonia.

21 TROOPER WARLICK:

22 Can you tell me what happened?

23 MR. PALMER:

24 I looked down for a second. I was (inaudible) my
25 phone.

1 TROOPER WARLICK:

2 Okay.

3 MR. PALMER:

4 Something (inaudible) down in the (inaudible).

5 TROOPER WARLICK:

6 You know how fast you were going?

7 MR. PALMER:

8 I really don't.

9 TROOPER WARLICK:

10 You don't?

11 MR. PALMER:

12 I looked down. Like I was just trying to grab -- I
13 was trying to grab my phone. The last thing I
14 remember, I was supposed to call (inaudible) call
15 his friend to help us move (inaudible).

16 TROOPER WARLICK:

17 Trying to get some help moving your stuff?

18 MR. PALMER:

19 Yeah.

20 TROOPER WARLICK:

21 So they were moving from Gastonia to Lugoff? How
22 many trips have you made today?

23 MR. PALMER:

24 One.

25 TROOPER WARLICK:

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1 Just one?

2 MR. PALMER:

3 Started at like 9:00, we didn't leave until about
4 10:00. I locked my keys in the car, people got out
5 there like 11:00, 11:30. For some reason it took an
6 hour and a half (inaudible), drove three hours to
7 get here (inaudible). I was on my way back --
8 really (inaudible) I didn't want to finish doing it.

9 TROOPER WARLICK:

10 All right.

11 MR. PALMER:

12 And (inaudible) then I got -- climbed out the
13 window, tried throwing (inaudible) and stuff out,
14 it's like woah (inaudible) I ran over there. I seen
15 the lady get out the car (inaudible) bloody.
16 (Inaudible) I seen her (inaudible) she's crying
17 (inaudible) and she's like just in shock, and I
18 guess the dudes ran over there on that side of the
19 car and I looked at the other side of the car
20 (inaudible). (Inaudible).

21 TROOPER WARLICK:

22 Gotcha.

23 MR. PALMER:

24 (Inaudible).

25 TROOPER WARLICK:

1 Just hang tight for a little bit, okay. What's
2 hurting on you?

3 MR. PALMER:

4 Stomach.

5 TROOPER WARLICK:

6 Your stomach. You had your seatbelt on? Hurting
7 where the seatbelt was?

8 MR. PALMER:

9 (Inaudible).

10 TROOPER WARLICK:

11 Are you hurting where the seatbelt was basically?
12 You said you come out of the seat. The airbag
13 didn't get you?

14 MR. PALMER:

15 Airbag did get me.

16 TROOPER WARLICK:

17 In your arms? Let me see your arms. Is that what
18 that's from? Or is that from --

19 MR. PALMER:

20 All that's --

21 TROOPER WARLICK:

22 All that right there?

23 MR. PALMER:

24 The skin is all the way off.

25 TROOPER WARLICK:

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1 Probably from (inaudible) had your right hand on the
2 steering wheel. You had your left hand? What
3 window did you climb out of, the driver's? It
4 didn't bust or you just put it down?

5 MR. PALMER:

6 I rolled it down.

7 TROOPER WARLIKC:

8 You rolled it down?

9 MR. PALMER:

10 'Cause I tried to -- I -- I tried to open the door
11 and then I -- I didn't know there was a wire
12 (inaudible).

13 TROOPER WARLICK:

14 Yeah, you got (inaudible)

15 MR. PALMER:

16 And I tried to (inaudible) on the other side, you
17 know, and I saw the wire on that one, and then I saw
18 the wire when I jumped out, and that's when I ran
19 across the street and -- yeah.

20 TROOPER WARLICK:

21 Just hang tight for a little bit, man. They're
22 going to check you.

23 (VIDEO STOPS PLAYING)

24 BY MS. LIVELY:

25 Q. So, Warlick, after this interaction with the

1 defendant, Mr. Palmer, at that time what was the next
2 step or what was gonna happen with Mr. Palmer at the
3 hospital?

4 A. From one he was going to be medically checked to
5 make sure he was okay, and then the other part was while
6 speaking with him I -- I observed him to have red, watery
7 eyes, a little bit of slurred speech. I couldn't smell
8 any alc --

9 Q. Pull that towards (inaudible).

10 A. I couldn't smell any alcohol on him but at -- with
11 the other indications of possible impairment I notified
12 Captain Darby, who then obtained a search warrant for his
13 blood draw to seek a felony DUI.

14 Q. At that time had you been notified by anyone that
15 was still on the scene about things that had been found
16 in the defendant's van?

17 A. I had been.

18 Q. Okay, tell the jury about that.

19 A. I was notified that there was marijuana and crack
20 cocaine located inside the vehicle of the defendant.

21 Q. Would that have given you additional concerns about
22 possible impairment of the defendant on that particular
23 day?

24 A. Yes, ma'am.

25 Q. Now, did you conduct any type of field sobriety or

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1 testing of the Defendant's eyes or any of those type of
2 tests that you do to determine impairment? Did you do
3 any of that?

4 A. No, ma'am, I did not.

5 Q. But at that time based on your training and
6 experience, you pay attention to those things, like what
7 you're looking at visually of a person's eyes, and how
8 they're speaking, and how they're acting?

9 A. Yes, ma'am.

10 Q. Okay. Are you aware whether or not Captain Darby
11 was able to get that search warrant?

12 A. He was able to, and he responded to the hospital
13 with it.

14 Q. When he responded to the hospital with the search
15 warrant, were you present whenever that search warrant
16 was actually provided and eventually served on the
17 defendant, Mr. Palmer?

18 A. I was.

19 Q. And was there medical personnel in the area as well
20 prior to the search warrant actually being executed on
21 the defendant?

22 A. There was.

23 Q. And while you were present, how was the defendant
24 acting just, you know, his actual demeanor at that point
25 in time whenever this was happening?

1 A. At that point in time he is all over the place. He
2 was being aggressive. He was being sad. He was being
3 every which way you could possibly go.

4 Q. Okay. Did he say anything to the personnel as they
5 were attempting to actually draw the blood pursuant to
6 the search warrant?

7 A. I did not hear anything there.

8 Q. You did not hear anything there? How about did he
9 say anything else in regards to the wreck and the
10 individuals of the Ford Explorer?

11 A. He did.

12 Q. All right. Please tell the jury what he said.

13 MR. FRICK: Objection to hearsay, Your Honor.

14 JUDGE GIBBONS: Objection overruled.

15 BY MR. LIVELY:

16 Q. That means you can tell the jury what he said.

17 A. He said, "So what, I killed that white boy."

18 Q. And did he say anything else to you regarding this
19 case at all after that that day?

20 A. No, ma'am.

21 Q. Was the next part of what you did basically is to
22 work with your team as well as former Trooper Dye to come
23 up with the final report for the collision?

24 A. Yes, ma'am.

25 Q. And were you also -- did you assist the MAIT team,

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1 who came in a little bit later, with giving them
2 information that you were able to help get from that
3 collision on that day?

4 A. Yes, ma'am.

5 Q. After you did all of that, was there anything else
6 other than coming here to testify today, was there
7 anything else that you had to do in order to actually
8 investigate this case?

9 A. No, ma'am.

10 Q. Thank you. Please answer any questions the Defense
11 may have.

12 JUDGE GIBBONS: Mr. Frick, your witness.

13 MR. FRICK: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. FRICK:

16 Q. Good morning, Trooper.

17 A. Good morning.

18 Q. So you were on the scene supervisor, is that fair to
19 say?

20 A. Yes, sir.

21 Q. Okay. And it was Trooper Holland that did most of
22 the I guess the work of marking out the scene; is that
23 fair to say?

24 A. That's -- yeah, the first part, yes, sir.

25 Q. But the primary investigator was Trooper Dye; is

1 that correct?

2 A. That's correct.

3 Q. And so everything would've gone through Trooper Dye;
4 is that fair to say?

5 A. Yes, sir.

6 Q. Okay. As far as decisions to make charges, who
7 would've ultimately made those decisions?

8 A. Ultimately the Solicitor's office.

9 Q. All right. As far as a recommendation that would've
10 been made to the Solicitor from Highway Patrol, who
11 would've done that?

12 A. That would've just been all the facts of the case
13 would've been given.

14 Q. But I mean, you're the scene supervisor, you're
15 talking to Darby, I mean, is that the chain of command in
16 this?

17 A. That's correct. I'm passing everything on to the
18 on-call, which is what we would call it, it would've been
19 Darby, and then Darby would be in contact with the
20 Solicitor's office.

21 Q. Okay. About the time you had gotten to the scene on
22 I-77, first responders had already been there, Trooper
23 Holland was already there, another trooper was there,
24 correct?

25 A. That's correct.

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1 Q. Okay. Do you recall about when you got to the
2 scene? I know you don't have the incident up there with
3 you, but.

4 A. I don't. I had a -- I had a little drive. I had
5 just signed on so I was at the house still.

6 Q. Okay. How long did you stay on the scene, do you
7 recall, approximately?

8 A. Say maybe 30 minutes.

9 Q. Maybe 30 minutes, okay. All right. And the body
10 cam we saw there is about 10 minutes long. Is that the
11 only portion of you being on the scene that was recorded
12 by your body worn camera?

13 A. Yes, sir.

14 Q. And again, you didn't -- I'm not trying to minimize
15 your role, but you were relaying the information to at
16 the time Corporal Darby?

17 A. At the time Lieutenant.

18 Q. Lieutenant, sorry.

19 A. That's correct.

20 Q. Okay. And then reporting to Chester ER to see
21 what's going on with Mr. Palmer, correct?

22 A. That's correct.

23 Q. And you did have your body worn camera when you went
24 in there. Is that the first -- what we saw on here, is
25 that your first contact with him?

1 A. The body worn? Yes, sir.

2 Q. Yes, sir.

3 A. Yes, sir.

4 Q. Okay. So you cut it on, you go in there and you
5 talk to him, was that your whole conversation with him?

6 A. No, sir.

7 Q. Okay. About how long did you talk to him, do you
8 remember? Initially, 'cause you stepped out the room;
9 isn't that correct?

10 A. Yes, sir.

11 Q. Okay.

12 A. Total time I was probably with him for over two
13 hours.

14 Q. Okay. That whole day? I mean, at the ER?

15 A. Yes, sir.

16 Q. And that's when you're waiting for the search
17 warrant to come back?

18 A. Waiting for that and then waiting for him to be
19 checked medically.

20 Q. And in a case like this, getting a search warrant's
21 kind of a procedural thing, is that fair to say?

22 A. Yes, sir.

23 Q. I mean, it's y'all's policy to go ahead and get a
24 search warrant to do this, right?

25 A. That's right.

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1 Q. A person can say go ahead and take my blood, right?

2 A. They can.

3 Q. And even if they did that, you'd still get a search
4 warrant wouldn't you?

5 A. That's correct.

6 Q. Okay. Do you know if Mr. Palmer volunteered to give
7 him blood?

8 A. I don't recall.

9 Q. Okay. And you were present when the search warrant
10 arrived, correct?

11 A. That's correct.

12 Q. And I know we said you were there about two hours
13 long, kind of in that approximate in that period of time
14 when that occurred? Was it like 30 minutes in, an hour
15 in, 10 minutes 'till you left?

16 A. I'd say probably about a hour or so.

17 Q. And when you went into the room, Darby had the
18 search warrant, right?

19 A. He did.

20 Q. And he was the one that was going to execute the
21 search warrant?

22 A. I don't recall who ex -- or actually served the
23 search warrant.

24 Q. Okay. But who all was there, you?

25 A. Me, Trooper Dye, and Darby.

1 Q. Okay. And to your knowledge did Darby have -- Darby
2 did not have a body cam.

3 A. He -- he did not.

4 Q. Okay. And you did?

5 A. I did.

6 Q. Do you know if Trooper Dye did?

7 A. He did.

8 Q. Okay. But those interactions were not recorded,
9 correct?

10 A. That's correct.

11 Q. Okay. And you did not perform the field sobriety,
12 whatever form of field sobriety test got performed, in
13 the -- in that hospital room?

14 A. That's correct, I didn't.

15 Q. That wasn't your role?

16 A. Right.

17 Q. You were essentially a witness at this situation?

18 A. Yes, sir.

19 Q. Okay. And it was Darby that conducted the testing
20 and determination of --

21 A. That's correct.

22 Q. Okay. But you did say that you didn't notice any --
23 no odor of alcohol, correct?

24 A. That's correct.

25 Q. Did you notice any smell of marijuana?

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1 A. No, sir.

2 Q. So, your indications -- your indication, I know you
3 weren't the one that doing the final analysis on this,
4 but your indication is that he possibly was under the
5 influence were watery eyes, slurred speech, and what you
6 heard got found in the van?

7 A. That's correct.

8 Q. And the statement that the Solicitor elicited from
9 you about what Mr. Palmer said, that was not recorded on
10 a body cam?

11 A. That was not.

12 Q. Okay. Beg the Court's indulgence.

13 JUDGE GIBBONS: Sure.

14 BY MR. FRICK:

15 Q. At the point where Mr. Palmer's attitude changed and
16 he became a -- I think you said aggressive or all over
17 the place.

18 A. Uh-huh (affirmative).

19 Q. Was that after he had been told that he was going to
20 be charged with something?

21 A. It was.

22 Q. And he had been told he was going to be charged with
23 what?

24 A. Felony DUI with death.

25 Q. At any point did someone say that they would try to

1 extract urine from Mr. Palmer by use of a catheter?

2 A. I don't recall.

3 Q. Okay. And that of course, that's not recorded as
4 well, right?

5 A. Right.

6 Q. Thank you, that's all the questions I have.

7 JUDGE GIBBONS: All right. Redirect?

8 MS. LIVELY: No further questions, Your Honor.

9 JUDGE GIBBONS: All right, thank you sir,
10 you're free to leave. Good luck with your wife and
11 your new child.

12 MS. LIVELY: Yes, be excused from his subpoena
13 to leave. Thank you.

14 JUDGE GIBBONS: Ladies and gentlemen, I need
15 to take a quick restroom break, if that's okay.
16 Let's take about a five to 10 minute recess, refresh
17 yourself. Don't talk about the case, all right.
18 Thank you very much.

19 (JURY EXITS)

20 JUDGE GIBBONS: Anything before we take a
21 brief recess?

22 MS. LIVELY: No, Your Honor.

23 JUDGE GIBBONS: All right.

24 (BREAK)

25 JUDGE GIBBONS: All right, we're going to go

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1 ahead, go back on the record and before we bring the
2 jury back out, I wanted the record to be clear of
3 the reasoning for my decision to deny the Defense's
4 request for mistrial. There have been two motions
5 for mistrial in this case. And of course, you know,
6 at the time I made my decision, I know what the law
7 is, but I couldn't cite it correctly, because I was
8 making my gut decision to deny those motions. But I
9 want the record to be clear for whatever -- wherever
10 this may go, as to the reasoning for my decisions,
11 all right. Now, I'm going to grant several --
12 excuse me, I'm going to cite several different cases
13 into the record. There's a State versus Bantan, B-
14 A-N-T-A-N, it's a 2010 South Carolina Court of
15 Appeals decision, and it cites several different
16 cases in our case law as to mistrial. The granting
17 of a motion for mistrial is an extreme measure that
18 should be taken only when the incident is so
19 grievous that prejudicial effect can be removed in
20 no other way. Well, I denied the first motion for
21 mistrial, because I removed the prejudicial effect
22 by issuing a curative instruction to the jury, they
23 could not consider that statement whatsoever in
24 their deliberation. The Court of Appeals also cites
25 State versus Harris, where that finding was that a

1 mistrial should be granted only when absolutely
2 necessary, and a defendant must show both error and
3 resulting prejudice to be entitled to a mistrial. I
4 don't think that I made an error, and I don't think
5 there is -- there was a prejudicial effect to that
6 evidence coming in -- or that statement coming in,
7 but again I gave the curative instruction and it has
8 to be considered based -- and weighed amongst all
9 the evidence that the Court must consider, and up to
10 this point in time. So, I believe my curative
11 instruction as to the statement that the -- that the
12 witness made yesterday I believe I cured that by
13 instructing the jury to not give it any
14 consideration whatsoever. All right, in addition, I
15 removed the "suspect" jurors, who had the same
16 address and replaced them with alternates. And of
17 course, I understand, you know, Mr. Frick's argument
18 about him striking particular things, but I note
19 that those were jurors that neither he or the State
20 -- well, excuse me, that other jurors which were
21 replaced I think most of them, if I'm not mistaken
22 looking at the strike sheet, there were some that
23 were still -- he still had strikes left. All right,
24 a mistrial, of course everybody know -- the lawyers
25 know, this language, a mistrial should only be

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1 granted in cases of manifest necessity, and with the
2 greatest caution for very plain and obvious reasons.
3 Well, we've had two, hopefully we won't have three.
4 You know, the third time is -- is the charm, is not
5 a legal basis for anything, but it could be in this
6 case. And hopefully there won't be, Madam
7 Solicitor, you understand?

8 MS. LIVELY: Very well, thank you, Your Honor.

9 JUDGE GIBBONS: Thank you. All right. Let me
10 further quote two more cases and I'll be done with
11 this and we can bring the jury out. Whether a
12 mistrial is a manifest necessary is a fact specific
13 inquiry, it is not a mechanically applied standard,
14 but rather is a determination that must be made in
15 the context of the specific difficulty facing the
16 trial judge. I believe I dealt with that the best
17 way I could, dealing with the issue this morning
18 concerning jurors who were cousins of a witness. I
19 questioned each juror separately. I separated them
20 from the jury. I talked to the entire jury. The
21 jury all indicated that they had not spoken with or
22 hadn't spoken to each other about this case, or they
23 had spoken to those other two jurors. Those other
24 two jurors lived together at that same address, that
25 fact -- or that address was known to both the State

1 and the Defense prior to them being sworn and
2 empanelled on this trial jury, and yet both the
3 State and the Defense decided to put them on the
4 trial jury, okay. And I removed them to protect the
5 sanctity of these proceedings, and so I believe we
6 handled that the best we can. State versus Council
7 says the Trial Court should exhaust other methods
8 before aborting a trial. Well, I've done that. I
9 gave a curative instruction and I removed the two
10 jurors. And lastly our South Carolina Supreme Court
11 most recently this year in the case of State versus
12 Benton, B-E-N-T-O-N, 901 SE 2d 701, quoting the
13 South Carolina -- excuse me, quoting the Supreme
14 Court of the United States under Renico versus Lett
15 said that a mis -- a reinstitute of the general rule
16 that a mistrial should be declared cautiously and
17 only in the most urgent circumstances for plain and
18 obvious reasons. While both of these circumstances
19 which came up, the first being the witness just in
20 response to the Solicitor's question, she was
21 expecting something different, said something new
22 for the first time and I issued a curative
23 instruction, that was an urgent circumstance but I
24 believe I cured it by giving a curative instruction.
25 And the circumstance of two jurors living in the

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1 same address, who just happened to be first cousins
2 of the State's witness, I cured that by removing
3 those jurors and -- I mean, within minutes of us
4 finding that out, before it -- with not even half of
5 the trial done, okay. So, that's the law, those are
6 the bases for my decisions. Mr. Frick, you are
7 protected in the record, your client is protected in
8 the record for your denied motions for mistrial. I
9 just wanted this record to -- and for whatever
10 appellate review there may be to understand my
11 reasonings for what I did, okay, and why I did it.
12 Anything else?

13 MS. LIVELY: No, Your Honor, that --

14 JUDGE GIBBONS: Thank you, let's bring the
15 jury out.

16 (JURY ENTERS)

17 JUDGE GIBBONS: All right, thank you, ladies
18 and gentlemen. The State can call its next witness.

19 MS. LIVELY: Yes, sir, thank you, Your Honor.
20 The State calls Cyteco Dye to the stand.

21 JUDGE GIBBONS: All right, Mr. Dye. Come on
22 around here, sir. If you could please raise your
23 right hand. Do you swear or affirm that the
24 testimony you give will be the truth, the whole
25 truth, and nothing but the truth, so help you God?

1 MR. DYE: I do.

2 JUDGE GIBBONS: All right, thank you, sir.

3 Come on up here. Watch the microphone when you're
4 having a seat and then pull it up to your face when
5 you're seated. Thank you, sir.

6 CYTECO DYE

7 was called as a witness, and having been first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LIVELY:

11 Q. Would you please spell your first name and last for
12 the record?

13 A. Spell my last -- first name?

14 Q. Yeah.

15 A. C-Y-T-E-C-O.

16 Q. And how do you say that? I want to make sure I'm
17 saying it correctly.

18 A. Cyteco.

19 Q. Cyteco.

20 A. Yes, ma'am.

21 Q. And your last name is Dye?

22 A. Yes, ma'am.

23 Q. D-Y-E?

24 A. Yes, ma'am.

25 Q. All right, just pull that microphone to you, so we

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1 can make sure that all of us can hear you, if you need to
2 like scoot up, that'd be great. Now, where do you work
3 currently, Mr. Dye?

4 A. Currently I am an EHS at Giti Tire full-time. But
5 I'm also full-time at Crawford Funeral Home.

6 Q. And prior to being at Giti Tire and working at the
7 funeral home, where did you work?

8 A. South Carolina Highway Patrol.

9 Q. And how long did you work at South Carolina Highway
10 Patrol?

11 A. Approximately three years.

12 Q. And how old are you now?

13 A. Twenty-five.

14 Q. Twenty-five, all right. So, where do you live?
15 Like what area of Chester?

16 A. On the Mitford side.

17 Q. Mitford, okay, Mitford, got it. So, are you
18 married?

19 A. No, ma'am.

20 Q. And do you live with any family?

21 A. I live alone.

22 Q. You live alone.

23 A. Yes, ma'am.

24 Q. All right. So, Mr. Dye, when was your last day at -
25 - as a trooper for the Highway Patrol?

1 A. January the 10th of '24.

2 Q. Of '24, okay. So, whenever you had your last day in
3 January of 2024, was that by your choice or for some
4 other reason?

5 A. Some other reason.

6 Q. Some other reason. If you could, please tell the
7 jury why you are no longer with the Highway Patrol.

8 A. When I first started patrol I finally -- once I came
9 out of the academy, finished FTO, I started on the road
10 November of '21, made a traffic stop a few months after
11 that, my supervisor at the time gave me incorrect
12 instructions on how to handle that traffic stop, which
13 led to my termination and his in January. Went through a
14 grievance hearing through the State, and they let me
15 resign instead of taking a termination from the Patrol.

16 Q. Was this something you ever wanted to have happened
17 to you?

18 A. No, ma'am.

19 Q. Okay. Did you like being a trooper?

20 A. Yes, ma'am, it's been a childhood dream is to be a
21 officer.

22 Q. And as a result of being allowed to resign, did it
23 have any effect on your certification and your ability to
24 become an officer in the future?

25 A. Yes, ma'am.

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1 Q. And tell the jury what that is.

2 A. My law enforcement certification was denied for
3 misconduct of office.

4 Q. And I know we discussed that Mr. Dye, and I
5 appreciate you telling the jury, but in regards to you --
6 the misconduct in office, if you could just tell them
7 briefly what those allegations were, so that we can make
8 sure we have everything out there for the jury to know.

9 A. So, the misconduct allegation for the reasons for my
10 certification denial was for the report that I wrote for
11 that traffic stop. That report was approved by that
12 supervisor. So, when I made that traffic -- I might have
13 been on the road for roughly three or four months on my
14 own, so I was in the process of still trying to figure
15 out basically how to do my job. Like he approved the
16 report, he read it, he didn't tell me -- basically give
17 me any other instructions on that report or make any
18 suggestions, so me being new I assumed that everything
19 was how it was supposed to be, which was apparently
20 wrong, when I found out and then the future that --
21 everything was -- it was wrong.

22 Q. And just to kind of move along a little bit, was the
23 traffic stop involving three individuals in a car where
24 marijuana was found?

25 A. Correct.

1 Q. And when that marijuana was found, did anyone claim
2 the marijuana to be their marijuana?

3 A. No, ma'am.

4 Q. So at that time instead -- are there two options,
5 you can either write a warrant for an offense or you have
6 to write an offense on a blue ticket?

7 A. The amount dictates --

8 Q. Not the amount of the drugs right now, I'm just
9 talking in general. If you're -- if you're an offense
10 that comes up to high court or it's a ticket, right?

11 A. Correct.

12 Q. So, at the time whenever the marijuana was found is
13 the reason why you got in trouble because instead of
14 writing it as one package of weight, which is how you
15 found it, you actually divvied it up into three different
16 ones; is that right?

17 A. Correct.

18 Q. And so each person in the car was charged with
19 simple possession; is that correct?

20 A. Correct.

21 Q. Okay. And now you know, obviously, that that's
22 something that you're not supposed to do, correct?

23 A. Correct.

24 Q. Did you get in trouble for ever planting drugs or,
25 you know, doing anything, stealing drugs, or anything

JURY TRIAL

1 like that?

2 A. No, ma'am.

3 Q. Okay. So what you did was make a rookie -- a bad
4 rookie mistake?

5 MR. FRICK: Objection to leading at this
6 point, Your Honor.

7 JUDGE GIBBONS: Sustained.

8 BY MS. LIVELY:

9 Q. Okay.

10 A. Correct.

11 Q. All right. Okay, he sustained so you can't answer
12 that question. So, let's move on then. Okay, so you're
13 no longer employed with the Highway Patrol, but before
14 you ended up being released from the Highway Patrol, you
15 actually were the one who investigated this incident that
16 happened on July 10th of 2022; is that right?

17 A. Correct.

18 Q. Okay. Had you ever investigated a fatality prior to
19 this?

20 A. At that time I had, but it wasn't to the extent of
21 this collision.

22 Q. And when you say it wasn't to the extent of this
23 collision, explain that to the jury, what you basically
24 showed up to that particular day.

25 A. So I arrived on the scene, it was very chaotic, a

1 lot of stopped cars in the interstate northbound, which
2 pretty much shut down that day. Get on the scene,
3 observe the white Explorer off to the right side of the
4 roadway up against the tree line, and then a white
5 Express van was in the cable barrier. EMS was leaving at
6 the time that I arrived. Trooper Holland was there.
7 Corporal Warlick was there as well. Get on the scene.
8 They tell me that we do have one confirmed case. At that
9 time I didn't know --

10 Q. When you say one confirmed case, you need to say
11 exactly what that means.

12 A. When I say confirmed case, I'm referring to a DOA.

13 Q. Deceased individual?

14 A. Deceased, yes, ma'am.

15 Q. Okay.

16 A. So, I didn't know whether it was an adult, a child,
17 the condition of that victim, or anything, I just knew
18 that, you know, we did have one deceased person on the
19 scene, which doesn't -- which didn't really change how I
20 conducted that investigation. When I first got there I
21 wanted to figure out who my witnesses were, and exactly
22 what happened, and where my drivers were at that time.
23 That's when I was informed that my driver of the white
24 Explorer was being transported to the ER, and my driver
25 for the van was still on the scene.

JURY TRIAL

1 Q. Okay. And did you make contact with the driver of
2 the van at that time?

3 A. I did.

4 Q. And tell the jury about that contact that you made
5 with the driver.

6 A. When I spoke to the driver of the white van, Mr.
7 Palmer, initially he was -- you could tell he was
8 obviously sad, he was crying, he was upset, basically
9 saying, you know, he don't really know what happened.
10 Got some more information from him, name, address, date
11 of birth, phone numbers, just your basic information. I
12 asked him what happened, he really couldn't tell me. All
13 he said was I looked down and I looked back up and I hit
14 the car.

15 Q. Did he ever tell you about how fast he was going or
16 did you ask him?

17 A. He said he couldn't remember.

18 Q. He didn't remember.

19 A. He didn't know how fast he was going.

20 Q. Okay. All right, what else did he tell you in that
21 initial interview, do you remember?

22 A. He said he was in the process of helping somebody
23 move at that time, so he was trying to get back to North
24 Carolina to pick up some more items to take to drop off
25 to someone else.

1 Q. And at that time did he say anything about whether
2 he had lost his phone or any other items in the crash?

3 A. He did mention the phone, but I don't -- that I can
4 remember through the extent of the phone and that
5 process.

6 Q. Okay, all right. Was that interview with Mr. Palmer
7 at that time right whenever you got there, was that
8 actually on your dash cam or in -- in-car video?

9 A. Yes, ma'am, it was audio and video recorded.

10 Q. Audio and video recorded, is what you're telling us
11 basically what you remember in regards to that interview?

12 A. Correct.

13 Q. Was it a pretty short interview at that point?

14 A. It was decent -- decent length, 'cause I had some
15 questions to ask him as far as the collision aspect as to
16 how it happened, where he was coming from, where he was
17 headed to, and things of those nature.

18 Q. So at this point in time you had not gotten any
19 information from him, as to speeds or anything else, that
20 could've been a part of what was happening before the
21 impact occurred, correct?

22 A. I did ask him do he remember approximately how fast
23 he was going, which he told me didn't remember.

24 Q. He did not remember, okay. And then he did say
25 something about he looked down and that --

JURY TRIAL

1 A. Correct.

2 Q. Okay. I just wanted to make sure -- so those are
3 the things that you're hearing initially?

4 A. Yes, ma'am.

5 Q. Did you interview some other witnesses who were
6 present on the scene?

7 A. I did.

8 Q. And were those witnesses law enforcement or were
9 they what we refer to lay witnesses or eyewitnesses to --
10 or possible eyewitnesses to the collision?

11 A. They were all eyewitnesses.

12 Q. They were all eyewitnesses.

13 A. Correct.

14 Q. All right. And did you document who those
15 individuals were?

16 A. I did.

17 Q. Was that made a part of your report?

18 A. It was.

19 Q. And at that time would you have provided those names
20 to your supervisor as well as to the MAIT team for them
21 to do follow-up interviews?

22 A. I did.

23 Q. Do you happen to remember the name Felicia Logan and
24 James Logan?

25 A. I do.

1 Q. You do? Do you remember if they were two of the
2 individuals that you interviewed on that day?

3 A. They were.

4 Q. And how about Brittney Dempsey and Joseph Parker?

5 A. Yes, ma'am.

6 Q. You remember both of those as well?

7 A. I do.

8 Q. And would you have actually put their names as
9 people you interviewed on that day into your report?

10 A. I did.

11 Q. Okay, thank you. And what was the weather like and
12 the conditions of the road?

13 A. The roadway was wet at the time of the collision.
14 It had rained prior to the collision.

15 Q. Do you recall about what time it was whenever you
16 responded?

17 A. I want to say my arrival time on scene was 5:20,
18 5:21, somewhere in there.

19 Q. All right.

20 A. 'Cause we just signed on for shift.

21 Q. Had you travelled up and down I-77 before on a
22 weekend afternoon around that time to, you know, and what
23 kind of traffic, you know, the flow of traffic on I-77,
24 is it busy, is it slow?

25 A. Fairly busy.

JURY TRIAL

1 Q. And this was July the 10th, 2022, correct?

2 A. Correct.

3 Q. So what holiday is close in time to that?

4 A. Fourth of July holiday.

5 Q. Fourth of July, all right. Okay. Now, I know by
6 the time you got there the collision had already
7 happened, so was there a lot of traffic and congestion
8 around that collision?

9 A. Correct. Like I said, traffic was pretty much shut
10 down northbound I-77 due to the collision.

11 Q. And after you talked to the defendant, and if you
12 would, please just for purpose of the record, could you
13 actually point out the Defendant, Mr. Palmer, that you
14 talked to and spoke to on that day?

15 A. It's the (inaudible) back in the white collar shirt.

16 Q. In the white shirt, okay.

17 A. Yes, ma'am.

18 Q. Your Honor, just let the record reflect that he's
19 referring to the Defendant, Mr. Palmer.

20 JUDGE GIBBONS: All right, noted.

21 MS. LIVELY: Thank you.

22 BY MS. LIVELY:

23 Q. Now after these interviews, let's see here, were you
24 the one took any photographs on the scene?

25 A. If I remember correct, I might have taken a few, but

1 Trooper Holland took the majority of the photos at that
2 time.

3 Q. Okay. And what about Coroner Tinker, did you have
4 any contact with him on that day?

5 A. I spoke to him briefly before I left to go to the
6 ER.

7 Q. And why were you going to the ER?

8 A. 'Cause Mr. Palmer was transported to the ER by EMS.

9 Q. Now, before you went to the ER, what did you do in
10 regards to looking at the vehicles that were involved in
11 the collision?

12 A. So, due to the extent of those vehicles damage-wise,
13 both vehicles had to be towed by a tow truck. It was
14 procedure that we conduct a log of property inside in
15 those vehicles for that tow receipt.

16 Q. Okay. And let me break that -- get you to break
17 that down for the jury, if you would, please, at the time
18 whenever a vehicle is being towed from the scene, what
19 are you supposed to do in regards to what is inside that
20 vehicle?

21 A. Just document any items that they have of value
22 inside of that vehicle, if any items at all.

23 Q. Okay. So the purpose of that is, does that protect
24 you as well as Highway Patrol in case in the future
25 someone says I had \$10,000 in the back of the van, and

JURY TRIAL

1 it's gone?

2 A. Correct.

3 Q. Correct, okay. So, you -- would that be referred to
4 as taking an inventory of the vehicle?

5 A. Correct.

6 Q. All right. And when that happens do you -- how do
7 you document it in order to show what it is you're
8 finding?

9 A. So we'll -- basically we'll put what the item is and
10 the color of it.

11 Q. Okay.

12 A. If it's more than one of those items, how many of
13 those items are inside the vehicle.

14 Q. And while you were doing this, was this when Trooper
15 Holland was also present?

16 A. Correct.

17 Q. And was he taking photographs of what you were
18 inventorying -- what the inventory you received out of
19 that van?

20 A. Correct.

21 Q. What if anything did you find that became relevant
22 to you at that time regarding what was going on with this
23 case?

24 A. At that time I found a black sunglasses case. Opened
25 -- opened up that case and there was some marijuana and

1 cocaine inside of that black sunglass case.

2 Q. Were you alone when you found that?

3 A. No, ma'am.

4 Q. Who was with you?

5 A. Trooper Holland.

6 Q. Trooper Holland, all right. When you found these
7 items, at the time of finding them, who actually, if
8 anyone, took pictures of what you found?

9 A. The -- it was also caught on my body cam and we also
10 took pictures of it as well.

11 Q. So on your body cam as well as pictures were taken?

12 A. Correct.

13 Q. Okay. And did anyone else who was on the scene
14 while you were there that day actually see those drugs
15 that were inventoried and taken out of the van?

16 A. The Coroner also took pictures of it as well.

17 Q. So Coroner Tinker got some pictures too?

18 A. Correct.

19 Q. When you walked into that -- did you ever actually
20 step into the van to do your inventory?

21 A. Due to the vehicle being -- the cable barrier being
22 through the vehicle was -- we were not able to get in the
23 vehicle, due to the cable barrier being wrapped around
24 it.

25 Q. Was there a time whenever the large side door was

JURY TRIAL

1 opened on the van? Do you remember?

2 A. I don't.

3 Q. Okay, that's fine, not a problem. I'm just going to
4 show a couple of photos, (inaudible) to what it is that
5 you actually found in the vehicle. I'm going to show you
6 what's already been marked as State's Exhibits 13, 14,
7 16, 17, and -- oh, 15, I'm sorry about that. It's my
8 understanding these are all in without objection, is that
9 correct, Mr. Frick?

10 MR. FRICK: That's correct.

11 MS. LIVELY: Okay.

12 BY MS. LIVELY:

13 Q. So, I'm going to show you these photos and ask you
14 if this -- if these photos reflect you doing inventory,
15 the pictures of the inside of the van, and the drugs you
16 just testified to that were located.

17 A. They do.

18 Q. And there's one photo in there, I think it's photo
19 number 15, where there is a -- an item that's a black
20 item in the middle of the grass, what is that?

21 A. It's a black backpack.

22 Q. Backpack; do you remember what you found in that
23 backpack?

24 A. I do not.

25 Q. Okay. But you would've been present when the -- you

1 were doing the inventory, correct?

2 A. Correct.

3 Q. Okay. Let me see if I can refresh your memory. Beg
4 the Court's indulgence, please.

5 JUDGE GIBBONS: Yes.

6 BY MS. LIVELY:

7 Q. I'm going to show you State's Number 28, see if this
8 refreshes your memory.

9 A. Yes, ma'am.

10 Q. Okay. So you do recognize that photo?

11 A. I do.

12 Q. And was that the contents of the black backpack that
13 we just saw?

14 A. It was.

15 MS. LIVELY: State's Number 28.

16 MR. FRICK: No objection.

17 MS. LIVELY: No objection, okay.

18 JUDGE GIBBONS: Introduced.

19 MS. LIVELY: Thank you.

20 (State's Exhibit 28

21 was introduced into evidence)

22 BY MS. LIVELY:

23 Q. What are we seeing inside the black backpack?

24 A. Beer.

25 Q. Beer, okay. Were any of them opened?

JURY TRIAL

1 A. No, ma'am.

2 Q. If you remember. Okay. Is that a no?

3 A. Correct.

4 Q. Okay, I just want to be sure, all right. Thank you,
5 Mr. Dye. Now, so all of these items were located in your
6 inventory, did you contact anyone to let them know what
7 was found inside the vehicle once you actually did the
8 inventory?

9 A. I did.

10 Q. Who were you communicating with at that point?

11 A. Trooper Holland and Corporal Warlick.

12 Q. So Warlick, who was here earlier, correct?

13 A. Correct.

14 Q. And Trooper Holland who is -- is he seated here in
15 the courtroom?

16 A. He is.

17 Q. All right. At any time when you went into that van
18 to do your inventory, did you manipulate, try to tamper
19 with the drugs in any way, shape, or form?

20 A. No, ma'am.

21 Q. Are the pictures that were taken of those drugs,
22 where you found them, and how you collected them, did
23 that document exactly how the drugs at that time were put
24 into evidence --

25 A. Correct.

1 Q. -- by you?

2 A. Correct.

3 Q. And any time did you have to call a supervisor about
4 how you're supposed to collect that evidence and document
5 it?

6 A. No, ma'am.

7 Q. All right. So, and was everything you did actually
8 reviewed by Corporal Warlick and other supervisors?

9 A. Correct.

10 Q. Now, once you had this information, you said you
11 provided it to now Captain Darby, where did you go after
12 that?

13 A. Once I inventoried the vehicle, spoke to Coroner
14 Terry Tinker, briefly, then I went to Chester ER, with
15 Mr. Palmer.

16 Q. And when you got to Chester ER with Mr. Palmer, what
17 was the next step in regards to what was going to take
18 place with him regarding the investigation?

19 A. So, after we found the drugs and the alcohol, then
20 we spoke to Captain Darby, at that point it was
21 determined -- trying to determine sobriety of him at the
22 time.

23 Q. Who, if anyone, did any type of testing that y'all
24 are trained to do as troopers, to determine whether or
25 not there's a possibility of impairment?

- 1 A. Captain Darby did an evaluation on him at that time.
- 2 Q. At any time did you do any type of field sobriety or
3 evaluation for impairment of Defendant Palmer?
- 4 A. No, ma'am.
- 5 Q. Once again, were you still pretty new on the force
6 at that point?
- 7 A. Correct.
- 8 Q. So, did you actually observe whether or not Captain
9 Darby did this testing or did he do it outside of your
10 presence?
- 11 A. He done it in the ER room.
- 12 Q. In the ER room, and were you present when he did it?
- 13 A. I was.
- 14 Q. You were, so did you observe him doing those tests?
- 15 A. I did.
- 16 Q. Do you recall what tests those were that he was able
17 to do?
- 18 A. He did DRE tests. So, I was still new at the time,
19 so I didn't exactly know what those tests were, 'cause
20 I'm not a DRE.
- 21 Q. Okay, what's a DRE, sorry, for them to know?
- 22 A. It's a drug recognition expert.
- 23 Q. A drug recognition expert, okay. So you were
24 observing the process?
- 25 A. Correct.

1 Q. Did you document that in your report after whenever
2 -- as the lead investigating trooper, did you actually
3 document that that was done?

4 A. Correct.

5 Q. But you did not do it, you just observed?

6 A. Correct.

7 Q. Now, was the search warrant actually obtained by
8 Corporal -- I guess, it's Captain Darby?

9 A. Correct.

10 Q. It was? All right, and what was that search warrant
11 for?

12 A. The search warrant was for blood or urine.

13 Q. Okay, blood or urine. And of the Defendant Palmer?

14 A. Correct.

15 Q. All right. So were you present whenever the search
16 warrant was actually served and executed on Mr. Palmer?

17 A. I was.

18 Q. You were? All right. So, whenever that happened
19 and you -- and you were present for that, did you read
20 him any paperwork regarding what was about to happen?

21 A. I read him the search warrant.

22 Q. And how did he respond to that?

23 A. Initially he agreed to the test, and then he quickly
24 changed and said he was not going to submit to the test.

25 Q. And whenever he said that what did you do?

JURY TRIAL

1 A. At that point we told him that since we had the
2 search warrant that he could either agree to the test or
3 not.

4 Q. And if he did not agree to it what was going to
5 happen? Did you tell him specifically?

6 A. I did; we would still get those samples.

7 Q. You would still get those samples. Did you tell him
8 how?

9 A. I did.

10 Q. You did, okay. And what did you tell him?

11 A. Either blood or urine.

12 Q. I understand that. But did you tell him how those
13 samples would be collected?

14 A. As far as the --

15 Q. Like how are they going to actually get the blood,
16 do you know? Was it through a nurse or were you doing
17 it?

18 A. Through a nurse, yes.

19 Q. That's what I'm asking, it's fine. And how did he
20 respond to the nurse being the one that was going to take
21 his blood sample?

22 A. He told her that he wasn't going to do it.

23 Q. That he wasn't going to do it, okay. So how was his
24 behavior during that time?

25 A. He did make some verbal threats to those nurses and

1 to law enforcement if we did try to get those samples.

2 Q. Eventually did things get to a point where the
3 samples could be taken?

4 A. It did.

5 Q. It did. And so those samples from Mr. Palmer were
6 taken. Did you retrieve those and put them into
7 evidence, or did someone else do that?

8 A. Initially I signed the evidence -- evidence log for
9 those samples.

10 Q. Okay.

11 A. And they were given to higher supervision to be
12 submitted into evidence.

13 Q. Okay. So, you initially signed that it was being
14 put into evidence, but then a higher level supervisor
15 actually took those samples?

16 A. Correct.

17 Q. Okay. Did you have anything to do with those
18 samples being taken to the South Carolina Law Enforcement
19 Division for toxicology tests?

20 A. I did not.

21 Q. You did not, all right. So, when you were in there,
22 the samples were being taken, did the defendant say
23 anything to you about what had happened with the
24 individuals in the Explorer?

25 A. In the ER he would be remorseful, he would be angry,

JURY TRIAL

1 he would be upset. He did ask about the child, that's
2 when I informed him that the child was of course
3 deceased. He made some verbal comments about the child
4 at that time. He would fall asleep, would wake up, and
5 he would ask those same questions repetitively over and
6 over again.

7 Q. And was that part of what you were watching and
8 documenting in regards to possible impairment of the
9 defendant?

10 A. Correct.

11 Q. Did he ever say anything specifically about the
12 child?

13 A. He did.

14 MR. FRICK: Objection to hearsay, Your Honor.

15 JUDGE GIBBONS: Hang on. Overruled.

16 BY THE WITNESS:

17 A. He did say in the ER, "I killed a white kid, so
18 what." He did use vulgar language -- vulgar language as
19 well.

20 Q. That's fine, you don't have to say anything more,
21 that's fine. Now, after all the -- and you were not
22 wearing your body worn camera at that point; is that
23 correct?

24 A. Correct.

25 Q. And whenever you're in the hospital or there's some

1 times whenever you should -- or when you've been actually
2 told to wear your body worn camera or have it on or off?

3 A. Correct.

4 Q. Correct? Okay. During the collection of the
5 samples was your body worn camera on?

6 A. It was not. My body camera had died at that time
7 due to being on through the entirety of the on-scene part
8 of the collision.

9 Q. Through the collision, got it. And what about at
10 the time Darby as well as was Warlick present -- for the
11 collection of the samples?

12 A. At that time we did the samples my body camera was -
13 - it was dead at that time.

14 Q. Right. What about Warlick, was he present whenever
15 the samples were done? I'm sorry, if I didn't ask that
16 very --

17 A. He was.

18 Q. He was. What about Darby?

19 A. He was.

20 Q. He was, okay, all right. So, they were in there for
21 everything that was being done and said, correct?

22 A. Correct.

23 Q. Thank you so much, Mr. Dye. Please answer any
24 questions the Defense may have.

25 JUDGE GIBBONS: Mr. Frick, your witness.

JURY TRIAL

1 MR. FRICK: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. FRICK:

4 Q. So, Mr. Dye, when this -- when you responded to this
5 incident, you've been a trooper for about how long?

6 A. Been a few months since I had been on the road from
7 training.

8 Q. Okay. And FTO, what is that? Is that your
9 training?

10 A. That's field training.

11 Q. Okay. And how long does that take?

12 A. Field training with HP is eight weeks.

13 Q. Eight weeks?

14 A. Yes, sir.

15 Q. Is that different from going to the academy?

16 A. It is. FTO is basically training on the road, doing
17 the job versus the academy, to where they just give you
18 the basics and the law of the job.

19 Q. Okay. How long did you have to go to the academy?

20 A. The academy was in total 12 weeks.

21 Q. Okay. When you're doing the FTO, is another trooper
22 with you?

23 A. Correct.

24 Q. For the whole eight weeks?

25 A. Correct.

1 Q. Okay. And during that time do they kind of let you
2 do some of the work too, like if they do a stop, do you
3 get to go up and make contact, write the ticket?

4 A. Correct.

5 Q. That's the idea is to train you how to do it and
6 make sure you've got somebody observing you, correct?

7 A. Correct.

8 Q. And you said that program takes eight weeks?

9 A. It does.

10 Q. Okay. And when did you begin as a trooper?

11 A. My hire date?

12 Q. Yeah, is that before you went to the academy or
13 after? I'm trying to --

14 A. My hiring date was before the academy.

15 Q. Before the academy, yeah, what was your hire date?

16 A. March of '21, I don't exactly remember the day.

17 Q. That's fine, that's fine. And this particular case
18 you were the primary investigator, correct?

19 A. Correct.

20 Q. And in that role basically you were running the on-
21 scene operation, correct?

22 A. Correct.

23 Q. I mean you were obviously talking to supervisors,
24 but you were the one who was trying to talk to witnesses,
25 make sure the scene got documented, all that stuff,

JURY TRIAL

1 right?

2 A. Correct.

3 Q. Okay. And you did have contact with Mr. Palmer on
4 the scene, correct?

5 A. I did.

6 Q. And that was captured -- your in-car camera, let's
7 talk about that. You had two different cameras, a body
8 worn camera and an in-car camera?

9 A. Correct.

10 Q. What's the difference between the two?

11 A. Body worn camera is the one that we wear on our
12 person. In-car camera is the camera inside of the
13 vehicle.

14 Q. Okay. The body worn camera obviously goes around
15 with you, so if you're walking around it's recording
16 everything you do, right?

17 A. Correct.

18 Q. The in-car camera, it's in the car, right?

19 A. It stays in the car, correct. It's stationary.

20 Q. But it has a mechanism where if you leave the
21 microphone on, it will record you as you're walking
22 around talking to people, right?

23 A. Correct.

24 Q. Did you have your microphone on?

25 A. I did.

1 Q. Okay. And you had your body worn camera on?

2 A. I did.

3 Q. During the entirety on the scene?

4 A. Correct.

5 Q. And I think you said it died by the time you got to
6 the hospital?

7 A. It did.

8 Q. Okay. So you talked to the witnesses, and then it
9 became time to go down and do the inventory of the van.
10 And you state that Trooper Holland was with you when you
11 did that inventory?

12 A. He was.

13 Q. Okay. But you also stated that you could not get
14 inside the van?

15 A. Correct.

16 Q. Okay. I'm going to show you what's been marked --

17 A. Okay.

18 Q. -- Defendant's Exhibit Number 3. Can you tell me
19 what that is?

20 A. Looks like a vehicle and me.

21 Q. Huh? So that's you inside a vehicle, right?

22 A. Correct.

23 Q. Does that appear to be the van that was in the
24 median?

25 A. I would say so.

JURY TRIAL

1 Q. Okay. So that is you in the van? Right?

2 A. Correct.

3 Q. Did you take pictures while you were down there or
4 did somebody else take pictures?

5 A. I took pictures and Trooper Holland also took
6 pictures. And the Coroner took pictures as well.

7 Q. I mean at the van, I'm sorry, that wasn't very
8 specific. When you were at the van did you take
9 pictures?

10 A. I did.

11 Q. Okay. I'm going to show you what's been Defense --
12 I'm sorry, admitted Defense 1 and 2. Can you tell me
13 what those are pictures of?

14 A. These are pictures -- 2 is pictures of the van and
15 the cable barrier; his tire marks coming into the cable
16 barrier and the median. And 1 is going to be the van
17 against -- resting against those cable barriers with the
18 side door open.

19 Q. Okay. Do you know whether you took those pictures
20 or not?

21 A. I don't recall.

22 Q. Okay. That's fine, thank you, sir. And where did
23 you find this sunglasses case?

24 A. If I remember correctly it was in the front of the
25 van.

1 Q. In the front of the van? So that would be basically
2 what we're talking about here is in Defendant's Number 3?

3 A. Correct.

4 Q. Okay. And the backpack the Solicitor was talking
5 about, you discovered it, correct?

6 A. Correct.

7 Q. Do you recall where it was located?

8 A. In the grass.

9 Q. In the grass, okay. So it was not actually in the
10 van?

11 A. Correct.

12 Q. Was there -- were there any forensics done on that?
13 Did you do any touch DNA? Did you do any fingerprints or
14 anything to try to establish ownership of that?

15 A. That would be more so the MAIT team.

16 Q. Okay. Do you know if they did?

17 A. They were not on the scene at that time.

18 Q. But you're the lead investigator, do you know what
19 happened to that bag?

20 A. It was inventoried for evidence.

21 Q. But you don't know whether any forensic testing was
22 done on it?

23 A. To my knowledge I'm not sure.

24 Q. And you were out there a long time that afternoon,
25 correct?

JURY TRIAL

1 A. Correct.

2 Q. Did you go back to the scene after you went to the
3 ER or did you remain on the scene until you went to the
4 ER?

5 A. I remained on the scene until I went to the ER.

6 Q. Okay. Do you remember about how long you were on
7 the scene?

8 A. I do not.

9 Q. And then when you got to the hospital, you were
10 there when Darby does the testing for the drug
11 recognition, correct?

12 A. Correct.

13 Q. And your body camera had died at this point,
14 correct?

15 A. Correct.

16 Q. You also said you were present when the search
17 warrant appeared. And you in fact read him the search
18 warrant, right?

19 A. Correct.

20 Q. And what are you doing with that? Do you have to
21 read the whole thing to him?

22 A. We do.

23 Q. And you go through and explain why you're taking it?
24 I mean, why you're giving the search warrant?

25 A. Correct.

1 Q. And does it say in there that he's a suspect in a
2 felony DUI?

3 A. That's the charge listed on that search warrant.

4 Q. That's the charge listed on there. And once he was
5 told that he was going to be charged with felony DUI, did
6 we have a degree at that point? Did we say great bodily
7 injury or death results?

8 A. We did.

9 Q. Okay. So once he's told he's been charged with
10 great bodily injury or death results in felony DUI,
11 that's when he got angry wasn't it?

12 A. Correct.

13 Q. And you said the search warrant was to get either
14 urine or blood, right?

15 A. Correct.

16 Q. Did you tell him that y'all would put a catheter in
17 him to get urine?

18 A. We wouldn't, that would be the nursing staff.

19 Q. Did you tell him that that's what's going to happen?

20 A. To get blood, yes, for urine, no.

21 Q. You'd use a catheter to get the blood?

22 A. Or a syringe for the blood.

23 Q. Okay.

24 A. Blood draw.

25 Q. And the statement that the Solicitor asked you about

JURY TRIAL

1 the child, he said that after he had been read this
2 search warrant, right?

3 A. Before.

4 Q. Before?

5 A. Correct.

6 Q. So before he's told he's been charged?

7 A. Correct.

8 Q. That's when he said that?

9 A. Correct.

10 Q. Okay. Now the evidence that was submitted in this
11 case, you collected all of it, is that fair to say?

12 A. Correct.

13 Q. I've got some marijuana, I've got blood tests, and
14 I've got suspected crack cocaine, that's -- you collected
15 that stuff, correct?

16 A. Correct.

17 Q. Okay. When you found the sunglasses case in the van
18 -- and you said you were taking photographs, right?

19 A. Correct.

20 Q. Did you take a photograph of where you found it?

21 A. I did.

22 Q. You did? Okay. After you found it, and you say you
23 photographed it, what did you do with this sunglasses
24 case?

25 A. We opened it to see what was inside of it, and took

1 pictures of it as well.

2 Q. Did you open it up right there at the van?

3 A. I don't recall.

4 Q. Okay. Do you recall taking it to a fire -- to the
5 tailgate of a fire truck?

6 A. I do not.

7 Q. Okay. Was the van collected in this? Is that
8 considered part of the evidence?

9 JUDGE GIBBONS: He's asking you.

10 BY THE WITNESS?

11 A. Sir?

12 Q. Was the van, the Express van, was it collected as
13 far as the evidence?

14 A. Correct.

15 Q. It was towed away from the scene, correct?

16 A. Correct.

17 Q. Do you know where it went?

18 A. I don't remember the tow company that towed that
19 vehicle.

20 Q. Okay. Do you know where it is now?

21 A. I'm not sure.

22 Q. Okay. And you were in fact the lead investigator on
23 this investigation, right?

24 A. Correct.

25 Q. Now, let's talk about what happened with you, Mr.

JURY TRIAL

1 Dye. You stated that you were allowed to resign.

2 A. Correct.

3 Q. Did you receive a letter from the Department of
4 Public Safety about your situation, dated January 12th?

5 A. My attorney has it.

6 MR. FRICK: I'm going to mark this for
7 identification.

8 (Defendant's Exhibit 4
9 was marked for identification)

10 BY MR. FRICK:

11 Q. Mr. Dye, I'm going to show you what's been marked
12 for identification, Defendant's Number 4, do you
13 recognize that?

14 A. This is the initial paperwork from the Department of
15 Public Safety.

16 Q. The initial paperwork?

17 A. The initial paperwork for the -- and the reasoning
18 from OPR for the termination.

19 Q. Okay. And in fact it says termination, correct?

20 A. It does.

21 Q. So you wasn't resigned, you were fired, weren't you?

22 A. Initially, yes.

23 Q. Okay. And it wasn't just about an incident report,
24 was it?

25 A. It was about the entire traffic stop.

1 Q. Right. Traffic stop in which someone handed you a
2 large bag of weed, and you broke it down into three
3 separate bags of weed; isn't that correct?

4 A. Correct.

5 Q. In fact, you drove from Fairfield County, up 77, to
6 Troop Headquarters, to the squad room to break it down,
7 didn't you?

8 A. Not headquarters, our Post office.

9 Q. The Post office, okay. Well, you drove from -- do
10 you remember where you made the traffic stop in
11 Fairfield?

12 A. 77.

13 Q. What mile marker?

14 A. I don't exactly remember.

15 Q. Okay.

16 A. It's been three years ago.

17 Q. All right. Well let's say it was exit 48, the far
18 end of Fairfield County, then you drove up to Rock Hill.

19 A. That's incorrect.

20 Q. Well where is the Post headquarters?

21 A. It's in Chester.

22 Q. The Post headquarter is in Chester, okay, fine, you
23 drove to Chester. Then you weighed it out, did you not?

24 A. Correct.

25 Q. Weighed it out to make sure that each baggie was

1 going to be simple possession of marijuana?

2 A. Correct.

3 Q. And do you recall the reason that you told DPS why
4 you did it?

5 A. 'Cause my supervisor told me to charge simple
6 possession.

7 Q. Can you tell me what it says right here? These are
8 your words; where it says, you advised.

9 A. You want me to read it?

10 Q. Yes, sir.

11 A. It says, "You advised, I guess, there really isn't a
12 reason, and there was no excuse for failing to ensure
13 that all information that you document is accurate."

14 Q. And?

15 A. "You advised I guess it's fair to say being lazy and
16 acknowledge that you were never advised to document false
17 information on a report during any of your training."

18 Q. So at that time you're not blaming a supervisor, you
19 even said you're being lazy, correct?

20 A. According to the report.

21 Q. Are you saying DPS lied in their report to you?

22 A. No, sir.

23 Q. Was that a yes or no?

24 A. No.

25 Q. No? Okay. So those are your words, right?

1 A. Correct.

2 Q. So you were fired for manipulating evidence and then
3 falsifying documents.

4 A. Correct.

5 Q. And that was in April of 2002 -- or '22, correct?

6 A. Correct.

7 Q. And this incident occurred in July of '22, correct?

8 A. Correct.

9 Q. And you maintain here today under oath that you were
10 not alone down that -- by that van when you found that
11 sunglasses case?

12 A. Correct.

13 Q. I want to ask you one thing. I want to show you
14 Defendant's ID Number 4 again. Looking at that last
15 page, there's a signature line on there.

16 A. Right here?

17 Q. Yes, sir.

18 A. All right.

19 Q. Whose signature is that?

20 A. Mine.

21 Q. Okay. So you received a copy of this before,
22 correct?

23 A. I did.

24 Q. Beg the Court's indulgence.

25 JUDGE GIBBONS: Yes.

1 MR. FRICK: Thank you, sir, that's all the
2 questions I have.

3 JUDGE GIBBONS: All right, redirect?

4 MS. LIVELY: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. LIVELY:

7 Q. Did you carry crack cocaine and marijuana in your
8 pants to the scene of this fatality?

9 A. No, ma'am.

10 Q. So that you could plant it inside of this van in a
11 black sunglass case, that you must have also happened to
12 take with you to the scene?

13 A. No, ma'am.

14 Q. No. Thank you. I'm going to show you a picture,
15 which is already in evidence, and I'm actually, with the
16 Court's indulgence, I'm going to put it on the screen.

17 JUDGE GIBBONS: Okay.

18 BY MS. LIVELY:

19 Q. So that everybody can see it. All right. What's
20 that? And if you need to step down to see it, 'cause I
21 know you're further off than the jury and myself, Your
22 Honor, may he step down, please?

23 JUDGE GIBBONS: Sure.

24 MS. LIVELY: Thank you.

25 BY MS. LIVELY:

1 Q. And I know the State -- this is already in evidence,
2 State's Exhibit Number 14.

3 A. I don't have my contacts in for it.

4 Q. It's okay. It's okay. All right, what are we
5 looking at next to that white either blanket or sheet
6 here, what is that?

7 A. Sunglass case.

8 Q. That's the sunglass case?

9 A. Correct.

10 Q. Is that the sunglass case that you collected?

11 A. Correct.

12 Q. What was in that sunglass case?

13 A. Marijuana and crack cocaine supposedly.

14 Q. Okay. You don't know at that point in time right?

15 A. Correct.

16 Q. Because you didn't bring it to the scene, did you?

17 A. Correct.

18 Q. Did you plant evidence in this case?

19 A. No, ma'am.

20 Q. Okay. But you were fired for tampering with or not
21 properly collecting it in another case; is that fair to
22 say?

23 A. Correct.

24 Q. And you admit that, and Mr. Frick handled all that
25 for the jury here today, correct?

JURY TRIAL

1 A. Correct.

2 Q. Is that what you found when you went into the van?

3 A. Correct.

4 Q. All right. Thank you.

5 RE CROSS-EXAMINATION

6 BY MR. FRICK:

7 Q. The incident in Fairfield happened in April of '22,
8 right?

9 A. Correct.

10 Q. And --

11 MS. LIVELY: I guess I'm through, thank you.

12 JUDGE GIBBONS: Yeah, I was expecting to ask
13 her are you through.

14 MR. FRICK: I'm sorry. I'm sorry, I thought -
15 -

16 JUDGE GIBBONS: Y'all never let me know if
17 you're through or not.

18 MS. LIVELY: I know, I know. that's fine,
19 Your Honor, yes, that's all from the State, thank
20 you.

21 JUDGE GIBBONS: All right, thank you. Mr.
22 Frick, your witness.

23 MR. FRICK: I am sorry about that. I did not
24 -- I thought when she turned around.

25 JUDGE GIBBONS: It happens.

1 BY MR. FRICK

2 Q. All right, and then you got fired in January of '24,
3 correct?

4 A. Correct.

5 Q. So, no one knew about this until it got discovered
6 in September of '23, right?

7 A. Correct.

8 Q. And it wasn't you that volunteered that information
9 was it?

10 A. Correct.

11 Q. Thank you. That's all the questions I have.

12 JUDGE GIBBONS: Thank you, sir. You can step
13 down, and you're free to leave. The State can call
14 its next witness.

15 MS. LIVELY: Thank you, Your Honor. The State
16 would call Trooper Morgan Hughes to the stand.

17 JUDGE GIBBONS: All right. Ma'am, if you'll
18 raise your right hand. Do you swear or affirm that
19 the testimony you give will be the truth, the whole
20 truth, and nothing but the truth, so help you God?

21 MS. HUGHES: I do.

22 JUDGE GIBBONS: Thank you.

23 MORGAN HUGHES

24 was called as a witness, and having been first duly
25 sworn, testified as follows:

JURY TRIAL

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DIRECT EXAMINATION

BY MS. LIVELY:

Q. Would you please state your full name for the record?

A. It's Morgan Hughes.

Q. And what is your current title?

A. I'm the Sergeant with the South Carolina Highway Patrol.

Q. How long have you been with Highway Patrol?

A. Since July of 2015.

Q. And what is your role typically on a daily basis with the Highway Patrol now?

A. Yeah, I'm assist post commander, so I assist in creating the schedules, running the post, basically a supervisor of all the guys on the road in Post C, which is -- encompasses Chester and Fairfield County. I am the evidence custodian for the Post. So, any evidence that comes in, I process it, and make sure it gets where it's going to, approve reports, approve time, basically HR and supervisors all in one thing.

Q. Okay. And did you actually begin your role with the South Carolina Highway Patrol as an actual road officer?

A. I did. I started in Chester and Fairfield as a road trooper in 2015.

Q. Okay, road trooper, thank you. And were you

1 actually then promoted as you went along in your job,
2 which is normal if you do your job correctly?

3 A. Yes, ma'am.

4 Q. Is that fair?

5 A. I was promoted to Corporal in 2021.

6 Q. In 2021. So in 2022 were you still working as --
7 were you still in that title of Corporal?

8 A. I was.

9 Q. Are you familiar with the incident that we've been
10 referring to here in court on July 10th of 2022 that
11 involved the fatality of Max Shanks and the injuries to
12 Corey Shanks?

13 A. I am.

14 Q. Now, if you could, please tell the jury what your
15 role was whenever you got notification of this particular
16 collision.

17 A. Absolutely. I oversee the fatal collisions as well.
18 So, I kind of maintain contact with all parties involved,
19 whether MAIT's involved, maintain contact with the
20 Coroner's office, and the Solicitor's office. In this
21 case, I can go into the details that I aided them in
22 obtaining the search warrant for the two vehicles that
23 were involved for MAIT examination.

24 Q. All right. And whenever a vehicle is actually
25 involved in a collision, what do you -- what's the normal

1 procedure for actually taking that vehicle away from the
2 collision? What do you have to do with that vehicle
3 before it gets taken?

4 A. We have to do a vehicle inventory and notate that on
5 our towed vehicle report, it has a spot for all the
6 inventory that we have to notate it.

7 Q. All right, so whenever any item that's actually
8 found in the vehicle, you document it on that inventory
9 report?

10 A. We do.

11 Q. Now, whenever you became, like I said, involved in
12 this particular case, did you ever go actually to the
13 collision scene that day?

14 A. I did not.

15 Q. You did not, all right. So, at the point whenever
16 you got involved, were you kind of behind the scenes with
17 information that needed to be collected, and any type of
18 warrants that needed to be procured?

19 A. Yes, it was the next day that I was involved in all
20 the behind the scenes stuff.

21 Q. Okay, thank you for clarifying that. So, on July
22 the 11th, you were the one that actually did the next
23 steps for getting the search warrants; is that correct?

24 A. I did.

25 Q. And tell the jury again when you got the search

1 warrants, what was the basis for those search warrants?

2 A. Yeah, any time MAIT is involved in a collision where
3 they do a deferred response or an immediate response to
4 investigate the collision, they often tell us to put a
5 hold on the vehicles if it's towed. That means no one
6 can access the vehicle, come to the -- get the vehicles,
7 or get anything out of the vehicles. The next step for
8 them is to get a search warrant for those vehicles, so
9 they can come by and do a general examination of the
10 vehicle -- any vehicle defects. Sometimes they look at
11 speed, black box in the vehicle, etcetera, just to do a
12 general examination of any defects they can find.

13 Q. Were you actually involved in the search of those
14 vehicles?

15 A. I was present 'cause I had to bring -- after I
16 received the search warrant from the judge and signed for
17 them, I had to bring them to the lots where the MAIT
18 associates were, and that way we can perform the search
19 warrant for those.

20 Q. Okay, but that was the extent of your involvement
21 for the search warrant?

22 A. Correct, yeah.

23 Q. So let's go back to the actual evidence then. Do
24 you have evidence that was collected from the van with
25 you here today?

JURY TRIAL

1 A. I do.

2 Q. Please tell the jury what that is.

3 A. I've got one thing of evidence that contains the
4 four grams of marijuana that was located in the vehicle
5 and sent to SLED for testing. I also have a evidence of
6 the .46 grams of a white rocky substance of cocaine, that
7 was also collected from the van and sent to SLED for
8 testing.

9 Q. And I see that you have white sheets on top of the
10 actual envelopes, what are those white sheets
11 documenting?

12 A. Yeah, every time we enter -- anybody enters
13 evidence, an automatic electronic chain of custody is
14 created. So, anytime evidence is moved from the trooper
15 that found it, to a evidence locker, and then to me to
16 submit and ensure that evidence is how it's supposed to
17 be, every person that touches the evidence is added to
18 that log, and says where they're going to, and what's the
19 purpose of them being in contact with the evidence.

20 MS. LIVELY: Your Honor, may I approach the
21 witness?

22 JUDGE GIBBONS: Yes.

23 BY MS. LIVELY:

24 Q. Let me retrieve these items from you, if you would,
25 please.

1 A. I did the most updated one would be bringing to
2 court today.

3 Q. All right, we're going to first deal with the --
4 what you mentioned as to the marijuana, and I'm going to
5 have her mark this really quick. And I'm going to have
6 her mark the chain of custody since you brought it with
7 it, I'm just going to attach it. Is this the last chain
8 of evidence that was actually put into the system?

9 A. It is. I printed it off today when I brought it
10 from our evidence locker to today to court.

11 Q. Perfect. Let's do chain of evidence and this one
12 I'm actually going to staple it, or just put it -- you
13 want to put that right there. State's Exhibit Number 93,
14 once again, you've already testified that this was what
15 was believed to be marijuana at the time that it was put
16 into the system and into evidence at what location again?

17 A. Let's see.

18 Q. At the evidence drop locker; is that correct?

19 A. Correct.

20 Q. Okay. Now, it looks like you actually checked it
21 out on July 11th of 2022; is that correct?

22 A. That's correct.

23 Q. All right. When you checked out the marijuana, was
24 the condition of the packaging that it was put in for it
25 to then be sent to SLED, was there anything with that

JURY TRIAL

1 packaging that gave you any concerns about it being
2 tampered with or not being properly packaged?

3 A. No, I don't submit it unless if it's not correctly
4 labeled or sealed correctly. Everything needs to be
5 remain sealed the whole time.

6 Q. And so you did review that before you took it to
7 SLED?

8 A. I did.

9 Q. And that for the record is State's Number 93. Let
10 me mark this one. And State's Number 94, just to keep it
11 how you brought it here to court today, what did you say
12 was going to be in this particular packaging?

13 A. I believe it was .46 grams of a white rocky
14 substance, which was believed to be cocaine.

15 Q. Okay. And this is State's Number 94, and is this
16 the last chain of custody that you printed out to show
17 everyone who had hands on this particular item, prior to
18 it being sent to SLED for testing?

19 A. Correct.

20 Q. And I see you also checked this out on July 11th of
21 2022. When you checked this out on that date, did you
22 have any concerns about how it was packaged and sealed in
23 order for it to be sent to SLED?

24 A. No, once again everything was sealed when I received
25 it and everything was labeled correctly.

1 Q. Okay, all right. So that's State's Number 94. Now,
2 at some point you had already testified that you deal
3 with all the fatalities that come through that is
4 investigated by Highway Patrol; is that correct?

5 A. Just for the Post C, but, yes, ma'am.

6 Q. For the Post C, I'm sorry, just for this particular
7 area. So, whenever information and evidence is coming
8 back from SLED are you aware of this?

9 A. I am.

10 Q. So, was there a change in the charging in this
11 particular case based on information that was received
12 back from SLED?

13 A. Yes, ma'am, when we received the toxicology results
14 back from SLED indicating there was no impairment for
15 drug -- or excuse me, alcohol, I did have a conversation
16 with the Solicitor about what other charges we would
17 bring forward at that time.

18 Q. Okay. Have you in your years of working as a
19 trooper, as well as now in your capacity, have you
20 charged reckless homicide in a situation where impairment
21 was not actually shown through toxicology?

22 A. I have been a part of it. I don't think I've ever
23 been the direct one, but, yes, ma'am.

24 Q. I'm sorry, I should have said are you the -- is that
25 something that you've --

JURY TRIAL

1 A. Yes.

2 Q. -- been a part of?

3 A. Yes.

4 Q. Okay. And in this particular case was that one of
5 the things that was decided to do, and you presented that
6 information to a Grand Jury?

7 A. Yes, ma'am.

8 Q. So, you were the actual affiant for that charge of
9 reckless homicide?

10 A. Yes, ma'am.

11 Q. Did you have any other dealings with this particular
12 case or the evidence in this case after you presented
13 that to the Grand Jury?

14 A. No, ma'am.

15 Q. Have you just basically been here in order to assist
16 with the remaining evidence and bringing it here to court
17 today?

18 A. Yes, ma'am.

19 Q. Thank you. Answer any questions the Defense may
20 have. Oh, hold on, just a second, I'm sorry. The
21 Court's indulgence. Thank you, answer any questions that
22 the Defense may have.

23 JUDGE GIBBONS: Mr. Frick?

24 MR. FRICK: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. FRICK:

2 Q. So, in this particular case you were kind of the
3 evidence custodian; is that fair to say?

4 A. Fair to say, yes, sir.

5 Q. Okay. And you did present an indictment to the
6 Grand Jury, correct?

7 A. I did.

8 Q. Do you recall when you presented that indictment?

9 A. I do not recall. I think if I can look at it.

10 Q. I'm going to show you, this is the indictment.

11 MS. LIVELY: That's fine, no objection, Your
12 Honor.

13 BY MR. FRICK:

14 Q. I'm going to show you --

15 A. Yes.

16 Q. -- is that the indictment you -- a copy of the
17 indictment that you presented?

18 A. Yes, sir.

19 Q. Do you see the date that it was presented?

20 A. Looks like it was January 31st, 2023.

21 Q. And I know you didn't talk a lot about the blood in
22 this case, but it was sent to SLED, right?

23 A. Yes, sir.

24 Q. And when the report came back from SLED was it
25 subsequently sent someplace else?

JURY TRIAL

1 A. Say that -- the blood?

2 Q. Yeah.

3 A. Or the -- yeah, it's -- whenever evidence is tested
4 by SLED, it goes back from SLED to the central evidence
5 facility, which is in Columbia.

6 Q. Okay.

7 A. That's where it's housed.

8 Q. Did you do it for additional testing?

9 A. I don't recall.

10 Q. Okay.

11 A. Not -- not with Highway Patrol, I don't believe.

12 After we get it to CEF, which is our Central Evidence
13 Facility, they kind of handle it from there for transport
14 and stuff like that.

15 Q. Got you. I'm just trying to make --

16 A. That's okay.

17 Q. -- heads or tails out of these --

18 A. It's a little confusing, I understand.

19 Q. I know they are. All right, I'm looking at State's
20 Number 94, this is a chain of custody on the alleged
21 crack cocaine. If I'm reading this correctly it was
22 gotten by Dye on July the 11th, correct? Is that
23 correct?

24 A. Yes, sir. I'm sorry, yes, sir.

25 Q. That's all right. And then it was checked into, is

1 that the Post?

2 A. It is, that's -- that's where they store the
3 evidence.

4 Q. That day?

5 A. Showing July 11th, yes.

6 Q. Okay. It's got a time on there, can you tell me
7 what --

8 A. Yeah, it's 1:30 -- or 1:28 in the morning, so it
9 would've been the day -- that same shift that he was
10 working from the collision, just after midnight.

11 Q. Okay.

12 A. So would've --

13 Q. So he brings it to the Post July 11th about 1:30 in
14 the morning?

15 A. Uh-huh (affirmative).

16 Q. Okay. And I guess you must have come on the shift
17 about 7:30 that morning?

18 A. Yes, sir.

19 Q. And then you get it out of the box?

20 A. Yes, sir.

21 Q. And then you log it in? And then it gets sent to
22 SLED --

23 A. There's one step in between it. Yeah, so --

24 Q. Can you tell me --

25 A. Yeah. I can talk through every step if you want me

JURY TRIAL

1 to. So, I log it in. I come out the next day on July
2 11th, 2022 at 07:40 hours. I check it out to myself. I
3 make sure everything is correct. I log it back into our
4 temporary storage location, because it has to get sent
5 down to our Central Evidence Facility in Columbia, and
6 that takes a little bit of figuring out who can go down
7 to Columbia with the evidence to bring it to them. So,
8 if you'll see on July 13th, First Sergeant Cedric Morgan,
9 who is also our evidence custodian, he brought it from
10 our Post down to Central Evidence Facility in Columbia
11 where they then store it until they can get it to SLED
12 for testing.

13 Q. All right.

14 A. If that makes sense.

15 Q. And then it still it went to SLED a day or two after
16 that?

17 A. Yes.

18 Q. Okay. Very good. And then the last part here,
19 that's just checked out for the court, is that what that
20 is?

21 A. That's right.

22 Q. All right, let's talk about State's Number 93, this
23 was the alleged marijuana that's -- that's Dye that turns
24 it into the Post about -- that one says 1:24.

25 A. Correct.

1 Q. In the morning on the 11th.

2 A. Correct.

3 Q. And you get it about 7:30 in the morning.

4 A. Correct.

5 Q. Correct me if I'm wrong, but it remained at the
6 Troop storage, and I don't know, is that Chester? Is
7 that Rock Hill?

8 A. Chester.

9 Q. That's in Chester.

10 A. Uh-huh (affirmative).

11 Q. It remains in Chester until January of this year; is
12 that correct?

13 A. That's correct. So, per our policy anything like
14 crack cocaine, any drugs other than marijuana is to be
15 sent down to Central Evidence Facility within five days
16 to get tested for SLED. There was a time there where
17 they -- SLED would no longer accept marijuana, due to the
18 volume of stuff that they were receiving, and back in
19 January of 2020 -- excuse me, January 2024, they kind of
20 transitioned to a new system and they wanted all the
21 marijuana to be tested, so that's when we brought it down
22 there.

23 Q. Okay. The Solicitor asked about you search
24 warrants, you -- there were search warrants obtained for
25 MAIT for both the Explorer and the van, correct?

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1 A. Correct.

2 Q. Do you know where the van was?

3 A. I don't recall which tow -- but they all stayed at
4 the tow yard wherever they were towed.

5 Q. Do they remain there?

6 A. Until now?

7 Q. Yes, ma'am.

8 A. I don't know where they are now. I just know that
9 there was a hold on it after the collision for MAIT to do
10 an investigation.

11 Q. Okay. So we don't exactly know where either car is
12 at this point, right?

13 A. Correct.

14 Q. Okay. Beg the Court's indulgence. All right, and I
15 asked you about this, but I just want to ask it one more
16 time, and I apologize, the blood though, you're not sure
17 whether it got checked out and sent for subsequent
18 testing or not?

19 A. After ours?

20 Q. After SLED -- after it came back from SLED.

21 A. Uh-huh (affirmative).

22 Q. And the results were in.

23 A. Uh-huh (affirmative).

24 Q. Whether or not it was sent to another facility for
25 testing?

1 A. That I do not know.

2 Q. Okay.

3 A. We don't -- we -- it didn't come back to our Post,
4 it stays at Central Evidence Facility after it's tested,
5 so we don't have any hand in after that.

6 Q. Okay. Thank you, that's all the questions I have.

7 JUDGE GIBBONS: All right, redirect?

8 MS. LIVELY: No, Your Honor.

9 JUDGE GIBBONS: Thank you, ma'am, you may step
10 down. You're free to leave. Let me see the
11 lawyers.

12 (BENCH CONFERENCE)

13 JUDGE GIBBONS: Ladies and gentlemen, we're
14 going to go ahead and take a lunch recess. I want
15 you back in your jury room at 1:30. Remember, don't
16 talk to anybody about the case. Don't do any
17 independent research. We'll see you back at 1:30,
18 okay.

19 (JURY EXITS)

20 JUDGE GIBBONS: All right, anything from the
21 State before we take a break?

22 MS. LIVELY: No, Your Honor.

23 JUDGE GIBBONS: Anything from the Defense?

24 MR. FRICK: No, sir.

25 JUDGE GIBBONS: All right, thank you. See you

1 all back at 1:30.

2 MS. LIVELY: Thank you.

3 (OFF THE RECORD)

4 JUDGE GIBBONS: Before we bring the jury back
5 out.

6 MS. LIVELY: I'm just -- Your Honor, give me
7 just a couple minutes. I'm just trying to go
8 through these questions -- I mean, these pictures
9 since they were Julia's, and making sure they're
10 lined up on the computer. And I've got seven more
11 to go through.

12 (OFF RECORD)

13 (JURY ENTERS)

14 JUDGE GIBBONS: All right, thank you ladies
15 and gentlemen. The State can call its next witness.

16 MS. LIVELY: Yes, Your Honor, thank you. May
17 it please the Court. The State calls Trooper Tyler
18 Holland to the stand.

19 THE CLERK: Please raise your right hand,
20 place your left hand on the Bible, and state your
21 full name.

22 MR. HOLLAND: Tyler Holland.

23 THE CLERK: You do solemnly swear or affirm
24 the testimony you give will be the truth, the whole
25 truth, and nothing but the truth, so help you God?

1 MR. HOLLAND: I do.

2 THE CLERK: Thank you, sir.

3 JUDGE GIBBONS: All right.

4 MS. LIVELY: Yes, thank you, Your Honor.

5 TYLER HOLLAND

6 was called as a witness, and having been first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. LIVELY:

10 Q. Trooper Holland, where are you currently employed?

11 A. The South Carolina Highway Patrol.

12 Q. And what's your full name? I'm sorry, I should have
13 asked you that first.

14 A. Tyler Holland.

15 Q. How long have you been with South Carolina Highway
16 Patrol?

17 A. Six years.

18 Q. Do you have any other side jobs?

19 A. I am a volunteer firefighter with Richburg Fire
20 Rescue.

21 Q. So, how long have you been a volunteer with
22 Richburg?

23 A. Almost two years now.

24 Q. Are you from the Chester County area?

25 A. I am not originally. I'm from Fort Mill.

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1 Q. From Fort Mill, but you're from South Carolina?

2 A. I am.

3 Q. What is your current rank?

4 A. Lance Corporal.

5 Q. Lance Corporal. So, what are your duties as Lance
6 Corporal?

7 A. Primarily traffic enforcement as well as collision
8 investigation, assisting motorists on the roadways who
9 may be broke down or disabled.

10 Q. And on July 10th of 2022, was that your role at that
11 particular time in regards to your status as a trooper?

12 A. Yes, it was.

13 Q. Did you get dispatched to the collision that
14 occurred on that day around about 5:15 or 5:20?

15 A. Yes, I did.

16 Q. Please tell the jury how you got dispatched and what
17 you knew about what had happened before you got there.

18 A. So, we received the transmission from dispatch
19 notifying us that there was a crash, or a 10-50 is what
20 the code that we use, it had injuries, and part of the
21 interstate of I-77 was blocked, or 10-53 is our code for
22 that.

23 Q. And whenever you -- so you learned this information,
24 when you got on the scene, what was the first thing that
25 you needed to do regarding everything that was going on?

1 A. So, when we get on the scene, I got my traffic vest
2 on, 'cause we're in an environment where vehicles still
3 may be moving. At that time the road was completely
4 blocked and shut down with fire units, law enforcement,
5 and EMS units.

6 Q. So all of these other first responders were already
7 on the scene when you got there?

8 A. Correct.

9 Q. And do you recall whether or not the individuals who
10 were in the vehicles, who were involved in the collision,
11 whether they were still there when you got there?

12 A. Yes, the white SUV that was off to the right hand
13 side of the road, the driver and one of the children, who
14 was a back seat occupant, were still on the shoulder of
15 the roadway getting ready to be prepped for transport by
16 EMS. The driver of the white van, which was in the
17 median in the cable barrier, was along the shoulder, the
18 right shoulder of the roadway at that time. I believe
19 the pass -- the front seat passenger was -- had already
20 been transported or was getting ready to leave in the
21 ambulance after I --

22 Q. Was that from the Explorer?

23 A. That's correct, that's from the Explorer.

24 Q. Were there any other passengers or anyone else in
25 the white van, other than the driver?

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1 A. No, not that I'm aware.

2 Q. All right. So, you told us about three occupants
3 from the Explorer, what about the fourth?

4 A. Yes, the fourth was -- I learned later on, I -- or
5 as I arrived from a fire fighter that the fourth occupant
6 was deceased and still on the scene.

7 Q. So, when you're there on the scene, tell the jury
8 what you have with you in order to document what you're
9 seeing.

10 A. So, we have our body cameras, an in-car camera,
11 paint, cameras to take pictures, and our reports that we
12 do on our computers, are usually used to document the
13 scene.

14 Q. And were there other troopers that you worked with
15 on that particular day for this collision?

16 A. Yes, there was.

17 Q. And who were they?

18 A. Trooper Dye, Corporal Warlick was the on-scene
19 supervisor, and Trooper Gordon from Lancaster came over
20 to assist.

21 Q. So, while all of you were there doing your
22 individual roles, what things did you actually do?

23 A. So, my primary responsibility was to paint and
24 photograph the entire scene for Trooper Dye, while he
25 conducted his interviews.

1 Q. And how long were you on the collision scene,
2 approximately?

3 A. Somewhere between three and four hours from start to
4 finish, I believe.

5 Q. And was your body worn camera activated for the
6 entire time?

7 A. Yes, it was.

8 Q. And was that body worn camera, was it on the whole
9 time, or were you turning it on and off depending on what
10 you were doing? Do you recall?

11 A. I do not recall.

12 Q. That's fine. But do you recall that you actually
13 turned it on while you were there?

14 A. Yes, I do.

15 Q. In regards to your body worn camera, did you also
16 collect -- or did you actually take photographs that were
17 then collected and made a part of this investigation?

18 A. Yes, I did.

19 Q. Did I allow you to see a stack of photographs from
20 your investigation on July the 10th that you took
21 regarding the collision scene?

22 A. Yes, you did.

23 Q. I'm going to show those to you again, they've got
24 stickers on them, but it's pretty much the same thing.

25 Let me show them to you. Is this the stack that I showed

1 you earlier that has a good chunk of photos of both
2 vehicles, as well as the roadway, and the conditions that
3 were around the area where the collision took place?

4 A. Yes, ma'am, these are the photos.

5 Q. Okay. Let me retrieve those from you. And there
6 was one that I have that did not get marked. I'm going
7 to need you to do that for me, if you would, please.
8 There was one that Julia didn't have that was in her
9 other stuff. Just mark it right there is fine. Thank
10 you. All right. Now, Trooper Holland, when you're
11 taking these photos, are you sometimes with another
12 trooper, or are you alone whenever you're moving around?

13 A. It depends on the scene itself. For this particular
14 case I was with someone else.

15 Q. You were with someone else. Who was with you for a
16 large portion of the time you were documenting the
17 vehicles?

18 A. Trooper Gordon was with me.

19 Q. How about whenever you were taking photographs of
20 the Defendant's van?

21 A. Trooper Dye was present at that time.

22 Q. So Trooper Dye, did you testify what his role was
23 for that particular case -- or for this case?

24 A. I did. He was the primary investigator as well. He
25 was the primary investigator.

- 1 Q. Do you know how long he had been on the job by then?
- 2 A. Two -- two or three months by himself, and he had
3 been on for a little under a year, I believe.
- 4 Q. So, when he was with you, and y'all actually were
5 around the van, were you taking photographs of the van
6 itself?
- 7 A. I believe it was me --
- 8 Q. Okay.
- 9 A. -- that took the photographs of the van.
- 10 Q. Now, the photos that I just showed you.
- 11 A. Uh-huh (affirmative).
- 12 Q. Were photos that were provided to the State and the
13 Defense that were from Highway Patrol. And you do
14 recognize all of these photos?
- 15 A. I do.
- 16 Q. So, would your testimony be that you either took
17 them, or that you were present when they were taken --
18 taken -- took, listen, I'm sorry, taken.
- 19 A. Yeah, I -- I either took them or I was present while
20 they were being taken, yes.
- 21 Q. Okay. All right, so were there any of these photos
22 that you had any concerns with whatsoever?
- 23 A. No.
- 24 Q. Okay. Your Honor, the State would move to enter
25 these into evidence, the problem is it's going to be a

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1 little all over the place. I'll just do this first
2 chunk. So, it's 7 through 95, minus number 83 where Your
3 Honor and we -- where the objection was made regarding
4 one of those photos being entered. And some of them are
5 duplicated, Your Honor, like 84, 85, and 86 are already
6 in, they came in with another witness.

7 JUDGE GIBBONS: Okay, so --

8 MR. FRICK: No objection.

9 JUDGE GIBBONS: Thank you.

10 MS. LIVELY: Yeah, that was just more so for
11 clarity on the record, Your Honor.

12 JUDGE GIBBONS: Okay.

13 MS. LIVELY: Thank you.

14 (State's Exhibits 7 through 82 and 84)
15 through 95 were introduced into evidence)

16 BY MS. LIVELY:

17 Q. What I'm going to do is I'm -- actually I will hand
18 these to you, Trooper Holland, but we're just going to go
19 through on the television so the jury can see them, while
20 we talk about what we're looking at, okay.

21 A. Yes, ma'am.

22 Q. And actually I'm going to take those back from you,
23 just so I can refer to the State's Exhibit Number.

24 A. Okay.

25 Q. Now, can you see that okay?

1 A. Yes, ma'am.

2 Q. In this particular photo, what it is that we're
3 seeing on the road, in the middle of the road?

4 A. So that mark would be an indicator, or some sort of
5 evidence, that led me to believe that that would be the
6 area of impact, or as I have it labeled there it's point
7 of impact.

8 Q. Point of impact. And the orange paint, are you
9 trained on what to do with the orange paint, and how you
10 mark certain significant factors that you find around a
11 collision scene?

12 A. Yes, we are.

13 Q. And this is actually State's Exhibit Number 7 that
14 we're talking about, okay. Now, is this a close-up to
15 show what you just testified about?

16 A. That is correct.

17 Q. And what was it about this particular photo that led
18 you to believe that that was the point of impact?

19 A. I believe -- that's kind of hard for me to see.

20 Q. I know it's hard to see. If you need to step down
21 you can.

22 A. I believe there was a combination of things --

23 Q. Can you hear him okay, Jenny?

24 JUDGE GIBBONS: Just make sure you keep
25 talking loud.

1 MS. LIVELY:

2 Q. Yeah, talk louder.

3 A. Yes, sir. I believe I was trying to identify that
4 black -- the white gouge in the road there.

5 Q. Okay, got it. And what did that tell you based on
6 your training?

7 A. A part of the vehicle made contact with the road
8 surface, which is going to leave that mark across the
9 roadway there.

10 Q. Okay. And is that where it started, where you saw
11 that?

12 A. That's correct.

13 Q. And was it consistent with -- when you followed that
14 path, was it consistent with other tire marks, and
15 leading up to where you found the Explorer?

16 A. Yes, it was.

17 Q. And that would be State's Exhibit Number 87. Now,
18 what are we seeing -- now, where are we in regards to --
19 where we were looking at before, which lane were we
20 looking in?

21 A. We were in lane number two of I-77 northbound.

22 Q. Right. Okay, so that was northbound, all right. So
23 now we're looking at State's Exhibit Number 8, what are
24 we seeing here?

25 A. Those would be furrows or tire tracks through off

1 the left side of the road into the grass median, that
2 would be post-collision, the path of the van has
3 travelled into the grass median.

4 Q. How many different collisions were there that were
5 involved in this particular incident?

6 A. So, we have the original crash with the white SUV
7 and the white van, and then as you see in that picture
8 there in the upper left --

9 Q. Here?

10 A. Yes, ma'am. That'll be a secondary collision that
11 occurred on the north -- correction, the southbound side
12 of the roadway.

13 Q. All right. And that's State's Exhibit Number 8.
14 Then what are we seeing here?

15 A. Once again that's the continued post-collision path
16 of the van through the mud, and also the puddles of water
17 indicating that there was rain prior to the collision.

18 Q. Can you tell me what I'm pointing to here in this
19 photograph? Can you see it from there?

20 A. Yeah, I believe that's the van who has made further
21 contact with the cable barrier after crossing through it.

22 Q. After crossing through --

23 A. Right there, yeah.

24 Q. -- through here?

25 A. Yes, ma'am, the cable barrier's laid over at this

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1 point.

2 Q. Okay. And did you learn why those other vehicles on
3 the other side going southbound ended up running into
4 each other?

5 A. Yes, ma'am.

6 Q. Why?

7 A. Through statements and interviews, it was determined
8 that due to the van's path of travel they believed they
9 were going to struck head on, so they started evasive
10 action in order to prevent that which caused a rear end
11 collision between those vehicles.

12 Q. All right, that's State's Exhibit Number 9. And
13 once again, in this particular picture, is this a close-
14 up of the conditions in that -- on the road that day?

15 A. Yes, ma'am.

16 Q. That would be State's Exhibit Number 90. So, what
17 are we seeing here?

18 A. This is continued path of the van in its travel, and
19 where his rear bumper has been detached from the vehicle.

20 Q. Okay. And that's State's Number 10. Were there
21 other pieces or parts of the van that you found as you
22 walked this path?

23 A. Yes, ma'am, the exhaust from the vehicle had also
24 been ripped from the undercarriage of the vehicle.

25 Q. And what are you doing as you're walking this path?

1 A. You're painting -- you're making paint marks as you
2 go about every five feet showing the tire path -- the
3 path that the tire has made through the grass itself.

4 Q. All right, that's State's Exhibit Number 10. Tell
5 the jury why it's important every five feet that you make
6 those paint marks in the grass. What -- who ends up
7 using that information?

8 A. So, MAIT will later use this information to recreate
9 their diagram for final rest positions, they'll actually
10 make those furrows in the grass. So, that is short lived
11 evidence sometimes, especially with rain, that can go
12 away, therefore the paint is put down to preserve that
13 evidence if it was to be destroyed later.

14 Q. I got you. Okay. And now here we are with State's
15 Exhibit Number 11, is this where the van came to its
16 final rest?

17 A. Yes, ma'am.

18 Q. And in this particular picture what do we see in
19 regards to why that -- the vehicle stopped there from
20 what you can see?

21 A. That cable barrier there on the left hand side has
22 captured that vehicle.

23 Q. That's State's 11. All right, we've already had
24 some testimony earlier about this, are you the one that
25 took the picture of this backpack? If you didn't, that's

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1 okay, it's already in.

2 A. I don't recall who took that one.

3 Q. That's okay. Let's move to -- and do you remember
4 whether you were the one that took the picture of what
5 was inside the backpack?

6 A. I believe I did take that.

7 Q. Okay.

8 A. 'Cause at that point we were documenting.

9 Q. Got it. And that's actually already in as State's
10 Exhibit Number 28. All right, now, back to the van, were
11 you there, or did you take that photograph, one or the
12 other, of the van?

13 A. I was present for the van being inventoried, yes.

14 Q. Being inventoried, all right. And who was in charge
15 of actually inventorying the van?

16 A. Trooper Dye.

17 Q. Trooper Dye, all right. So Trooper Dye inventoried
18 the van, so at this point we're looking into the side
19 door of the van; is that right?

20 A. That's correct.

21 Q. That's State's Number 88. And going back around to
22 the other side, does this show how the van was actually
23 stopped as a result of the cable?

24 A. That's correct.

25 Q. And that's State's Exhibit Number 95. And this is

- 1 another angle showing the same damage; is that correct --
- 2 A. That's correct.
- 3 Q. -- to the van? This is State's Number 12. And
- 4 here, what are we seeing in this particular picture,
- 5 which is State's Number 89?
- 6 A. That's an airbag deployment from the white van.
- 7 Q. Okay. And why is that important to show that there
- 8 was an airbag deployment?
- 9 A. It's documented on our collision report that we fill
- 10 out. And also contributes to injuries to the driver of
- 11 the vehicle.
- 12 Q. Now we're looking at State's Number 13, and were you
- 13 there for when that picture was taken?
- 14 A. Yes, I was.
- 15 Q. Okay. And do you recall the items that were
- 16 inventoried out of the van?
- 17 A. Yes.
- 18 Q. You do? Okay. Do you see right now, and if you
- 19 don't you can actually step down and show the jury, do
- 20 you see in this particular photograph an item that was
- 21 inventoried that became of significance?
- 22 A. Yes, ma'am, it would be the black sunglasses case in
- 23 the bottom right hand corner.
- 24 Q. Here?
- 25 A. That's correct.

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1 Q. So, did you see that for yourself?

2 A. I did.

3 Q. You did. So were you present when that was
4 collected?

5 A. Yes, I was.

6 Q. All right. And that's State's Exhibit 13. All
7 right, and I believe this is just -- this one's already
8 in, is this just kind of a closer up picture of what you
9 just testified to?

10 A. Yes, ma'am.

11 Q. So the sunglass case, what is that little yellow
12 thing at the bottom, do you know what that is?

13 A. I'd have to -- I'd have to look.

14 Q. Here, I'll show you the picture, maybe this is --
15 State's 14, and if you don't know what that is, that's
16 fine.

17 A. I believe those are cigarette rolling papers.

18 Q. Okay. And that's State's 14. Does that help you a
19 little bit with what the yellow thing is?

20 A. Yes, ma'am, that'll be the packaging for the rolling
21 -- the cigarette rolling papers.

22 Q. Okay, that's State's Exhibit Number 16. Now, tell
23 me, I'm going to go back, so we're seeing the sunglass
24 case in this particular picture, then it's out of -- I'm
25 assuming, where is it at at this point? 'Cause it's out

1 of the van.

2 A. Yes, we relocated it from the van back to the
3 interstate in the bed of -- that's on the bed of a pickup
4 truck.

5 Q. And who all was present for whenever it was actually
6 opened, the sunglass case was opened?

7 A. Myself, Trooper Dye, as well as the Coroner, Terry
8 Tinker.

9 Q. Terry Tinker was there too, okay. All right, so
10 when you opened it -- when it was opened up, do you
11 recall seeing these items inside?

12 A. Yes, I do.

13 Q. What, if anything -- who saw initially that the foil
14 might be of significance?

15 A. I -- I pointed out that it might be something of
16 significance.

17 Q. Okay.

18 A. And then the Coroner also made his comment about not
19 letting it blow away, we were all on the side of the
20 interstate in that environment.

21 Q. So, at that time who was in charge of actually
22 seizing that evidence and making sure that it was
23 collected?

24 A. Trooper Dye.

25 Q. Trooper Dye, okay. So, you were there, you know,

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1 you were saying, don't let it blow away, okay. And who
2 opened it up?

3 A. Trooper Dye opened it up.

4 Q. Who opened up the foil?

5 A. Trooper Dye opened that up as well with gloves on.

6 Q. So, that's State's 16. So, this is State's 17. So,
7 who's hand is that?

8 A. That would be Trooper Dye's hand.

9 Q. Trooper Dye's, so were you standing there for when
10 he opened the foil?

11 A. Yes, I was.

12 Q. All right. Did you see him pull that out of his
13 pockets or somewhere off of his body?

14 A. No, ma'am.

15 Q. Where did you see him take it from?

16 A. From that black case.

17 Q. From the black case. Where did you see him take the
18 black case from?

19 A. From the back of that minivan -- or that van.

20 Q. From the van, thank you. That's State's Number 17.
21 Now, where are we back to at this point?

22 A. We're back on the -- in the number two lane
23 northbound on I-77.

24 Q. So this is State's Number 91. At this juncture
25 here, we see a lot of like mud tracks here, and then we

1 see tracks here, which one of these would be indicative
2 of the travel of the Explorer?

3 A. None of those.

4 Q. None?

5 A. None of those.

6 Q. Right. So, I'm sorry, let me ask the question. So
7 none of those would be, so I just want to explain, how
8 much further up do we have to go before we're actually
9 going to see where the Explorer left the road? Did you
10 document it with paint marks?

11 A. I did document it with paint.

12 Q. Okay. How's that?

13 A. That's correct.

14 Q. And that's the one?

15 A. That's the one.

16 Q. Okay. So, were there a lot of emergency vehicles
17 coming and going that day?

18 A. Yes, there were.

19 Q. So, whose job is it to determine what is actually
20 relevant for the purpose of how the vehicles traveled
21 after the collision?

22 A. It would've been mine that day.

23 Q. Yours that day.

24 A. 'Cause I was painting.

25 Q. Okay. So, this would be State's Number 92. So, you

- 1 were the one that made those orange paint marks, correct?
- 2 A. Yes, ma'am.
- 3 Q. And was that information then given to the MAIT team
- 4 for them to do their job in reconstructing the collision?
- 5 A. Yes, it was.
- 6 Q. And once again is this an additional pathway of the
- 7 Explorer when it left the road?
- 8 A. Yes, ma'am, this will be post collision furrows and
- 9 tire mark.
- 10 Q. And this also is indicative -- the same thing you're
- 11 showing?
- 12 A. Yes, ma'am.
- 13 Q. Of the pathway of the Explorer, okay. Were you able
- 14 to as you were following the pathway of the Explorer to
- 15 see trees that were hit by the Explorer?
- 16 A. Yes, ma'am, I was.
- 17 Q. Were there multiple trees?
- 18 A. Yes, ma'am.
- 19 Q. And what happened to the smaller trees as it
- 20 travelled into -- as it travelled off the roadway?
- 21 A. They would -- they collapsed to the ground.
- 22 Q. From the force of the vehicle?
- 23 A. From the -- correct, from the force.
- 24 Q. I mean, from the Explorer?
- 25 A. Yes, that's correct.

1 Q. Okay, thank you. And then what is the significance
2 of the orange X on this particular tree?

3 A. That would be the area of impact for the Explorer
4 where it made contact with that tree.

5 Q. And that's State's Number 19. And what does this
6 show us after the impact with the tree?

7 A. That would be the Explorer's final rest.

8 Q. And that's State's Number 20. Which side of the
9 vehicle actually impacted that tree that you put the X
10 on?

11 A. The passenger side.

12 Q. Is this reflected in State's Number 21?

13 A. That is correct.

14 Q. And in regards to this picture in State's Number 22,
15 do you know why this, what looks to be like a door, is
16 laying there?

17 A. Yes. The fire department would have cut or removed
18 the door from the passenger side, in order to provide
19 treatment and care to the passenger who was severely
20 injured.

21 Q. And would that have been the front seat passenger?

22 A. That would be in the front seat passenger, yes.

23 Q. That's State's Exhibit Number 22. And on this
24 particular side of the vehicle what are we seeing; that's
25 State's Exhibit 23.

JURY TRIAL

1 A. That's the driver's side or left side that had
2 virtually no damage whatsoever.

3 Q. Was that where Ms. Jessica Shanks and Griffin Shanks
4 were seated on that side of the vehicle?

5 A. That is correct.

6 Q. And they actually were able to get out of the
7 vehicle themselves; is that right?

8 A. Yes, they were.

9 Q. That's State's 23. All right, and here the orange
10 marks that we have here next to -- is this next to the
11 Explorer?

12 A. That is correct, to the left rear.

13 Q. And what was the purpose of those marks?

14 A. That would be the approximate body position, feet,
15 center mass, and head of the deceased.

16 Q. Max Shanks?

17 A. That's correct.

18 Q. And that's State's 24. And in this particular photo
19 here, is -- who's seat are we seeing in this particular
20 photo?

21 A. That would be the right front passenger, Corey
22 Shanks' seat.

23 Q. And in this particular one -- I'm sorry, the other
24 one is already in evidence before, it was 85, this one
25 here, this is State's 86, who's seat was this?

1 A. That would be where Max was seated in the right
2 rear.

3 Q. And in this one here, who was seated in this side of
4 the vehicle?

5 A. Let me take just a second.

6 Q. Do you need to take a break? Your Honor, can we
7 take a break?

8 JUDGE GIBBONS: Sure.

9 MS. LIVELY: I apologize.

10 JUDGE GIBBONS: All right, ladies and
11 gentlemen, let's take a quick recess. Go back to
12 your jury room. Don't talk about the case.

13 (JURY EXITS)

14 JUDGE GIBBONS: What's your afternoon schedule?

15 MS. LIVELY: Well, I was just going to say I'm
16 actually finished with the Trooper Holland and then
17 I've got a first responder that came from Florida
18 and a couple of others that'll be short and then a
19 couple of MAIT team. So it just depends on --

20 JUDGE GIBBONS: Okay.

21 MS. LIVELY: -- how we keep going here.

22 MR. FRICK: And Judge, just to be fair. I've
23 got a video, I've got his body cam. I shared that
24 with the Solicitor, it is an hour and 15 minutes.

25 JUDGE GIBBONS: Sure.

JURY TRIAL

1 MR. FRICK: So my cross-examination will be
2 lengthy simply --

3 JUDGE GIBBONS: Sure, we'll go until we need
4 to go.

5 MS. LIVELY: Okay.

6 JUDGE GIBBONS: You know, nobody has any time
7 limits for any particular reason do they?

8 MS. LIVELY: Not today, Your Honor, no. And
9 what I'll do, is like I said, I'll, you know, kind
10 of let us decompress just for a minute. I'll be
11 finished, maybe like a couple of questions with him,
12 and then Frick can just jump right into his cross-
13 examination.

14 JUDGE GIBBONS: Okay.

15 MS. LIVELY: Do you want to go ahead and give
16 me your zip drive and I'll just put it ready to go
17 whenever you're ready?

18 MR. FRICK: Yeah. Do you want to mark it or --

19 MS. LIVELY: Yeah, let's go ahead and do that.
20 What number will this be?

21 JUDGE GIBBONS: I'm going to run to the
22 restroom.

23 MS. LIVELY: Yes, sir. And there's not going
24 to be --

25 JUDGE GIBBONS: Anybody else that needs to run

1 to the restroom, now is a good time to do it.

2 MS. LIVELY: No, that's fine. Okay.

3 (OFF RECORD)

4 MR. FRICK: Your Honor, we understand the
5 emotional nature of this case. I mean, I recognize
6 that, but during the break there was a member of the
7 family that did come up, approach the witness and
8 then I don't know what -- if they had conversation
9 or not, but I know they approached, they embraced.
10 I just need to make that a part of the record,
11 Judge.

12 JUDGE GIBBONS: Oh, ask them what they said.
13 Go ahead.

14 MR. FRICK: Trooper, was there any
15 conversation between you and the member of the
16 family that walked up?

17 MR. HOLLAND: Yes.

18 MR. FRICK: What did y'all discuss?

19 MR. HOLLAND: She just thanked me for coming
20 to testify today. And that she's sorry I have to go
21 through this again.

22 MR. FRICK: Yes, sir. All right.

23 JUDGE GIBBONS: Thank you. All right, bring
24 the jury out.

25 (JURY ENTERS)

JURY TRIAL

1 JUDGE GIBBONS: All right, thank you ladies
2 and gentlemen. You may resume your questioning.

3 MS. LIVELY: Your Honor, the State doesn't
4 have any further questions for this witness.

5 JUDGE GIBBONS: All right. Witness is
6 tendered. Mr. Frick, your witness.

7 MR. FRICK: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. FRICK:

10 Q. Trooper Holland, I believe we did talk about it, you
11 did have a body camera that was one while you were out on
12 the scene?

13 A. Yes, sir, I did.

14 Q. Okay. And I've got a video I'm going to play here
15 in just a second. I've got a few other questions. And
16 I've showed you the beginning of that video, that's your
17 body camera that we're going to see?

18 A. Yes, sir, it is.

19 Q. All right. And I believe that is in without
20 objection, is that correct, Defense's Number 5.

21 JUDGE GIBBONS: All right. Admitted into
22 evidence without objection.

23 (Defendant's Exhibit 5
24 was introduced into evidence)

25 BY MR. FRICK:

1 Q. Trooper Holland, I'm going to show you some more
2 pictures, and I'll be honest, I don't think I know
3 whether you took them or Dye took them or who took them.

4 A. Okay.

5 Q. They are, I believe, of the scene, but correct me if
6 I'm wrong.

7 A. Yes, sir, that's correct. These are of the scene
8 and of the vehicles.

9 Q. All right. And just for the record, 6, that's the
10 tree where the impact occurred?

11 A. Yes, sir.

12 Q. And that's before you painted it, correct?

13 A. No, that would be after, I see the X on it.

14 Q. Okay, (inaudible).

15 A. Yes, sir, the X is on.

16 Q. My ink's little lighter, all right. Number 7 --
17 I'll tell you what, let's start in reverse order, Number
18 9, can you tell me what that is?

19 A. Yes, sir, those would be the post-collision furrows
20 that are -- for the van.

21 Q. For the van?

22 A. Uh-huh (affirmative).

23 Q. Okay. Is there an item that's there in kind of the
24 corner there?

25 A. That's correct.

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1 Q. What does that appear to be to you?

2 A. It appears to be possibly a brake light lens.

3 Q. All right. And then Defense Number 7, is that just
4 kind of a closer view of that?

5 A. That is correct.

6 Q. And then in Number 8, is that just a picture of that
7 lens?

8 A. That's correct.

9 Q. And then I'm going to show you Number 10. What is
10 that?

11 A. That would be the left -- yes, the left rear
12 passenger seat in the rear along with the car seat that
13 Max would've been sitting in.

14 Q. Okay. And then Number 11?

15 A. That would be the passenger seat of the van, picture
16 taken from the driver's side.

17 Q. And same as 12, what is that?

18 A. Picture of the airbag from the driver's side window.

19 Q. 11 and 12, that's while the van is still on scene,
20 correct?

21 A. That's correct.

22 Q. And this is when y'all are -- is this before or
23 after you do the inventory?

24 A. I do not recall --

25 Q. Okay.

1 A. -- when the pictures were taken.

2 Q. Okay. All right. But this would've been the
3 condition that y'all saw it?

4 A. Correct.

5 Q. Okay. As y'all approached it. I mean, you're
6 painting?

7 A. Yes, sir.

8 Q. Okay. This is the condition that it's in, all
9 right. Your Honor, I'd like to just pass these to the
10 jury real quick.

11 JUDGE GIBBONS: Sure you can publish them.

12 BY MR. FRICK:

13 Q. So your role in this case was to paint --

14 A. Yes, sir.

15 Q. -- try to determine a point of impact?

16 A. Yes, sir.

17 Q. And it was a fairly hectic scene, correct?

18 A. That's correct.

19 Q. And there was a lot of mud on the road that made it
20 a little confusing, wasn't it?

21 A. Yes, sir.

22 Q. And you later found out that one of the fire trucks
23 had gotten stuck, and that caused a little difficulty in
24 determining; isn't that true?

25 A. It didn't necessarily cause difficulty, 'cause I was

JURY TRIAL

1 notified of that by fire, EMS.

2 Q. Right. But it made it a little difficult to try to
3 figure out what cars had gone off the road?

4 A. Correct, it puts a lot mud on the road.

5 Q. And there were a lot of fire vehicles out there,
6 correct?

7 A. Yes, sir, there were.

8 Q. And you said you were out there on the scene for
9 three to four hours?

10 A. Approximately.

11 Q. Approximately, okay. And I'm fixing to show you
12 your video. In fairness it's about an hour and 14
13 minutes of video --

14 A. Yes, sir.

15 Q. -- is that -- is that fair to say?

16 A. Yes, sir.

17 Q. Okay. At this time go ahead and publish the video.

18 JUDGE GIBBONS: Can you see it, Mr. Witness?

19 Can you see it from where you're sitting?

20 WITNESS: Yes, sir, I can.

21 JUDGE GIBBONS: All members of the jury, can
22 y'all see it okay? All right.

23 (VIDEO PLAYS)

24 TROOPER HOLLAND:

25 Just a minute. I'm -- let me try and get some of

1 this traffic flowing again. I'm going to start the
2 investigation.

3 FEMALE VOICE:

4 You just need to make sure that the (inaudible)
5 white van (inaudible) 'cause he's the one that
6 caused everything, and there's already one fatality.
7 So it's the one with dreads and he ran everybody off
8 the road.

9 TROOPER HOLLAND:

10 Okay. All right. Is that -- they're a secondary
11 wreck, they happened at -- that happened after the
12 fact? They're trying to look?

13 FEMALE VOICE:

14 (Inaudible).

15 TROOPER HOLLAND:

16 Well they were trying to look probably at what was
17 going on over here.

18 MALE VOICE:

19 (Inaudible) the van was going up and over
20 (inaudible) the van (inaudible) actually up and over
21 and then came back. It looked like (inaudible) they
22 were getting hit --

23 FEMALE VOICE:

24 (Inaudible) across (inaudible).

25 MALE VOICE:

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1 So they may be scared of like themselves getting
2 hit.

3 TROOPER HOLLAND:

4 Okay. All right. (Inaudible) 10-23. G-37
5 (inaudible) 66. 10-4 on this vehicle. And I've got
6 a secondary that occurred about the same time on the
7 northbound -- correction on the southbound side so
8 you'll have to back up (inaudible). (Inaudible).
9 10-4, I got one on the way, (inaudible), 10-8, and
10 be advised we got one confirmed.

11 MALE VOICE:

12 (Inaudible).

13 TROOPER HOLLAND:

14 I got one confirmed.

15 MALE VOICE:

16 (Inaudible).

17 MALE VOICE:

18 What you need? Where you need me?

19 TROOPER HOLLAND:

20 I got one confirmed.

21 MALE VOICE:

22 Okay.

23 TROOPER HOLLAND:

24 So, this thing's going to be a whole -- going to be
25 a whole thing to mark up. (Inaudible) one

1 confirmed.

2 MALE VOICE:

3 (Inaudible).

4 TROOPER HOLLAND:

5 Okay, well right now we need to start getting
6 information. We got a secondary that happened over
7 there. I guess they were trying to not get hit by
8 the van, which they thought was going to cross over
9 the cable barrier so. That car, that van. I'm not
10 sure what that red car is. This female in the --
11 leaning against the truck there witnessed what
12 happened. They're saying the van is the primary
13 cause of what went on. That van right there. That
14 male -- the driver of that van is that (inaudible)
15 with the dreads sitting against that car right
16 there. Just hold tight for me. I'm going to get to
17 you as soon as I can.

18 MALE VOICE:

19 (Inaudible).

20 FEMALE VOICE:

21 (Inaudible).

22 MALE VOICE:

23 (Inaudible) all the way around (inaudible).

24 TROOPER HOLLAND:

25 Is -- who are -- who are all you guys, just --

JURY TRIAL

1 FEMALE VOICE:

2 We're the nurses and we saw --

3 TROOPER HOLLAND:

4 Oh, okay, all right.

5 FEMALE VOICE:

6 (Inaudible).

7 MALE VOICE:

8 (Inaudible).

9 TROOPER HOLLAND:

10 Yeah, yeah, yeah, no, for sure. No, that's what we
11 needed.

12 MALE VOICE:

13 (Inaudible) van hitting (inaudible) dreadlocks, he's
14 sitting over there.

15 FEMALE VOICE:

16 The witnesses (inaudible).

17 TROOPER HOLLAND:

18 That's fine, we'll get in their car.

19 MALE VOICE:

20 I was (inaudible) southbound when I seen the van
21 (inaudible).

22 TROOPER HOLLAND:

23 You (inaudible) this wreck.

24 FEMALE VOICE:

25 (Inaudible).

1 TROOPER HOLLAND:

2 Your (inaudible).

3 MALE VOICE:

4 (Inaudible) the southbound lane (inaudible)

5 southbound lane.

6 TROOPER HOLLAND:

7 I'm assuming that's what happened (inaudible) right

8 there.

9 MALE VOICE:

10 They didn't get stopped in time, they ran into the

11 back (inaudible).

12 FEMALE VOICE:

13 Oh, so they got hit too, oh.

14 TROOPER HOLLAND:

15 Yeah, they're a secondary (inaudible) so.

16 FEMALE VOICE:

17 (Inaudible) this lady.

18 MALE VOICE:

19 These people (inaudible) the median, he never got in

20 the southbound lane. He almost did, then he came

21 back this way (inaudible). (Inaudible) then he came

22 back (inaudible).

23 TROOPER HOLLAND:

24 Yeah. I don't know. They got them in the ambulance

25 before I could get (inaudible). You saw -- you saw

JURY TRIAL

1 him -- you didn't see the collision, right?

2 MALE VOICE:

3 (Inaudible) contact.

4 TROOPER HOLLAND:

5 You just saw his truck --

6 MALE VOICE:

7 (Inaudible) in case you need to contact me?

8 TROOPER HOLLAND:

9 Yeah, let's get your license real quick.

10 MALE VOICE:

11 We're heading on vacation.

12 TROOPER HOLLAND:

13 All right, that's fine, I'll just get your name and
14 your phone number.

15 MALE VOICE:

16 No problem. And then I ran over to check on him and
17 then I ran over and checked on these guys.

18 TROOPER HOLLAND:

19 What's a good phone number for you?

20 MALE VOICE:

21 704-491-5187, that's my cell phone number.

22 MALE VOICE:

23 (Inaudible) dropped the kids off (inaudible) next
24 exit, they just got on the interstate, so.

25 TROOPER HOLLAND:

1 All right. So is your family (inaudible) this
2 vehicle right here? Okay. Yeah.

3 MALE VOICE:

4 (Inaudible).

5 TROOPER HOLLAND:

6 Uh-huh (affirmative), North Carolina does that. All
7 right, just give me your address (inaudible).

8 MALE VOICE:

9 Thank you, sir.

10 TROOPER HOLLAND:

11 You're good.

12 MALE VOICE:

13 (Inaudible).

14 TROOPER HOLLAND:

15 You too.

16 MALE VOICE:

17 The person you need to speak to (inaudible) my wife.
18 We just -- we was right behind them.

19 TROOPER HOLLAND:

20 Okay.

21 MALE VOICE:

22 So we saw everything.

23 TROOPER HOLLAND:

24 All right.

25 MALE VOICE:

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1 I just -- once I saw that the little boy, I got two
2 little kids in the car.

3 TROOPER HOLLAND:

4 You're good. Let's -- well, let's head back down
5 there.

6 MALE VOICE:

7 I'm sorry.

8 TROOPER HOLLAND:

9 I know, it's an emotional thing.

10 MALE VOICE:

11 (Inaudible).

12 TROOPER HOLLAND:

13 I got you. We're all -- we're all kind of there
14 right (inaudible).

15 MALE VOICE:

16 I'm sorry.

17 TROOPER HOLLAND:

18 Even myself. You're good. So these folks were
19 directly behind them.

20 MALE VOICE:

21 (Inaudible) so they got (inaudible).

22 TROOPER HOLLAND:

23 No.

24 MALE VOICE:

25 (Inaudible) on the side, like he's -- the van passed

1 us to hit her.

2 TROOPER HOLLAND:

3 Okay.

4 MALE VOICE:

5 (Inaudible) on the side of the her, but she was a
6 little ahead of us, but we saw -- he had to pass us
7 to hit her.

8 TROOPER HOLLAND:

9 Okay.

10 MALE VOICE:

11 Literally.

12 TROOPER HOLLAND:

13 So did you see the actual this car leave the
14 roadway?

15 MALE VOICE:

16 Yes.

17 TROOPER HOLLAND:

18 Okay. That's fine. That's what we need to know.
19 They're just witnesses. They're down here in the
20 white car.

21 MALE VOICE:

22 Do I need to get -- do I need to get them on camera
23 too for their statement?

24 TROOPER HOLLAND:

25 Yes.

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1 MALE VOICE:

2 My wife -- my wife (inaudible) I just --

3 TROOPER HOLLAND:

4 He's too -- he's too emotional right now. He -- so

5 --

6 MALE VOICE:

7 I'm sorry.

8 TROOPER HOLLAND:

9 You're good. It's (inaudible) I understand. If you
10 want to get your car and pull down there, and do an
11 interview with her, 'cause she's got -- they got
12 kids in the car as well.

13 MALE VOICE:

14 Okay.

15 TROOPER HOLLAND:

16 So, put her on your camera, interview her.

17 MALE VOICE:

18 (Inaudible) got them on camera already.

19 TROOPER HOLLAND:

20 That's fine (inaudible). Okay, that's fine. He's
21 the driver of that white van, correct? Okay.

22 MALE VOICE:

23 Yeah.

24 TROOPER HOLLAND:

25 He's the driver of that white van that struck this

1 vehicle.

2 MALE VOICE:

3 Okay.

4 TROOPER HOLLAND:

5 That caused them to leave the road.

6 MALE VOICE:

7 I'm gonna talk to her, then I'm gonna talk to him.

8 TROOPER HOLLAND:

9 Okay. If you can. I was going to try to, but then
10 I got told all the other stuff. The troop -- the
11 other trooper is coming down here, just so you don't
12 have to walk all the way up to his car. What we're
13 gonna do is we're gonna put you in his -- in his
14 vehicle, so then -- get you to give us your
15 statement on camera, okay; just due to the
16 circumstances. So, just hold tight, he's walking
17 back up to get his vehicle now. And then we'll get
18 all your information, your statement, and then we'll
19 let you guys just get out of here, okay. Okay. And
20 I got to get Dye down there to interview that
21 witness.

22 MALE VOICE:

23 (Inaudible).

24 MALE VOICE:

25 (Inaudible).

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1 TROOPER HOLLAND:

2 Yeah, that's not (inaudible) got a kid too it's not
3 (inaudible). I need to try and figure out what in
4 the world happened here. (Inaudible) somebody
5 (inaudible) traffic down there slowing cars down,
6 but I got traffic --

7 MALE VOICE:

8 (Inaudible) in my car (inaudible).

9 TROOPER HOLLAND:

10 Okay. (Inaudible) wreck. If you want to, you can
11 go and collect those people's information for us
12 over there on that side.

13 MALE VOICE:

14 Okay.

15 TROOPER HOLLAND:

16 I need driver's license, registration, insurance,
17 phone number for both parties, if there's any airbag
18 deployment, if they were wearing their seatbelts,
19 sorry I'm trying to get my thoughts together.
20 That's pretty much it; and what happened. I'm
21 pretty sure they just rear ended (inaudible) 'cause
22 they thought that van was coming (inaudible)
23 traffic. And I'm trying to find point of impact
24 where these cars frickin struck each other. All
25 right.

1 MALE VOICE:

2 (Inaudible) 840 was stuck.

3 TROOPER HOLLAND:

4 Oh, 840 was stuck? Okay, 'cause they're kind of --

5 they're kind of -- kind of confusing with all the

6 (inaudible). Just this one is on top of my

7 (inaudible).

8 MALE VOICE:

9 (Inaudible).

10 TROOPER HOLLAND:

11 Yeah, I know, you're good. So, I just need to try

12 and see if --

13 MALE VOICE:

14 You want me to back it up?

15 TROOPER HOLLAND:

16 Yeah, you're just -- you're good. If you could back

17 up just off of these tracks. Will you work that

18 secondary (inaudible) because the van went through

19 the cable barrier, and they thought he was coming

20 into oncoming traffic. So that (inaudible) slam on

21 brakes (inaudible).

22 MALE VOICE:

23 (Inaudible).

24 TROOPER HOLLAND:

25 Yeah.

JURY TRIAL

1 MALE VOICE:

2 (Inaudible) on the phone?

3 TROOPER HOLLAND:

4 Yeah. A child (inaudible) on the other side of the
5 car. I'm not sure yet. It looks -- they look to be
6 if not 10, 11, 12, something like that.

7 MALE VOICE:

8 (Inaudible).

9 TROOPER HOLLAND:

10 Hold on I'm writing (inaudible) right now with 816 I
11 think.

12 MALE VOICE:

13 816?

14 TROOPER HOLLAND:

15 That was 2:00.

16 MALE VOICE:

17 (Inaudible) through me.

18 TROOPER HOLLAND:

19 He just walked through me.

20 MALE VOICE:

21 Yeah, 'cause (inaudible).

22 TROOPER HOLLAND:

23 So, from what I can gather (inaudible) a confirmed
24 10-7, okay, child. They're on the other side of
25 that -- they're on the other side of the car covered

1 up. From what I can gather that van passed -- they
2 said -- those are witnesses down there in the white
3 car, passed them, struck that car.

4 MALE VOICE:

5 That was moving?

6 TROOPER HOLLAND:

7 Yeah.

8 MALE VOICE:

9 Okay.

10 TROOPER HOLLAND:

11 That -- that -- struck that SUV.

12 MALE VOICE:

13 That's over here?

14 TROOPER HOLLAND:

15 Yeah. They left the roadway, overturned, up in the
16 wood line there, came to rest. He went across the
17 center lane, from what witnesses are saying, through
18 the cable barrier, up that side of the median, he
19 was able to steer it before he went into oncoming
20 traffic, 'causing that white car to slam on brakes,
21 that car to rear end that white car, and then he
22 came to rest down there when he was steering back
23 towards the cable barrier, the van.

24 MALE VOICE:

25 So, this car slams on brakes to being -- avoid

JURY TRIAL

1 getting hit by the van --

2 TROOPER HOLLAND:

3 Exactly.

4 MALE VOICE:

5 -- (inaudible).

6 MALE VOICE:

7 'Cause they -- they thought that he was going to
8 come on outside of here.

9 TROOPER HOLLAND:

10 Right. And I don't even know where a point of
11 impact is. I -- I got very minimal debris in the
12 roadway back there, but I know this is where she
13 started swatting. But I can see -- no, I haven't
14 made it that far.

15 MALE VOICE:

16 What's the status of the parents (inaudible).

17 TROOPER HOLLAND:

18 Yeah, the pass -- one of the passenger's they don't
19 know -- they're both transported to Piedmont, I
20 think, (inaudible).

21 MALE VOICE:

22 I saw both (inaudible).

23 MALE VOICE:

24 He's the driver of that one?

25 TROOPER HOLLAND:

1 He's right there, that gentlemen -- (inaudible) in
2 the red shirt with dreads. He's the driver of the
3 van.

4 MALE VOICE:

5 Sitting on the ground?

6 TROOPER HOLLAND:

7 Yeah. Far as I know, from what witnesses say. But,
8 Dye's interviewing the witnesses down there
9 (inaudible) their car, 'cause they're kind of
10 emotional right now, 'cause (inaudible) and they got
11 two kids, and they were down there with all the
12 nurses and bystanders that were trying to assist
13 these folks. I'm trying to paint and figure out
14 where that point of impact is, but I got -- all I
15 got is this track right here where they're -- this
16 Ford (inaudible) the road. There's the debris.
17 There's mud everywhere. I'm assuming it was
18 somewhere back there (inaudible) point of impact was
19 (inaudible). I see where she left the road. I need
20 you to help me -- talk me through what you've
21 already heard, 'cause I need to know where -- where
22 this all started at.

23 MALE VOICE:

24 So (inaudible) both my witnesses said they were in
25 the number one lane.

JURY TRIAL

1 TROOPER HOLLAND:

2 All right.

3 MALE VOICE:

4 And this van come up behind them pretty fast, they
5 swerved right, and come back over, went back over
6 again, and then (inaudible) white car was right
7 behind them, they were maybe five, six car lengths
8 ahead of them, the last witness, and she said they
9 (inaudible) two lane, he come up behind them real
10 fast, he swerved right, come up hit them in the
11 back, they swerved off, hit (inaudible) and the van
12 went across the median and ended up where he's at.
13 I asked him did he recall what happened. He
14 basically said I looked down for a quick second, I
15 looked up and boom (inaudible). (inaudible) how
16 fast were you going. He said I don't -- I don't
17 even know. All he knows is he looked down and he
18 (inaudible) --

19 TROOPER HOLLAND:

20 Any odor of alcohol or anything? Any signs of
21 impairment whatsoever?

22 MALE VOICE:

23 (Inaudible) to talk.

24 TROOPER HOLLAND:

25 (Inaudible) any signs of impairment. None at all?

1 You're positive?

2 MALE VOICE:

3 Yes, I didn't see any --

4 TROOPER HOLLAND

5 Reckless, in and out of traffic according to the
6 witnesses.

7 MALE VOICE:

8 I've got three witnesses saying he was in and out of
9 traffic. The last witness was five to six car
10 lengths behind them (inaudible) one lane, he come up
11 behind them, swerved right to get around them, and
12 ended up hitting them (inaudible) hit the tree, the
13 van went across the cable barrier (inaudible).
14 (Inaudible) hospital with EMS so (inaudible) he
15 basically said that he don't remember. All he
16 remember looking down and looking up and making
17 contact.

18 TROOPER HOLLAND:

19 (Inaudible).

20 MALE VOICE:

21 He (inaudible).

22 TROOPER HOLLAND:

23 All right (inaudible). You need that?

24 MALE VOICE:

25 I (inaudible) whatever (inaudible) take a picture of

JURY TRIAL

1 it.

2 TROOPER HOLLAND:

3 You're good. You can -- I think he wrote it down.

4 MALE VOICE:

5 Okay.

6 TROOPER HOLLAND:

7 Dye might need it though.

8 MALE VOICE:

9 All right. (Inaudible).

10 TROOPER HOLLAND:

11 Okay.

12 MALE VOICE:

13 That's (inaudible) here.

14 MALE VOICE:

15 That's his name?

16 MALE VOICE:

17 Yeah. Shanks, S-H-A-N-K-S.

18 MALE VOICE:

19 (Inaudible).

20 TROOPER HOLLAND:

21 (Inaudible) North Carolina tags. They had just got

22 dropped off. She just picked up the kids from The

23 65 and they just got in the interstate from 65.

24 MALE VOICE:

25 According (inaudible).

1 TROOPER HOLLAND:

2 According to a family member that was on the scene,
3 he was meeting with them to drop -- that he had just
4 dropped the child off with her, and they had just
5 gotten on the interstate. He left and went to the
6 hospital.

7 MALE VOICE:

8 Who was that, his dad?

9 TROOPER HOLLAND:

10 I didn't catch who he was, some relative
11 (inaudible).

12 MALE VOICE:

13 (Inaudible) so, he's (inaudible) run that by me
14 again. Somebody dropped somebody off --

15 TROOPER HOLLAND:

16 The dad, I guess, met with them at the 65. Yeah,
17 the dad of this child, he just dropped the kids off
18 with her, and he said she had just gotten back on
19 the interstate.

20 MALE VOICE:

21 So (inaudible) he was in here?

22 TROOPER HOLLAND:

23 No. He was follow -- he was coming back up the
24 interstate.

25 MALE VOICE:

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1 (Inaudible).

2 TROOPER HOLLAND:

3 Yeah.

4 MALE VOICE:

5 The dad knows?

6 TROOPER HOLLAND:

7 I don't know if he knows or not.

8 MALE VOICE:

9 Where is he? Where is he at?

10 TROOPER HOLLAND:

11 He went to Piedmont.

12 MALE VOICE:

13 I don't think he (inaudible) and knew (inaudible).

14 TROOPER HOLLAND:

15 And the people out here helping shielded the mom

16 from looking at (inaudible). So I don't think she's

17 aware of it (inaudible).

18 MALE VOICE:

19 Pretty good smack to the head. She -- she probably

20 (inaudible) so (inaudible).

21 TROOPER HOLLAND:

22 All I'm doing here (inaudible) tire marks start on

23 the (inaudible) and I basically just walked through

24 (inaudible) every so often, so when we take pictures

25 (inaudible). Yes, sir?

1 MALE VOICE:

2 (Inaudible).

3 TROOPER HOLLAND:

4 (Inaudible). She was able to straighten him back
5 out (inaudible) they came back. It slid back
6 (inaudible). (Inaudible) bar code (inaudible).

7 MALE VOICE:

8 Okay.

9 TROOPER HOLLAND:

10 And hit it with that. And hit it at the driver's
11 side -- or the passenger side door and kind of -- so
12 she would've -- she would've hit it, the passenger
13 side and that (inaudible) her out. All right, I'm
14 gonna go back and repeat. At this point, tires
15 starting to merge back together and line back up
16 again. No point in taking (inaudible). It's gonna
17 have to be in --

18 MALE VOICE:

19 (Inaudible).

20 TROOPER HOLLAND:

21 No, I've been trying to paint this and figure out
22 point of impact, but --

23 FEMALE VOICE:

24 (Inaudible).

25 TROOPER HOLLAND:

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1 (Inaudible).

2 FEMALE VOICE:

3 (Inaudible).

4 MALE VOICE:

5 (Inaudible) this one (inaudible).

6 TROOPER HOLLAND:

7 Yeah, no, that's fine (inaudible).

8 MALE VOICE:

9 (Inaudible).

10 MALE VOICE:

11 Then I'll work that wreck after I get done with all

12 this (inaudible).

13 TROOPER HOLLAND:

14 We've got another one (inaudible) 65 and one in

15 Chester.

16 MALE VOICE:

17 (Inaudible).

18 TROOPER HOLLAND:

19 Yeah, (inaudible). There's one here at the 65,

20 there's no injuries.

21 MALE VOICE:

22 (Inaudible) right now (inaudible).

23 TROOPER HOLLAND:

24 Soon as --

25 MALE VOICE:

1 (Inaudible).

2 TROOPER HOLLAND:

3 (Inaudible) soon as he comes back I'm going to ask

4 (inaudible).

5 MALE VOICE:

6 (Inaudible) that one on Saluda Road (inaudible).

7 TROOPER HOLLAND:

8 And the other one is on the (inaudible) is on Dawson

9 Drive (inaudible). Where the Sheriff's office is.

10 MALE VOICE:

11 Any injuries?

12 TROOPER HOLLAND:

13 Not that I know of. They're trying to get the

14 (inaudible).

15 MALE VOICE:

16 I think he's (inaudible) back there.

17 TROOPER HOLLAND:

18 No, somewhere -- somewhere back there where she left

19 the road. We don't have an exact --

20 MALE VOICE:

21 (Inaudible).

22 TROOPER HOLLAND:

23 The skids mark pick up here where she left the road.

24 So, I have debris right here, but there's some

25 debris back there as well. I'd say there should be

JURY TRIAL

1 a taillight somewhere. Because her whole right side

2 --

3 MALE VOICE:

4 (Inaudible).

5 TROOPER HOLLAND:

6 -- taillight. Well there's a lot of fire vehicles
7 in and out. That looks like tire debris where that
8 glass -- I'm assuming it's somewhere around here.

9 MALE VOICE:

10 Okay.

11 TROOPER HOLLAND:

12 I walked all the way back here and didn't see
13 anything. Okay, so he just basically pushed her, he
14 never like (inaudible).

15 MALE VOICE:

16 (Inaudible).

17 TROOPER HOLLAND:

18 That's him.

19 MALE VOICE:

20 (Inaudible) came back.

21 TROOPER HOLLAND:

22 He struck her here in this lane, crossed over --

23 MALE VOICE:

24 Gotcha, okay.

25 TROOPER HOLLAND:

1 -- went through the barrier and steering back --

2 MALE VOICE:

3 (Inaudible) from the other side.

4 TROOPER HOLLAND:

5 He was trying to come back through but he realized
6 he couldn't get through so he came to a stop.

7 MALE VOICE:

8 (Inaudible).

9 TROOPER HOLLAND:

10 No idea. I haven't talked (inaudible). But, I'm
11 assuming (inaudible) gonna -- something's going on
12 'cause Dye's got to go to the hospital with him.

13 MALE VOICE:

14 (Inaudible) to the hospital?

15 TROOPER HOLLAND:

16 Yeah. And I think it's back there where we stopped.
17 (Inaudible) skid mark on the start (inaudible) up
18 there. I can see where his skid marks start, that's
19 gonna be where he hit her and it's hard to slam on
20 brakes.

21 MALE VOICE:

22 (Inaudible) the left lane --

23 TROOPER HOLLAND:

24 He hit her in the right hand lane. He changed lanes
25 from the one into the two, and he hit her in the

JURY TRIAL

1 back. (Inaudible).

2 MALE VOICE:

3 What else you got to do?

4 TROOPER HOLLAND:

5 I'm working on this --

6 MALE VOICE:

7 I'm gonna start -- I'm gonna start the report now.

8 MALE VOICE:

9 (Inaudible).

10 TROOPER HOLLAND:

11 What's going on with (inaudible) as far as --

12 MALE VOICE:

13 He's going to Chester (inaudible) stand by with him,

14 he don't want -- he don't want (inaudible).

15 TROOPER HOLLAND:

16 092220. That's my (inaudible).

17 MALE VOICE:

18 We got another Chester wreck.

19 TROOPER HOLLAND:

20 It's probably the one on (inaudible). Okay, so this

21 is got to be the point of impact somewhere in here.

22 Right there. There's a broken reflector, 'cause its

23 track right here starts through that lane.

24 MALE VOICE:

25 You said he hit her from the back right?

1 TROOPER HOLLAND:

2 Yeah, he hit her in the back end.

3 MALE VOICE:

4 All right.

5 TROOPER HOLLAND:

6 I want to say point of impact right here.

7 MALE VOICE:

8 (Inaudible) over here?

9 TROOPER HOLLAND:

10 No, I still got to paint the car down there, and the
11 Coroner said he's gonna take pictures of everything
12 down there, and then he'll just send them to us.

13 MALE VOICE:

14 (Inaudible) y'all see him?

15 TROOPER HOLLAND:

16 Yeah.

17 MALE VOICE:

18 Okay.

19 TROOPER HOLLAND:

20 He's already down there with him. (Inaudible). I'm
21 gonna have to stop tracking for a minute. All
22 right, (inaudible) was it -- no, eight -- the fire
23 truck got stuck, they had to pull it out. Sorry,
24 working as fast as I can here. Hey (inaudible).
25 You're good (inaudible).

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1 MALE VOICE:

2 I don't know.

3 TROOPER HOLLAND:

4 Uh, yeah, it's probably narcotics. That's where
5 they use to tie off their arm. I think it got
6 (inaudible).

7 MALE VOICE:

8 (Inaudible).

9 TROOPER HOLLAND:

10 This might be something more.

11 MALE VOICE:

12 He's got (inaudible). Y'all gonna try to
13 (inaudible).

14 TROOPER HOLLAND:

15 I don't -- Warlick is the supervisor on scene, so I
16 don't -- I don't know if he's gonna want to do that
17 or not.

18 MALE VOICE:

19 Well, I don't -- I don't mind going, but I think
20 (inaudible).

21 TROOPER HOLLAND :

22 Yeah, well --

23 MALE VOICE:

24 (Inaudible) going to the ER (inaudible).

25 MALE VOICE:

1 (Inaudible).

2 TROOPER HOLLAND:

3 That's gonna be -- that's gonna be something -- I've
4 done (inaudible).

5 MALE VOICE:

6 (Inaudible) the odometer (inaudible).

7 TROOPER HOLLAND:

8 That's fine.

9 MALE VOICE:

10 (Inaudible).

11 TROOPER HOLLAND:

12 That's fine. (Inaudible).

13 MALE VOICE:

14 (Inaudible).

15 TROOPER HOLLAND:

16 You sure?

17 MALE VOICE:

18 It's not residue.

19 TROOPER HOLLAND:

20 Is that straw or is that -- I think they use that to
21 tie (inaudible).

22 MALE VOICE:

23 That's why (inaudible).

24 TROOPER HOLLAND:

25 You said (inaudible).

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1 MALE VOICE:

2 For this, I'll find out.

3 TROOPER HOLLAND:

4 Yeah. That's marijuana.

5 MALE VOICE:

6 (Inaudible).

7 TROOPER HOLLAND:

8 We're gonna need to (inaudible) to be put in --
9 marijuana.

10 MALE VOICE:

11 (Inaudible).

12 TROOPER HOLLAND

13 Oh, yeah, yeah, where did Gordon go? No, he's not,
14 he's down there.

15 MALE VOICE:

16 (Inaudible) Gordon.

17 TROOPER HOLLAND:

18 Yeah, that's what I said, where's Gordon at.

19 MALE VOICE:

20 (Inaudible).

21 TROOPER HOLLAND:

22 No. I need -- I need my camera so I can take
23 pictures with that (inaudible) around it.

24 MALE VOICE:

25 I'm gonna -- I'm gonna send you everything that I

1 took down through there (inaudible).

2 TROOPER HOLLAND:

3 Okay.

4 MALE VOICE:

5 I'll email you the whole deal (inaudible).

6 TROOPER HOLLAND:

7 And I'm just gonna take additional pictures with the
8 paint. I got to have the paint around it
9 (inaudible).

10 MALE VOICE:

11 (Inaudible) I'll take it to (inaudible).

12 TROOPER HOLLAN:

13 I'm just gonna -- I'm just gonna have extra ones
14 with the paint around it.

15 MALE VOICE:

16 (Inaudible).

17 TROOPER HOLLAND:

18 Oh, okay.

19 MALE VOICE:

20 (Inaudible).

21 TROOPER HOLLAND:

22 I don't know what it is.

23 MALE VOICE:

24 Well don't get your hands (inaudible). (Inaudible)

25 yeah, if you don't know what's on that and you touch

JURY TRIAL

1 something (inaudible).

2 TROOPER HOLLAND:

3 That's why I --

4 MALE VOICE:

5 (Inaudible).

6 TROOPER HOLLAND:

7 He said -- (inaudible). No, you're just gonna have
8 to hold it up a little bit (inaudible).

9 MALE VOICE:

10 Who said that (inaudible).

11 TROOPER HOLLAND:

12 Yeah.

13 MALE VOICE:

14 That's why (inaudible) take care of that
15 (inaudible). (Inaudible).

16 TROOPER HOLLAND:

17 No.

18 MALE VOICE:

19 (Inaudible).

20 TROOPER HOLLAND:

21 No, it wasn't trash. That wasn't trash.

22 MALE VOICE:

23 We got some meth.

24 TROOPER HOLLAND:

25 Okay. (Inaudible) the weed everywhere. And this

1 right here. (Inaudible) you got gloves on, I
2 already opened it up, look.

3 MALE VOICE:

4 (Inaudible).

5 TROOPER HOLLAND:

6 This was that piece of aluminum you threw out here
7 thinking it was trash.

8 MALE VOICE:

9 It's either meth or crack.

10 TROOPER HOLLAND:

11 Easy.

12 MALE VOICE:

13 (Inaudible).

14 TROOPER HOLLAND:

15 White -- white residue, rolling up in a --

16 MALE VOICE:

17 It's in here.

18 TROOPER HOLLAND:

19 Oh, yeah, he's using it to snort. You got

20 (inaudible).

21 MALE VOICE:

22 No.

23 TROOPER HOLLAND:

24 (Inaudible). I think -- close that (inaudible)

25 right now, and don't let the wind blow that away.

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1 Where's Gordon at? Just wait. Just wait. He's got
2 to come back over here. Yeah, it's got my pictures
3 on it. Don't worry about it, he's got (inaudible).

4 MALE VOICE:

5 So he hit -- he hit this --

6 TROOPER HOLLAND:

7 Yeah, he went over there and went through the cable
8 barrier, those (inaudible) thought he was coming
9 into oncoming traffic (inaudible) excuse me, slams
10 on brakes, that car rear ended them, he steers it
11 back around. I mean, it's (inaudible).

12 MALE VOICE:

13 (Inaudible).

14 TROOPER HOLLAND:

15 Yeah, he didn't --

16 MALE VOICE:

17 (Inaudible).

18 TROOPER HOLLAND:

19 No, he struck the back of her vehicle which caused
20 her off the road.

21 MALE VOICE:

22 (Inaudible).

23 TROOPER HOLLAND:

24 Where'd you leave off at?

25 MALE VOICE:

1 (Inaudible) that vehicle.

2 TROOPER HOLLAND:

3 Okay. 'Cause I don't want to -- I want to do this
4 again even though we're getting the pictures, and I
5 got some kind of narcotics. (Inaudible) in there in
6 that black (inaudible) in that van. I don't want to
7 get the pictures out of order, so that's gonna have
8 to wait until the last -- well, no, it was in the
9 van, right?

10 MALE VOICE:

11 Yeah, it was in the back (inaudible).

12 TROOPER HOLLAND:

13 I saw it (inaudible). All right, you're gonna have
14 to help me out opening up that.

15 MALE VOICE:

16 (Inaudible).

17 TROOPER HOLLAND:

18 I probably should document this as well (inaudible).

19 MALE VOICE:

20 (Inaudible).

21 TROOPER HOLLAND:

22 (Inaudible) 36-6. I can't get out. 10-36-6, you
23 need (inaudible) mark (inaudible) signal 17

24 (inaudible). (Inaudible).

25 MALE VOICE:

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1 Suspect?

2 TROOPER HOLLAND:

3 No, I didn't get -- just got (inaudible).

4 MALE VOICE:

5 (Inaudible).

6 TROOPER HOLLAND:

7 Can you tie that (inaudible)?

8 MALE VOICE:

9 (Inaudible).

10 TROOPER HOLLAND:

11 Yeah, somewhere. All right, I got to finish the
12 pictures for this over here.

13 MALE VOICE:

14 I'm going to get (inaudible).

15 TROOPER HOLLAND:

16 You can look in my car if you want. Yeah, good, I'm
17 just going to start these pictures for this --

18 MALE VOICE:

19 Yeah, I'm (inaudible) that vehicle (inaudible).

20 TROOPER HOLLAND:

21 (Inaudible) back up here and start these.

22 MALE VOICE:

23 That little clear -- the clear baggie, there's some
24 residue (inaudible).

25 TROOPER HOLLAND:

1 Clear baggie what? What is that a white powder?

2 MALE VOICE:

3 Look in the bottom of that. There's a white powder
4 residue (inaudible).

5 TROOPER HOLLAND:

6 (Inaudible) on I guess that black surface. It'll
7 pick it up. Okay. Yeah, put them in that baggie
8 with (inaudible).

9 MALE VOICE:

10 (Inaudible).

11 TROOPER HOLLAND:

12 I mean, you don't -- you don't need that straw, you
13 just need the drug part of it, take the straw out.
14 That's what he used to stick up his nose.

15 MALE VOICE:

16 (Inaudible).

17 TROOPER HOLLAND:

18 That's -- that's paraphernalia. I need your -- I'm
19 gonna need your ambulance to kind of pull up on --

20 MALE VOICE:

21 To pull up?

22 TROOPER HOLLAND:

23 Yeah, just --

24 MALE VOICE:

25 Oh.

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1 TROOPER HOLLAND:

2 -- I got to come back here and start taking pictures
3 for this vehicle.

4 MALE VOICE:

5 Okay.

6 TROOPER HOLLAND:

7 So. Yeah, I (inaudible).

8 MALE VOICE:

9 (Inaudible).

10 TROOPER HOLLAND:

11 Okay. Will do. (Inaudible) 1 Medical Park?

12 MALE VOICE:

13 I can't remember. (Inaudible).

14 MALE VOICE:

15 You know 1 Medical Park -- Park Drive or something,
16 Medical Park Way. (Inaudible). On that -- on that
17 van?

18 MALE VOICE:

19 Yeah.

20 TROOPER HOLLAND:

21 Okay, I'll get (inaudible) as soon as I'm done.

22 He's going to take those pictures, but I want
23 pictures where the paint for (inaudible) hospital
24 (inaudible).

25 MALE VOICE:

1 (Inaudible).

2 TROOPER HOLLAND:

3 Okay, just hang tight for me, just a minute. I'm --
4 let me try and get --

5 (VIDEO ENDS)

6 JUDGE GIBBONS: If y'all need to stand up,
7 stand up to stretch, that's fine.

8 MR. FRICK: I just have a few questions.

9 BY MR. FRICK:

10 Q. So, at the very end there we see you're taking
11 pictures with your phone, is that what you would
12 typically take pictures with?

13 A. Yes, sir.

14 Q. While you were getting your exercise walking a lot
15 and painting, you're painting the tracks, correct?

16 A. Yes, sir, that's correct.

17 Q. That's the MAIT team comes in the next day and they
18 do their calculations and such?

19 A. Yes, sir.

20 Q. The vehicles get removed, right?

21 A. Yes, sir, they do.

22 Q. So, when you're down at -- you had passed off your
23 camera to another trooper at that time, right?

24 A. Yes, sir.

25 Q. So when you're at the van you don't -- you're not

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1 taking pictures?

2 A. No, sir.

3 Q. And we see on the video you were up at your car, a
4 guy approaches you, and hands you the sunglasses case,
5 correct?

6 A. Yes, sir.

7 Q. All right. I think there was some conversation
8 about do you have your state phone, did you recall seeing
9 that on there?

10 A. Yes, sir.

11 Q. Is that what Dye was taking pictures with?

12 A. That's what he would have taken pictures with if he
13 took pictures.

14 Q. I believe his response was no.

15 A. Yes, sir.

16 Q. Okay. So he didn't take pictures then?

17 A. Not that I'm aware of.

18 Q. The determina -- as soon as you get to the scene,
19 people start telling you it was the guy over there, it
20 was the guy over there; is that a fair assessment?

21 A. Yes, sir.

22 Q. Okay. And then you start trying to determine a
23 point of impact by looking where skid marks, I guess, is
24 like a better term that works, right?

25 A. Yes, sir, that's correct.

1 Q. And you found where the Explorer went off to the
2 right, you also found some stuff that went off to the
3 left that I believe you attributed to the van; is that
4 correct?

5 A. Yes, sir.

6 Q. And you called those skid marks, correct?

7 A. Yes, sir.

8 Q. In fact I believe you said that's where he start --
9 must have pressed his brakes?

10 A. Yes, sir. And that's what the video --

11 Q. Right. In your experience could the skid marks been
12 left if he didn't press brakes?

13 A. Yes, sir, they could have.

14 Q. Okay. And he would have to speed up? I mean, you
15 got to leave rubber somehow.

16 A. You would -- that's a -- that's a different set of
17 skid marks. If -- if you accelerate --

18 Q. Uh-huh (affirmative).

19 A. -- then that will leave a thicker impression on the
20 roadway.

21 Q. Okay. But you in this video say that those were
22 attributed to him?

23 A. Yes, sir.

24 Q. Okay. And then you obviously spent a great deal of
25 time marking out the tracks, and then marking the vehicle

1 --

2 A. Yes, sir.

3 Q. -- correct? Beg the Court's indulgence, one second.

4 JUDGE GIBBONS: Yes, sir.

5 BY MR. FRICK:

6 Q. When you're looking for the point of impact, one of
7 the things you were looking for is possibly a taillight,
8 correct?

9 A. Yes, sir.

10 Q. And you didn't find one on the right side of the
11 road, did you?

12 A. No, sir, not on the right.

13 Q. But it's shown in Defense's Number 9, that's
14 possibly one on the left side of the road, correct?

15 A. Yes, sir, that's correct.

16 Q. Thank you, sir, that's all the questions I have.

17 JUDGE GIBBONS: All right, any redirect?

18 MS. LIVELY: Just briefly.

19 REDIRECT EXAMINATION

20 BY MS. LIVELY:

21 Q. At the very end of the video whenever -- after the
22 suspected drugs have been found, did Terry Tinker, the
23 Coroner, say I'll send you all my pictures, give me your
24 email address?

25 A. Yes, he did.

1 Q. And so you did receive those pictures, and did you
2 make them a part of your case report?

3 A. Yes, we did.

4 Q. And at some point whenever Dye is showing you the
5 drugs and he shows you the case, do you recall on the
6 video saying, yeah I remember seeing that in the back of
7 the van?

8 A. Yes, I do.

9 Q. Okay. So you did actually see those items, like I
10 showed you, in the pictures that Terry Tinker actually
11 took?

12 A. Yes, ma'am, if you're referring -- if you would
13 refer to the video as I'm painting I stop to look inside
14 both vehicles.

15 Q. Thank you for clarifying. Yes, that's all --

16 A. Yes.

17 Q. -- the questions I have.

18 JUDGE GIBBONS: Anything else?

19 MR. FRICK: No, sir.

20 JUDGE GIBBONS: All right, thank you, sir. You
21 can step down.

22 MS. LIVELY: Your Honor, may I approach with
23 the attorney? Okay, I'm sorry, just real quick.

24 (BENCH CONFERENCE)

25 JUDGE GIBBONS: I know you may need a break,

1 the Solicitor was just telling us she's got a
2 witness who came from California and needs to --

3 MS. LIVELY: Florida.

4 JUDGE GIBBONS: Florida, not California.
5 Those are two distinctly different states.

6 MS. LIVELY: Thank you.

7 JUDGE GIBBONS: One on the east coast, one on
8 the west coast, sorry about that. All right, so if
9 y'all can hold off for a little bit, if you need to
10 stretch out, stretch out, you know, and that's
11 perfectly fine, just listen. Okay, call your
12 witness.

13 MS. LIVELY: Yes, sir, Elena Malzahn.

14 JUDGE GIBBONS: Come on around here. All
15 right, ma'am, if you'll raise your right hand. Do
16 you swear or affirm the testimony you give will be
17 the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 MS. MALZAHN: I swear.

20 JUDGE GIBBONS: Thank you, have a seat there.
21 And pull that microphone to you. Perfect. Your
22 witness.

23 MS. LIVELY: Thank you.

24 ELENA MALZAHN

25 was called as a witness, and having been first duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. LIVELY:

4 Q. Elena, where did you used to work back in June of --
5 I'm sorry, July of 2022?

6 A. Chester County EMS.

7 Q. Where are you working now?

8 A. I work as a paramedic/fire fighter for Flagler
9 County Fire Rescue in Florida, Palm Coast.

10 Q. In Florida, Palm Coast, okay. Pull your chair up a
11 little bit closer to the microphone, we want to make sure
12 we can hear you, okay. All right, thank you. And what
13 exactly are your qualifications that you have in your
14 job?

15 A. I'm certified as a paramedic. I'm responsible for
16 treatment and transport of sick and injured people.

17 Q. All right. When you were working in July, actually
18 specifically July the 10th of 2022, what particular group
19 of first responders were you working with, what was the
20 name of your team?

21 A. I was on EMS 4, it's a ambulance station in
22 Richburg.

23 Q. In Richburg.

24 A. And my partner was David Dutton.

25 Q. David Dutton, all right. So when you -- did you

1 respond to what was called out as a collision on I-77,
2 near the 67 mile marker?

3 A. I did.

4 Q. Please tell the jury what you did whenever you
5 arrived.

6 A. We responded for multiple car MVA, possibly three
7 vehicles involved, it was pre-arrival information. By
8 the time we got there, the traffic was stopped and we
9 pulled to the side. I was directed -- to my awareness I
10 was the first and only paramedic at this point on scene.
11 So, I assumed medical command, and started field triage
12 because I was informed that there was multiple people
13 that were injured. I was directed to a Ford Explorer
14 that was on the right side of the road, where I saw a
15 male patient, passenger front, passenger seat -- I'm
16 sorry, front seat passenger that was being extricated at
17 this point by Richburg Fire Department. He was
18 unconscious, breathing, and had pulse. So, I had to move
19 on. I further was directed around the vehicle where I
20 found a seven-year-old male patient, found out later that
21 he was seven-year-old, a male child patient, supine on
22 the ground, he was unresponsive and not breathing, with
23 gross injuries to his head.

24 Q. When you got there, Elena, just hearing what you're
25 saying to us now, I'm sorry, Ms. Malzahn, were you with

1 any -- the person or people who actually got the child
2 out of the vehicle?

3 A. I was not. I believe there was a couple fire
4 fighters from Richburg Fire Department who pointed out
5 that there was a patient on the ground.

6 Q. And at that point when you learned that was your
7 first -- your initial reaction to go to that child --

8 A. Yes, ma'am.

9 Q. -- or approach that -- okay. And when you say
10 supine, just for anybody who doesn't know what that
11 means, can you please explain that?

12 A. It's on the back, flat on the back, on the ground.

13 Q. Thank you so much. And you said that when you --
14 when you saw the child on the ground, was he breathing?

15 A. He was not.

16 Q. He was not. And based on your experience and what
17 you actually saw at that point, how severe were his
18 injuries?

19 A. Based on my training they appeared to be
20 incompatible with life.

21 Q. Incompatible with life? Now, whenever -- what is
22 your job once you have to make that determination? Tell
23 the jury what you have to do.

24 A. So in the scenario of what we call MCI, is mass
25 casualty incident, where the amount of patients

1 overwhelms the resources. At this point that's what was
2 going on. We initiated so called field triage and we
3 have to identify patients by the severity of their
4 injuries to prioritize the transport and treatment. At
5 this point Corey was prioritized as a red, which is
6 emergent transport.

7 Q. And when you're saying Corey, are you referring to
8 Mr. Corey Shanks?

9 A. Yes, ma'am, I'm sorry. The --

10 Q. That's okay, that's fine.

11 A. -- the passenger that was being extricated.

12 Q. Yes, ma'am.

13 A. In the scenario if he was not being extricated he
14 would've been immediately taken to the ambulance, but
15 since that was a delay I had to move on and assess
16 further, finding Max on the ground, I had to triage him
17 black and move on, just because I had other patients to
18 attend to. I was informed that there was another child
19 and driver, they were further out by the road. So, I had
20 to walk a little further to them. The child was
21 standing, and he kind of appeared a little dazed, so we
22 took the spinal precautions and I also assessed the
23 driver of the vehicle. She was alert at this point with
24 some facial injuries that I noted, but nothing acute that
25 needed immediate treatment. So, I knew that I had

1 another ambulance, ALS Ambulance, coming. And there was
2 a BLS ambulance from Fire Richburg that I was informed
3 they were attending to the other driver involved.

4 Q. And that would be -- are you familiar now with who
5 that other driver involved would be?

6 A. Yes, ma'am, that's the driver -- the defendant.

7 Q. The defendant?

8 A. Yes, ma'am.

9 Q. Okay, Mr. Palmer. But you didn't have any contact
10 with him that day?

11 A. I did not.

12 Q. Okay, just to be clear. So, the individuals that
13 you made contact with and that you treated, as best you
14 could with what you knew to be happening, were the
15 occupants of the Ford Explorer?

16 A. Yes, ma'am.

17 Q. So what ended up happening with the other child who
18 was -- was out of the vehicle, that you said looked
19 dazed?

20 A. Judging by our -- by our criteria he was also
21 prioritized at this point. There was no obvious external
22 signs of injury on him, but because his level of response
23 did not appear to be normal, he was also immobilized and
24 taken to the ambulance.

25 Q. And when there's a casualty involved in a motor

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1 vehicle accident such as this, is that also standard
2 protocol to take those kind of precautions --

3 A. Yes, ma'am, the death in the same vehicle
4 compartment is criteria for trauma alert.

5 Q. And you mentioned that the female, were you aware at
6 the time that she was the driver of the vehicle?

7 A. Yes.

8 Q. Okay. Was she also sent to the hospital to be
9 looked at?

10 A. She was.

11 Q. Did you have any further like care or response to
12 Corey Shanks, the one that's being extricated from the
13 vehicle, did you have anything else to do with him?

14 A. Yes, ma'am.

15 Q. Okay, tell the jury about that.

16 A. So he was immobilized to the backboard and taken to
17 my ambulance. He was then further assessed. I found
18 injuries on his left side. He was initially unresponsive
19 with GCS of three, which is Glasgow Coma Scale. He was
20 not responding to any pain -- any stimuli whatsoever, he
21 was not verbal, and no eye movement. Then he started
22 coming about a little bit. He started withdrawing and in
23 this scenario there is a necessity to secure his airway.
24 I attempted to place an i-gel, it's a device that
25 protects the airway and supplies the oxygen with the BBM.

1 He did not take it. He still had a gag reflex. So --
2 but we were able to ventilate and oxygenate him properly
3 and promptly took him to Piedmont Medical Center.

4 Q. How serious were his injuries based on what your
5 just overall assessment was of him?

6 A. With his level of consciousness it was very serious.
7 Like I said, he was tagged as red, a priority patient.

8 Q. So tagged as red means priority trauma response?

9 A. Yes, ma'am, I did active trauma alert on him as
10 well.

11 Q. And after you had done what you could do for Max,
12 and coded him black, then you went to Griffin, who was
13 the other child, and the mother.

14 A. Yes, ma'am.

15 Q. And you circled back around to Corey Shanks, and you
16 just told us what you did for him.

17 A. I didn't have to circle back to him because by that
18 time he was extricated and brought to the ambulance where
19 Jessica and Griffin were close by.

20 Q. Thank you for correcting me.

21 A. Yes, ma'am.

22 Q. Okay, so he was -- they actually brought him to you,
23 so he was extricated, you were able to see him in the
24 ambulance at that point.

25 A. Yes, ma'am.

1 Q. After you did everything you had to do on scene, did
2 you have any further responsibility in this particular
3 case as to the treatment of those individuals?

4 A. Would you clarify?

5 Q. Sure. Did you have -- was there anything else that
6 you had to do while on scene for these individuals before
7 they were taken to the hospital, other than what you've
8 told us here now?

9 A. As far as the treatment?

10 Q. Yes, ma'am.

11 A. We did start IV on Corey, started fluid bolus, which
12 is supportive care in case there's internal bleeding that
13 we can't see, control to keep him dynamically stable,
14 which means keep his blood pressure normal. Airway was
15 the priority and actually was quite time consuming and
16 intensive. I also did start IV on Griffin, and that's as
17 far as I remember.

18 Q. And once you've done all that and they're stable
19 enough to then be taken to the hospital, was that the
20 conclusion of your treatment of them on that day?

21 A. My conclusion of their treatment was turned over to
22 the hospital staff to the trauma staff.

23 Q. And once you do that, do you actually prepare a
24 report and document everything you did for each one of
25 the patients you've had contact with?

1 A. Yes, ma'am.

2 Q. And have I provided you with a copy of your report
3 for each review in order to testify before the Court and
4 before this jury here today?

5 A. Yes, ma'am.

6 Q. Has everything you told us, what you remember and
7 what was documented in your report, as to what you saw
8 and what you experienced on July 10th, 2022?

9 A. Yes, ma'am.

10 Q. Thank you so much. Please answer any questions the
11 defense may have.

12 JUDGE GIBBONS: Mr. Frick?

13 MR. FRICK: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. FRICK:

16 Q. Ms. Malzahn, you didn't see Mr. Palmer at the scene,
17 correct? Or you didn't treat him at the scene?

18 A. I did -- I did not make it to him. I didn't
19 approach him, but I saw him across the road by the
20 vehicle being --

21 Q. Had you seen him any time --

22 A. -- being attended to.

23 Q. -- since then?

24 A. No, sir.

25 Q. To your knowledge, no?

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1 A. No, sir.

2 Q. Okay. When you -- you said you were essentially the
3 first paramedic on the scene, correct?

4 A. That's correct.

5 Q. You said that the one child was already out of the
6 vehicle?

7 A. Yes, sir. They both were out.

8 Q. They both were out?

9 A. Yes, sir.

10 Q. Okay. And other than Mr. Shanks, was there anybody
11 else still in the car?

12 A. No, sir.

13 Q. Okay, so everybody else was out of the car. Do you
14 have any idea how Max got out of the car?

15 A. No, sir.

16 Q. Okay. Did anybody indicate to you how he got out of
17 the car?

18 A. No, sir.

19 Q. Okay. Thank you, ma'am, those are all the questions
20 I have.

21 A. Sure.

22 JUDGE GIBBONS: All right.

23 MS. LIVELY: No further questions, Your Honor.

24 JUDGE GIBBONS: All right, thank you, ma'am,
25 you can step down and you're free to go. Take a

1 quick afternoon recess. I know what time it is. I
2 need to figure out what we're going to do for the
3 rest of the day, okay. Thank you very much; don't
4 talk about the case.

5 (JURY EXITS)

6 JUDGE GIBBONS: All right, what else do you
7 want to try to do today?

8 MS. LIVELY: Yes, sir, I have two more
9 emergency responders that are here. They should not
10 take long. One of them actually was the one that
11 did see the defendant and his injuries, and then
12 David Dutton who was there whenever Mr. Shanks was
13 actually extricated from the vehicle.

14 JUDGE GIBBONS: Okay.

15 MS. LIVELY: And that should be all for today.

16 JUDGE GIBBONS: Is that what you want to do
17 today?

18 MS. LIVELY: Yes, sir, if that's okay with --
19 if you think we can fit them in.

20 JUDGE GIBBONS: Fine with me. And tomorrow
21 you have enough time to do what you need to do?

22 MS. LIVELY: Yes, sir, I do. I have my SLED
23 people and my MAIT people coming tomorrow. We may
24 have maybe one or two for Thursday morning but that
25 -- that's only if we can't get to them tomorrow.

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1 JUDGE GIBBONS: So the latest you're looking
2 to rest Thursday morning?

3 MS. LIVELY: Yes, sir.

4 JUDGE GIBBONS: Sounds good. Mr. Frick, are
5 you okay with the schedule as proposed by the State?

6 MR. FRICK: Yes, sir, that's fine. That's
7 fine. I was looking for Thursday anyway for the
8 Defense.

9 JUDGE GIBBONS: All right, sounds good. All
10 right, let's take a quick recess then. Go refresh
11 yourself and get right back out here.

12 MS. LIVELY: Okay.

13 (OFF THE RECORD)

14 (JURY ENTERS)

15 JUDGE GIBBONS: All right, thank you, ladies
16 and gentlemen of the jury. I've been advised by the
17 State that there will be two more witnesses today,
18 and then we will call it a day. And I will -- I'll
19 talk to them about what's going on tomorrow and let
20 you know that shortly, but I wanted y'all to have an
21 idea of what we're doing, okay. Call your next
22 witness.

23 MS. LIVELY: Thank you, Your Honor, the State
24 will call Danielle Bonner to the stand.

25 JUDGE GIBBONS: All right. Come on around.

1 Raise your right hand, please. Do you swear or
2 affirm that the testimony you give will be the
3 truth, the whole truth, and nothing but the truth,
4 so help God?

5 MS. BONNER: I do.

6 JUDGE GIBBONS: All right, thank you. Have a
7 seat there. Watch that microphone, and pull it to
8 you.

9 DANIELLE BONNER

10 was called as a witness, and having been first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. LIVELY:

14 Q. Ms. Bonner, where are you currently employed?

15 A. I am not currently employed. I am a student with
16 North Greenville University as a physician assistant
17 student.

18 Q. That's right. You did tell me you're no longer
19 employed with -- is it Chester County EMS where you
20 worked?

21 A. That's correct.

22 Q. How long were you with Chester EMS?

23 A. About a year and a half, two years.

24 Q. And when you were working there was it around the
25 time of July 10th, 2022?

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1 A. That's correct.

2 Q. Do you recall responding to the collision that
3 happened on I-77 close to the mile 67 marker?

4 A. Yes, ma'am.

5 Q. Please tell the jury what you saw when you got there
6 and what you did.

7 A. On arriving there were some fire trucks and police
8 officers there. All the other ambulances had gone to the
9 hospital at that point. We were there solely as backup
10 if needed. And I recall seeing some people standing
11 around a sheet that had covered up the deceased, and
12 asked if he needed attending to, and they had decided
13 that he was a black patient, so that meant that no he was
14 already deceased.

15 Q. And when you say -- like whenever Ms. Malzahn was up
16 there, she said we coded someone red or we coded someone
17 black, are those the different types of --

18 A. Correct, yeah. So he was coded black, so he was
19 coded as deceased at that point. And we had seen two
20 individuals standing near the rack and approached them to
21 see if they needed any assistance, but they informed us
22 that they weren't involved in the wreck. They did point
23 out the driver of the van at that time and we saw him
24 lying on the ground so we approached him at that time to
25 see if he needed any assistance.

1 Q. Okay, when you're saying we, who are you referring
2 to?

3 A. Myself and the paramedic I was with, Ms. Leann
4 Harris.

5 Q. Okay, Leann Harris. So, whenever you approached the
6 person that was pointed out as the driver, you said he
7 was laying on the ground, was he -- could you tell at
8 that point was he injured? What did you do in your
9 response for him?

10 A. We approached him to see if he was injured at all.
11 He didn't seem injured in any way from what I could tell,
12 obviously I can't see if he had any internal injuries,
13 but no physical injuries at that time from just looking
14 at him.

15 Q. Was he conscious?

16 A. He was conscious. He was able to respond whenever
17 we approached him to see if he needed any help, and he
18 said he didn't think he needed any help at that time.

19 But I asked if we could still check his vitals just to
20 make sure that he was okay, so he allowed us to do that.

21 Q. And whenever you checked his vitals, did you talk to
22 him about anything else involving what happened to him
23 and the actual collision that day?

24 A. He had asked if the little boy had died, and I told
25 him that we unfortunately couldn't discuss any other

1 patients with him. And he said that he did not mean to
2 kill the child.

3 Q. At that time did he appear -- what was his demeanor?

4 A. He appeared very remorseful. He was tearful at the
5 time. He seemed to regret what had happened.

6 Q. Okay.

7 A. From what I could tell he was in emotional distress.

8 Q. Okay, and actually in regards to Mr. Palmer, at that
9 particular time when he was on the scene, did you
10 document that demeanor and behavior in your report?

11 A. I did, yes, ma'am.

12 Q. You did, all right. Then at that time you stated
13 that you -- so did you check his vitals?

14 A. I did, yes, ma'am.

15 Q. You did. And that was in the report as well,
16 correct?

17 A. Yes, ma'am.

18 Q. So at that time there was nothing that actually gave
19 you concern that he needed to be immediately removed from
20 the area and --

21 A. Correct.

22 Q. -- you didn't tag him as something like a trauma red
23 or anything like that?

24 A. Correct. He was tagged green, so non-emergent.

25 Q. Non-emergent, all right.

1 A. Uh-huh (affirmative).

2 Q. How long did you actually spend with him?

3 A. I would say probably five to 10 minutes, just trying
4 to show him a little support to, you know, calm him down
5 a little bit, and see if there was anything that I could
6 do for him. He was on the phone with what I believe was
7 his brother at the time as well, and it was his brother
8 who had convinced him to actually go to be seen at the
9 hospital.

10 Q. All right. Did he give you any idea as to -- and
11 I'm just asking because I'm looking at your report, did
12 you document anything in your report about approximately
13 how fast he may have told you he was going?

14 A. He had reported to me, I believe it was 75 miles per
15 hour, is what he had told me.

16 Q. Okay, so he did tell you he was going 75 miles an
17 hour?

18 A. Yes, ma'am.

19 Q. Okay. Did he give you any information about how the
20 actual crash happened?

21 A. No, I did not ask him any specifics about how the
22 crash occurred.

23 Q. And I was looking at your actual report that you're
24 here -- that you have here that you've provided to the
25 State and to the Defense, you said you spent about five

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1 or 10 minutes with him; is that right?

2 A. Yes, ma'am.

3 Q. And was this -- how quickly did you get to the
4 collision site after you actually got the call out that
5 it had happened?

6 A. Probably 20 to 30 minutes. I'm not sure to be
7 honest with you.

8 Q. Okay. Would it help you if I showed you your report
9 which has your call received time, dispatched, and all
10 that information?

11 A. Yes, ma'am.

12 Q. Okay. I'm gonna just show that to you to refresh
13 your memory, okay?

14 A. Okay.

15 Q. All right, so approximately what time in the
16 afternoon did you receive the call that a collision had
17 taken place?

18 A. The call was originally received at 17:19.

19 Q. And that in regular time, not military time.

20 A. Oh, sorry.

21 Q. It's fine.

22 A. 5:19 p.m.

23 Q. 5:19, okay. Just for those of us -- I have trouble
24 with math. Okay, so then you get there, and about how
25 long is it showing that you were actually on scene?

1 A. Showing that we were on scene at 5:50, at patient at
2 6:00, and depart scene at 6:32.

3 Q. Okay, so when it says the -- what was the thing that
4 you said at patient?

5 A. At patient, so what time we made contact with him,
6 which is usually just an estimation we make.

7 Q. That's fine. So, I mean, when you're talking about
8 patient you've already told us you couldn't assist with
9 Max --

10 A. Correct.

11 Q. -- so that would've been the defendant, Mr. Palmer?

12 A. That's correct.

13 Q. So that was about what time when you made contact?

14 A. About 6:00.

15 Q. About 6:00?

16 A. Yes, ma'am.

17 Q. And you were -- you left the scene about 30 minutes
18 later?

19 A. That's correct.

20 Q. All right. So, at that time it would've been about
21 what 40 minutes since the time that you got on the scene
22 that you actually talked to the defendant?

23 A. Uh-huh (affirmative).

24 Q. Is that fair?

25 A. Yes.

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1 Q. Now, did you have any observations of him before
2 that time? Before you actually made contact with him at
3 6:00 on scene?

4 A. I don't recall seeing him prior to that, no.

5 Q. Now, in your report you -- you're talking about how
6 you wanted to kind of give him some comfort. Did he
7 actually at some point start to either doze off or go to
8 sleep?

9 A. Yes, ma'am, while we were on -- en route to the
10 hospital he started to doze off, and I would have to wake
11 him up to make sure that he wasn't losing consciousness
12 or having any more severe injuries that we weren't aware
13 of.

14 Q. Okay. And then during that time, and whenever you
15 got to the hospital, did his demeanor change?

16 A. Yes, ma'am. He began to become more aggravated with
17 the situation.

18 Q. And aggravated -- you said began to show signs of
19 aggravation, what was that?

20 A. He changed from being tearful to showing anger, I
21 guess you could say. He was mostly angry about the
22 people around in the hospital talking about the accident
23 and the things that had happened. But I don't remember
24 or recall specific details besides that.

25 Q. But it was enough to where you documented it in your

1 report?

2 A. Yes, ma'am.

3 Q. So, was that a big difference from what you
4 witnessed initially when you were at the crash site?

5 A. Yes, ma'am.

6 Q. After you actually handed him off to the nurse at
7 the ER, did you have any more contact with the defendant
8 or anyone else in this case?

9 A. No, ma'am.

10 Q. Okay, thank you. Answer any questions the Defense
11 may have.

12 JUDGE GIBBONS: Mr. Frick?

13 MR. FRICK: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. FRICK:

16 A. Ms. Bonner, did he not have some kind of injury to
17 his arm?

18 A. He did have an avulsion, which is like a skin scrape
19 on his arm that we found while we were loading him.

20 Q. Okay. Was it bandaged up?

21 A. Yes, I believe so.

22 Q. Okay. And you said y'all were the backup, you
23 checked with everybody else, and then some folks pointed
24 you to -- was he across the road or was he on the same
25 side of the road?

1 A. He was on the same side of the road, but he was down
2 a little bit farther.

3 Q. Okay. And you said he seemed okay, other than what
4 you saw there?

5 A. Yes, sir.

6 Q. You checked his vitals.

7 A. Checked his vitals.

8 Q. Is there any kind of concussion protocol or anything
9 that y'all go through?

10 A. We can do a neurological exam if we find it
11 warranted, but he wasn't complaining of any nausea
12 specifically at the time, any headaches. He didn't say
13 that he had any head trauma or loss of consciousness. He
14 said he wasn't sure if he lost consciousness, but he said
15 he doesn't remember hitting his head, so it didn't really
16 warrant a neurological exam at the time.

17 Q. Okay. All right. But he was kind of dozing off?

18 A. Once we were en route to the hospital, yes, sir.

19 Q. En route to the hospital, okay. And that was 30
20 minutes after y'all had initially made contact with him?

21 A. I believe so, yes, sir.

22 Q. Okay. And you said that on scene he was in
23 emotional distress I believe is what you said?

24 A. Yes, sir.

25 Q. He was upset about what had happened?

1 A. Yes, sir.

2 Q. Weeping?

3 A. He was tearful. I wouldn't say weeping.

4 Q. Okay.

5 A. But he was tearful.

6 Q. Okay. And you said his mood changed when he got to
7 the hospital?

8 A. Yes, sir. It was --

9 Q. He became --

10 A. -- very much a switch.

11 Q. Okay.

12 A. Yeah.

13 Q. But you believe that that was because folks were
14 talking about what -- the accident.

15 A. I can't say exactly why he made that switch but --

16 Q. But that's when it happened?

17 A. Yes; but that is when it happened.

18 Q. Okay. Do you recall what they were saying? I mean,
19 not specific words, but I mean, what were they talking
20 about?

21 MS. LIVELY: Your Honor, I just object to
22 hearsay.

23 JUDGE GIBBONS: Objection overruled.

24 MS. LIVELY: Thank you.

25 BY THE WITNESS:

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1 A. No, I don't recall exactly what they were saying,
2 just that they were discussing the wreck.

3 Q. They were discussing the wreck?

4 A. Yes, sir.

5 Q. Okay. All right. Thank you, ma'am, that's all the
6 questions I have.

7 JUDGE GIBBONS: All right, redirect?

8 MS. LIVELY: No redirect, Your Honor.

9 JUDGE GIBBONS: Thank you, ma'am, you can step
10 down. You're free to leave. The State can call its
11 next witness.

12 MS. LIVELY: Yes, the State would call David
13 Dutton to the stand.

14 JUDGE GIBBONS: Sir, stand right there to be
15 sworn.

16 THE CLERK: State your name your full name.

17 MR. DUTTON: David Allen Dutton.

18 THE CLERK: Do you solemnly swear or affirm
19 the testimony you give will be the truth, the whole
20 truth, and nothing but the truth, so help you God?

21 MR. DUTTON: Yes, ma'am.

22 THE CLERK: Speak through the microphone.

23 DAVID DUTTON

24 was called as a witness, and having been first duly
25 sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. LIVELY:

3 Q. Mr. Dutton, please tell the jury where you're
4 currently employed.

5 A. I'm currently employed by the Fort Long Fire
6 Protection District.

7 Q. And how long have you been there?

8 A. I've been with Fort Long for five years now.

9 Q. Five years now. So that's where you were employed
10 at the time whenever this collision occurred?

11 A. No, ma'am. That was my part-time employment. I was
12 full-time with Chester County EMS for nine years and then
13 I went to part-time at EMS.

14 Q. Okay, thank you for clarifying that, I appreciate
15 it. So, on July the 10th of 2022, did you respond to a
16 call that came in regarding a collision that happened on
17 I-77?

18 A. Yes, ma'am.

19 Q. Please tell the jury what your response was in
20 regards to that particular event.

21 A. So, that day I was working with Paramedic Malzahn. I
22 was her driver. We responded out there to the
23 interstate. We had to go in -- beyond the emergency lane
24 to access the wreck. When we got there, there's multiple
25 vehicles along the interstate and Elena said let's triage

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1 any MCI. So, I got out of the driver side of EMS 4 and
2 approached what appeared to be the worst vehicle, which
3 was the white SUV off to the right. Elena initially went
4 to the passenger side of the vehicle, I went around the
5 driver's side of the vehicle, so we could kind of sweep
6 it. When I got to the back left corner of the vehicle I
7 met Chief Melton from Richburg Fire, and I found the
8 subject on the ground with head injuries that appeared to
9 be non-viable to me. I yelled for Elena, because I'm
10 just an EMT basic, she's the paramedic, she can make that
11 evaluation. Simultaneously Chris Clinton yelled for me
12 because they were having some issues with the
13 extrication. I heard Dutton, I need some help. So, I
14 went around and assisting with the extrication on that
15 side, and Elena took over care of the patient on the back
16 left side.

17 Q. Let me ask you that and just kind of walk you through
18 it. So, when you say to help with extrication, what
19 actually had to happen in order to extricate this patient
20 from the vehicle?

21 A. Due to the impact it's called telescoping, it's
22 where the outer sheet metal of the vehicle will actually
23 ride over another section of the vehicle. So, there was
24 some telescoping of the outer door skin and they were
25 having issues extricating, popping the Nader pins. So

1 when you pull the door handle you hear that bump, and
2 then the door opens. The Nader pin was jammed in the B
3 post. So, myself and Chris Clinton had to alternate two
4 sets of extrication equipment. He would spread a
5 purchase point, and then we had to bounce down to be able
6 to pop the door to get the front passenger out of the
7 vehicle.

8 Q. And about how long did it take you to -- or take you
9 and Chris to be able to be successful at that?

10 A. From the time I got over there, maybe five to seven
11 minutes before we could actually get the door off and out
12 of the way to where we could get the patient out and onto
13 the backboard.

14 Q. And how many of you were standing there as a part --
15 were actually a part of that extrication, and then
16 actually pulling the patient out of the vehicle?

17 A. That would've been myself, fire fighter Clinton,
18 John Agee was in the driver's seat holding the passenger
19 in the vehicle while we were popping the door open, and I
20 believe there was an additional paramedic from Chester
21 EMS that was standing to my left, but I can't recall who
22 that was. So, there was four to five of us doing that.

23 Q. And what were your concerns as, you know, someone
24 who's trying to assist the patient that's sitting in the
25 passenger -- that's in the passenger seat.

1 A. He appeared to have a lot of trauma on the right
2 side of his body, and to the right side of his head, but
3 there was a lot of debris that was on his face. I'm
4 assuming that was from the impact with the trees. So we
5 hadn't -- hadn't got him out enough the stabilize and
6 clean that off at the time, but it looked like he had a
7 lot of right side trauma while we were doing the
8 extrication.

9 Q. And when that was going on, were you able to assess
10 whether he was breathing and was he responsive --

11 A. He was completely --

12 Q. -- anything like that?

13 A. -- unresponsive. John Agee was holding his head up
14 with his -- we had placed a C collar on him prior to, but
15 he had no level of responsiveness during my contact time
16 with him at all.

17 Q. And you've been sitting in here whenever Ms. Malzahn
18 talked about his condition and what she --

19 A. Uh-huh (affirmative).

20 Q. -- had to do for him. Were you present during all
21 of that?

22 A. Yes, I was the -- I was the medic on the transport
23 with her, so I was there from the time she left the
24 station until the time we got back.

25 Q. Was your part in the response that's a little bit

1 different from what she provided to, is that your part in
2 regards to the extrication of Mr. Shanks?

3 A. Yes, ma'am. Elena being the primary paramedic, and
4 her being the first one there, she says she took medical
5 command. Elena has to evaluate everybody and triage
6 everybody at one time. When she directs me to who the
7 most severe patient is, that's where I go to try to
8 stabilize to get them out and to the ambulance. Her
9 office is the back of the truck, mine's in the field.
10 So, I work here and take them to her and then I pass off
11 just like she passes off to the ER staff.

12 Q. One Mr. Shanks was actually out of the vehicle and
13 he was placed on the board, at that point was -- did
14 y'all do any work on him outside of that vehicle before
15 went to the (inaudible)?

16 A. No, the only thing that we did was we put him in a C
17 collar and we put him in head blocks for cervical
18 stabilization, strapped the backboard with Mr. Shanks on
19 it, and then we went down into the ambulance, and that's
20 when we passed off, and then there was a second child
21 that was on the scene that Elena had already packaged on
22 the bench seat.

23 Q. Okay.

24 A. So, and there was an additional family member, I
25 believe was the grandmother possibly that went with us to

JURY TRIAL

1 Piedmont.

2 Q. So, another family member that showed up on the
3 scene went to Piedmont?

4 A. Yes, I believe so.

5 Q. Okay. I'm not sure -- because in your report it's
6 not really clear as to who it was that went.

7 A. I'm not 100 percent sure. I just know it was a
8 family member.

9 Q. Okay. That's fine, I just wanted to see if we could
10 figure that out. Now, after -- so after you get him onto
11 the actual ambulance, and we heard Ms. Malzahn talk about
12 what she had to do in order to take care of his airway to
13 make sure that he was breathing, did he begin to improve
14 at some point while he was there in your presence?

15 A. He had a little bit of an improvement. He -- we
16 call it becoming combative, and that's a lot of times
17 with a head injury, but it might not be indicative of a
18 head injury, it's where they kind of become semi-
19 conscious and try to we call it fighting it. He might
20 try to come off the stretcher or posture in a certain
21 way. When we try to put the airway in, he still had a
22 gag reflex present, and I started putting the BBM on to
23 try to oxygenate him according to what the monitor was
24 saying. He came semi-combative during that, but he -- he
25 never came to a cohesive responsiveness during transport.

1 Q. So, do you agree with your lead Ms. Malzahn that he
2 was to be tagged as red and trauma?

3 A. Oh, 100 percent, yes, ma'am.

4 Q. 100 percent?

5 A. Yes.

6 Q. Did you have any further contact with the family or
7 Mr. Shanks once you finished your job on that day in
8 response to this collision?

9 A. No, ma'am. I actually never put the truck back in
10 service. I called the supervisor, 'cause I had at the
11 time I had a three month old at home with a cardiac
12 condition and three additional children. I called my
13 supervisor, which was Tim Minors, we call him Swimmy, and
14 I said you need to get somebody to Richburg I'm going
15 home, and I know that Richburg has had multiple events
16 for the Shanks family that I --

17 Q. I understand.

18 A. I can't.

19 Q. That's fine. No, I understand. And you don't need
20 -- I was referring to your actual response to that day,
21 thank you.

22 A. No, I -- no, I didn't.

23 Q. Not a problem. Thank you so much. Answer any
24 questions the Defense may have.

25 JUDGE GIBBONS: All right. Mr. Frick?

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CROSS-EXAMINATION

BY MR. FRICK:

Q. Briefly, Mr. Dutton.

A. Yes, sir.

Q. You said when y'all were getting there you had to go beyond the emergency lane.

A. Uh-huh (affirmative).

Q. We're talking about off onto the right shoulder of the road?

A. Yes.

Q. Okay. And y'all had to go for some distance to get to the scene; is that correct?

A. Yes, the traffic had started stacking up about a half a mile south of it, and people had attempted to use the emergency lane as additional travel lane, so we had to get off into the area and there were some issues with traction with the ambulance. So, we were kind of off and on trying to access the scene before we could get to it.

Q. And when you came around the vehicle, the driver's side of the vehicle, you saw that the child was already on the ground, correct?

A. Yes, sir, he was out supined facing to the left I believe.

Q. And you said it was Chief Melton that you saw over there?

1 A. Uh-huh (affirmative).

2 Q. Okay. Did anybody indicate to you how the child had
3 gotten out of the vehicle?

4 A. At some point I thought I heard that there might
5 have been some nurses that had stopped, but as far as
6 actually taking him out that's --

7 Q. No idea.

8 A. No idea.

9 Q. Okay. All right. And I believe you told the
10 Solicitor that Mr. Shanks had become a little bit
11 combative when he was starting to come to?

12 A. Uh-huh (affirmative), that was very briefly, maybe
13 two to three minutes prior to arrival at Piedmont; there
14 were some arm movement.

15 Q. Okay. But I think you also said it's not
16 necessarily unusual for someone when they're coming to to
17 do that.

18 A. It's not unusual and indicative of a head injury, as
19 far as the trauma that I seen. A lot of times you'll get
20 decorticate posturing, but as far as coming to, no.

21 Q. So, if he suffered a head injury that could cause
22 you to have some issues in your experience?

23 A. Possibly, yes, you'd have some motor response to a
24 head injury like that.

25 Q. Okay. All right. Thank you, sir, no more

1 questions.

2 JUDGE GIBBONS: Any redirect?

3 MS. LIVELY: No, Your Honor, thank you.

4 JUDGE GIBBONS: All right. And that's the
5 last witness for today?

6 MS. LIVELY: Yes, sir, it is.

7 JUDGE GIBBONS: All right, ladies and
8 gentlemen of the jury, I'm going to ask again
9 remember when you leave this courtroom you're not to
10 do any independent research or talk to anybody about
11 what's going on, everything that you decide must be
12 based from what occurs in this courtroom and the
13 evidence received, okay. Want to have -- I want you
14 to have a wonderful evening and we'll see you
15 tomorrow morning. Is the State going to be ready at
16 9:15.

17 MS. LIVELY: The State will be ready, Your
18 Honor, and we have -- I have a witness who is coming
19 from out of town, but she knows to be here at 9:00.
20 So, at 9:15 we will be ready to go.

21 JUDGE GIBBONS: Okay. What'd I tell y'all
22 this morning, 9:00 or 9:15?

23 UNIDENTIFIED VOICE: 9:00.

24 JUDGE GIBBONS: 9:00? We didn't start until
25 9:25, and then we started at -- things like that

1 always happens, so let's say, you know, get here
2 between 9:00 and 9:10, how about that? I'll give
3 you -- we'll call that 9:00-ish, okay. And we
4 should start, you know, and hopefully everything
5 will go smoothly -- smoothly tomorrow morning and we
6 can get moving, okay. Y'all have a wonderful
7 evening. We'll see you tomorrow.

8 (JURY EXITS)

9 JUDGE GIBBONS: All right, anything else from
10 the State, Madam Solicitor?

11 MS. LIVELY: No, Your Honor.

12 JUDGE GIBBONS: Anything from the Defense?

13 MR. FRICK: No, sir.

14 JUDGE GIBBONS: All right, we're in recess
15 until tomorrow morning.

16 (The proceedings were adjourned
17 until 9:15 a.m., October 30, 2024)

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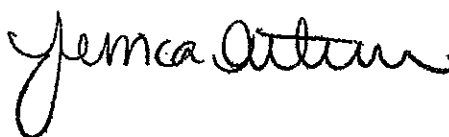
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CERTIFICATE OF TRANSCRIBER

I, Jessica Antonucci, a court-approved transcriber, do hereby certify that I transcribed the electronic recording of the foregoing proceedings in Docket Nos. 2023GS12317, 2023GS12248, and 2023GS12249 held on October 29, 2024, before the Honorable Brian M. Gibbons, and that said transcript is true and correct, all to the best of my knowledge and ability.

I further certify that I am not related to nor the employe of any of the parties or witnesses hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

January 20, 2025



Jessica N. Antonucci

Transcriber

1 October 30, 2024

2 JUDGE GIBBONS: -- before we bring the jury
3 in?

4 MS. LIVELY: Not from the State, Your Honor.

5 MR. FRICK: Nothing.

6 JUDGE GIBBONS: Mr. Frick? All right, thank
7 you. We'll bring the jury in.

8 (JURY ENTERS)

9 JUDGE GIBBONS: All right, good morning,
10 ladies and gentlemen, we're ready to get started.
11 The State can call its next witness.

12 MS. LIVELY: Yes, sir, Your Honor. The State
13 would call Dr. Kelly Crawford to the stand.

14 JUDGE GIBBONS: All right. Just come on
15 around here and I'll swear you in. If you would,
16 please raise your right hand. Do you swear or
17 affirm that the testimony you give will be the
18 truth, the whole truth, and nothing but the truth,
19 so help you God?

20 DR. CRAWFORD: I do.

21 JUDGE GIBBONS: Thank you, very much. Have a
22 seat there. Watch that microphone, and then if you
23 could pull it to you.

24 DR. CRAWFORD: All right, thank you.

25 DR. KELLY CRAWFORD

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1 was called as a witness, and having been first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. LIVELY:

5 Q. Dr. Crawford, where are you currently employed?

6 A. I am currently employed with Atrium Health Carolinas
7 Rehabilitation in Charlotte, North Carolina.

8 Q. And how long have you worked in that position?

9 A. I have been in that position for eight years.

10 Q. And what is your educational background for you to
11 have reached the level of your occupation that you're in
12 now?

13 A. I did four years of undergraduate at Tulane
14 University in New Orleans, Louisiana; two years of
15 graduate school at Tulane University in New Orleans,
16 Louisiana; and then I did four years of medical school in
17 Dayton, Ohio; along with four years of residency in
18 Cincinnati, Ohio; and two years of brain injury
19 fellowship in Pittsburgh, Pennsylvania. So, accumulation
20 of about 13 years.

21 Q. Thirteen years.

22 A. Yeah.

23 Q. And then how many years have you actually been a
24 practicing physician?

25 A. Practicing physician, I've been a practicing

1 physician in brain injury medicine for approximately 11
2 years.

3 Q. Do you have any certifications in regards to your
4 medical knowledge and experience?

5 A. I am certified. I am board certified in physical
6 medicine rehab and board certified in brain injury
7 medicine.

8 Q. Have you ever been qualified as an expert in court?

9 A. Yes.

10 Q. And when you say physical medicine, what does that
11 mean?

12 A. So physical medicine rehab is a specialty in which
13 you deal with folks who have had disabilities or
14 injuries, so trauma injuries, strokes, spinal cord
15 injuries, so the physical medicine piece.

16 Q. All right, thank you for explaining that.

17 A. Uh-huh (affirmative).

18 Q. Now, other than -- let's see here, so brain injury
19 medicine, physical medicine rehab, and those
20 certifications are those through the State of North
21 Carolina?

22 A. My license is through the State of North Carolina.

23 Q. And that's where you're currently practicing,
24 correct?

25 A. Correct.

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1 Q. Okay. Your Honor, at this time the State would
2 offer Dr. Kelly Crawford as an expert in brain injury
3 medicine and physical medicine rehabilitation.

4 JUDGE GIBBONS: All right. Any voir dire on
5 her qualifications?

6 MR. FRICK: No additional voir dire.

7 JUDGE GIBBONS: All right, thank you. She's
8 so qualified. Ladies and gentlemen, let me talk to
9 you briefly about what just happened. Normally when
10 a witness testifies in court that witness can only
11 testify about what they saw, heard, smelled, or
12 something like that, okay. However, there is a
13 person who is qualified as an expert in a particular
14 field because of their training, experience, work
15 history, etcetera, those witnesses can be classified
16 as experts or qualified as experts in that
17 particular field. I have qualified this witness as
18 an expert in the field of brain injury medicine and
19 --

20 MS. LIVELY: Physical medicine rehab.

21 JUDGE GIBBONS: -- in physical medicine,
22 meaning that she's qualified to give an opinion,
23 okay. Normally witnesses can't give opinions, okay,
24 unless they're qualified as an expert. So, just
25 because an expert gives an opinion in an area

1 doesn't mean you have to accept that opinion, all
2 right. It's something that you should consider when
3 you deliberate the weight and credibility of all the
4 evidence, okay.

5 BY MS. LIVELY:

6 Q. Now, Dr. Crawford, do you know the Shanks family,
7 specifically Jessica and Corey Shanks?

8 A. Yes, I do.

9 Q. And how do you know them?

10 A. I cared for Corey starting in his hospitalization
11 right after his injury when he was in the hospital. He
12 was in our hospital for approximately three to four
13 weeks, and then thereafter I have been following him in
14 my clinic every three to six months.

15 Q. And whenever you actually met with the family, and
16 you came into contact with him, did you look at the
17 history of what the causation was of his particular
18 injury?

19 A. The causation I only knew it was a motor vehicle
20 collision.

21 Q. Okay, thank you. And that's on me. So, it was as a
22 result of a motor vehicle collision?

23 A. Correct.

24 Q. All right. Did you have any other information as to
25 any kind of preexisting conditions or anything like that

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1 other than the motor vehicle collision?

2 A. No.

3 Q. Okay, thank you. So, when you met with Mr. Shanks,
4 did you have all of his medical records regarding his
5 initial admission for the injuries from the motor vehicle
6 accident?

7 A. Yes.

8 Q. And whenever he was being treated, are you aware if
9 he was ever in a coma?

10 A. I am not aware.

11 Q. How about this, were you aware, and did you get
12 information that he had suffered some type of a brain
13 injury?

14 A. Yes.

15 Q. Okay. How would you actually refer to the type of
16 brain injury that he had?

17 A. His type of a brain injury was a severe brain
18 injury.

19 Q. A severe brain injury.

20 A. Yes.

21 Q. Okay, thank you. And in regards to the type of
22 medicine that you have been qualified as an expert of
23 brain injury medicine and physical medicine
24 rehabilitation, is that the type of injury that you
25 specialize in in treatment?

1 A. Yes.

2 Q. Okay, thank you. Now, did he have any other
3 neurological damage to other parts of his body as a
4 result of this collision?

5 A. Neurological damage was mostly from the brain
6 injury, but he did have some nerve damage from fractures
7 that he had sustained elsewhere.

8 Q. Okay. And was your focus more so on the severe
9 brain injury for your treatment of Mr. Shanks?

10 A. No, we --

11 Q. Okay.

12 A. -- focused on all of it.

13 Q. On all of it.

14 A. Uh-huh (affirmative).

15 Q. So when you say physical medicine rehab, you take
16 the holistic approach to the whole body?

17 A. Correct. Correct.

18 Q. All right. So, what about permanent injuries to any
19 of his bodily organs, did you have a diagnosis as to any
20 permanent injuries?

21 A. Yes, would you like me to go through --

22 Q. And that's what I was going to do.

23 A. Sure.

24 Q. What are those permanent injuries --

25 A. Sure.

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1 Q. -- was going to be my follow-up question, so thank
2 you.

3 A. Okay, no problem. So, from a brain injury
4 perspective -- so the brain controls basically everything
5 of the body. So, from the brain injury's perspective
6 there are mood disturbances, there are cognitive
7 disturbances that are permanent. From the ortho injuries
8 in which he broke his right arm, his upper and his lower
9 right arm bones, he does have some mild nerve injuries as
10 well as along with some weakness in his right arm. Now
11 the brain also controls the bladder, and so he does have
12 some bladder ner -- we call it neurogenic bladder, as a
13 result of it being from neuro damage, that controls his
14 bladder. And I'm trying to remember. I believe those
15 are the big one -- the major ones, yes.

16 Q. All right. Are these types of injuries that you
17 mentioned, are these injuries that he's going to continue
18 to have to work through for a significant period of time?

19 A. Yes.

20 Q. And so in your opinion, as an expert in physical
21 medicine rehab and brain injury medicine, those injuries
22 that he sustained as a result of the motor vehicle
23 collision were permanent injuries that you're having to
24 treat?

25 A. Yes.

1 Q. Okay. And I actually sent you some information
2 about what in South Carolina is considered great bodily
3 injury for a particular individual. So, I'm going to ask
4 you in regards to what you just testified to and what you
5 read, would those be considered great bodily injury?

6 A. Yes.

7 Q. Yes, all right. Now, how long have you been
8 treating him then?

9 A. I have been treating him -- the specific date I met
10 him was July 22nd, 2022.

11 Q. What was the first thing that you focused on in
12 regards to his treatment?

13 A. The first thing was his cognition, his confusion,
14 his behavior, because he had a severe injury he was very
15 confused.

16 Q. Okay, very confused.

17 A. Uh-huh (affirmative).

18 Q. And at that point when you started your treatment
19 for him, was that confusion and cognitive deficiencies
20 was that something that you saw improve over time?

21 A. Yes.

22 Q. All right. And so with that improvement was he able
23 to also work with you with the other types of injuries he
24 has to understand what he needed to do in order to heal
25 himself?

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1 A. Yes, as -- as he improved, yes.

2 Q. And how has his wife Jessica, if any -- has she been
3 helpful in this process?

4 A. She's been there the whole time, at every step of
5 the way.

6 Q. Okay. Is this -- this type of treatment when you're
7 dealing with physical medicine rehabilitation, is it
8 helpful or even critical to have that family support in
9 order for someone like Mr. Shanks to get through what
10 he's suffered?

11 A. It's the number one predictor of outcomes.

12 Q. The number one predictor of outcomes.

13 A. Yes.

14 Q. Okay. Whenever you started working with Mr. Shanks
15 on his cognitive deficiencies, as a result of this
16 collision, how did he start to respond where you knew
17 that he was making progress?

18 A. We knew he was making progress when he started to
19 remember activities in conversations that had previously
20 happened. Before his memory was so significantly
21 affected that he couldn't recall, you know, what had
22 happened 20 minutes before we had walked into the room.

23 Q. And as his doctor was he able to recall what
24 happened on the day of the collision and actually landed
25 him in your care?

1 A. Not when I met him, no.

2 Q. Not when you met him.

3 A. No.

4 Q. Has he been able to recall that now?

5 A. I don't think we've had that discussion of the
6 events.

7 Q. Fair enough.

8 A. No.

9 Q. Fair enough. Okay. Are there any other permanent
10 limitations that you haven't already told us about that
11 Mr. Shanks does have as a result of his injuries?

12 A. There's one minor -- there are some vision issues.
13 So, he does because of his brain injury have some gaze
14 stabilization with his eyes. So, there are some vision
15 issues.

16 Q. Has he been able to go back to work?

17 A. Yes.

18 Q. He has? Okay. Are there any limitations in his
19 ability to go back to work?

20 A. Yes, he has to be -- he's on a reduced schedule.

21 Q. And is he able to drive?

22 A. Yes.

23 Q. Okay. And once again in regards to the -- in your
24 expert opinion, even with the continued treatment and
25 rehabilitation, will he always suffer from those

JURY TRIAL

1 permanent neurological damages that he's seeking
2 treatment for now?

3 A. Yes.

4 Q. All right. Is the plan at some point to continue
5 working with him, and to actually try to rehabilitate his
6 memory even up through the day that the collision
7 occurred? Or is that outside of your scope?

8 A. Can you repeat the question? I'm sorry.

9 Q. Sure. Is part of what you're doing neurologically
10 helping with the mental part where he's going to have
11 retrieval of his memories even of the day of the
12 collision?

13 A. The treatment would be focused on continuing to
14 improve and/or stabilize his cognitive status. At this
15 point getting that memory back is likely -- is unlikely.

16 Q. Is unlikely, okay. I probably should have asked
17 that better, but you know how lawyers are sometimes we
18 get a little complicated. I'm very sorry.

19 A. No, no.

20 Q. My question was more so I wasn't sure how in-depth
21 you get into anything like, you know, if he's getting any
22 kind of therapy, mentally --

23 A. I'm sorry, yes. He does have -- he does see a
24 psychotherapist for mood -- mood adjustment and anxiety
25 and depression, yes.

1 Q. Thank you.

2 A. Yes, sorry.

3 Q. No, you're fine. And is that normal for him to have
4 gotten some diagnosis in regards to the injury itself,
5 and his mental, you know, I don't want to say mental
6 issues, because that's an inappropriate way to say, but
7 like mental status in regards to possible depression and
8 other things.

9 A. Yes.

10 Q. Okay.

11 A. Very common.

12 Q. So, do you know what those diagnoses are at this
13 point?

14 A. I -- the last psychotherapist note that I read
15 listed adjustment disorder, anxiety -- mixed anxiety and
16 depression.

17 Q. And is it important for you to get that information
18 from his psychotherapist, so that you also know what
19 issues to address --

20 A. Yes.

21 Q. Okay.

22 A. Very much so.

23 Q. So, as an expert you're taking once again that
24 holistic approach?

25 A. Yes.

JURY TRIAL

1 Q. Okay. Has he been completely compliant with all of
2 your recommendations in order for his treatment?

3 A. Yes.

4 Q. Has he made significant improvement based on the
5 severity of his brain injury?

6 A. Yes.

7 Q. Will you continue to see Mr. Shanks, and continue to
8 help him with his rehabilitation?

9 A. Yes.

10 Q. And just to ask final, once again, in your medical
11 opinion and expert opinion, you believe that the injury
12 he suffered to his brain was great bodily injury?

13 A. Yes.

14 Q. Thank you. Answer any questions the Defense may
15 have.

16 JUDGE GIBBONS: Mr. Frick?

17 MR. FRICK: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FRICK:

20 Q. Good morning, Dr. Crawford.

21 A. Good morning.

22 Q. So you've been treating him since July of '22 --

23 A. Yes.

24 Q. -- is that fair to say?

25 A. Yes, uh-huh (affirmative).

1 Q. Okay. And how long did you treat him in July? I
2 know he was in the hospital for a while.

3 A. July 22nd through August 19th was his rehabilitation
4 stay in the hospital.

5 Q. Okay, so he was -- he's not in the ER, he was at the
6 rehab part?

7 A. He was at the rehab hospital for three weeks, prior
8 to that he was in the trauma ICU, the acute hospital
9 before he came over to the rehab hospital.

10 Q. Okay. So, from the 11th through the 22nd he was in
11 the --

12 A. The acute hospital.

13 Q. Okay.

14 A. Where the trauma -- yeah. And then --

15 Q. And then from the 22nd of July until August that's
16 when he's in the rehab and he's --

17 A. Correct.

18 Q. -- you're -- he's working --

19 A. And that's when I met him on admission, yes.

20 Q. Okay. Before the motor vehicle accident, did he
21 have any diagnoses?

22 A. I believe I read that he had ADHD diagnosis.

23 Q. Correct.

24 A. Correct.

25 Q. Right. And were there some medical records that you

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1 have that --

2 A. The hospital I believe sent them.

3 Q. Yeah.

4 A. Yes.

5 Q. Have you reviewed those?

6 A. I did.

7 Q. Okay.

8 A. Uh-huh (affirmative).

9 Q. Okay. Can I show something to you?

10 A. You sure can.

11 Q. I'm going to show you this. Do you recognize that?

12 A. Yeah.

13 Q. What is that?

14 A. That is a neuropsychological evaluation.

15 Q. Okay.

16 A. Uh-huh (affirmative).

17 Q. On there, it's about three pages --

18 A. Yeah.

19 Q. -- just take your time.

20 A. They're long, uh-huh (affirmative).

21 Q. Does it talk about his ADHD diagnosis?

22 A. I -- I -- I read through it, I know it does. I just
23 don't know where to find it right now.

24 Q. Okay. If I could see it (inaudible).

25 A. Yeah, oh, okay. He -- I'm sorry; sorry. He has --

1 yes, it is listed here.

2 Q. And he had had that for a while, correct?

3 A. I'm not sure how long he had had it.

4 Q. Well, I think it tells you in there.

5 A. He has a history -- I don't know. I apologize.

6 Q. Okay.

7 A. The area I'm reading it in I don't see the -- the
8 length of time.

9 Q. Let me see it.

10 A. Yeah, sure, sorry. Thank you.

11 Q. I'm looking under --

12 A. Oh.

13 Q. -- social -- socio -- social issue.

14 A. Sorry, it's right there, diagnosed with ADHD in the
15 second grade.

16 Q. Okay. And was he medicated for that?

17 A. He was at one time, yes.

18 Q. And he was later, correct? Is that what that
19 indicates at least?

20 A. Uh-huh (affirmative), yes.

21 Q. And ADHD that's a -- that causes some psychological
22 issues, does it not?

23 A. Attention deficit, yes.

24 Q. All right. Some confusion?

25 A. No.

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1 Q. Okay.

2 A. No.

3 Q. Just difficulty in focusing?

4 A. Difficulty in focusing and concentrating.

5 Q. Okay. All right. And those were some of the issues
6 that he had an issue --

7 A. Those were -- they were partly, yes.

8 Q. Okay. All right. And as you've treated him he has
9 improved, correct?

10 A. Yes.

11 Q. Okay. I mean, it was sometime in '22 he was able to
12 drive again?

13 A. Yes.

14 Q. And then in I think '23 he was able to get back to
15 some work.

16 A. Some.

17 Q. I don't think he went back full -- full-time.

18 A. Not full-time, sure, yes.

19 Q. Do you know if he's back to full-time now or is he
20 still --

21 A. No, he is not.

22 Q. -- still limited?

23 A. Uh-huh (affirmative).

24 Q. Okay. And you see him, I think you said about every
25 three to six months?

1 A. Every three to six months.

2 Q. What currently, is it still three to -- I mean, are
3 we saying three months or six months or --

4 A. It depends on when the holidays bump schedules back,
5 so probably around six months now, correct.

6 Q. About every six months?

7 A. Yeah, and I last saw him September 26th.

8 Q. Okay. Beg the Court's indulgence for one second.

9 JUDGE GIBBONS: Sure.

10 BY MR. FRICK:

11 Q. Can I see those papers again, one more time?

12 A. You sure can, uh-huh (affirmative).

13 Q. And just looking back at that same document, we
14 talked about his medication, I'm looking at the -- at the
15 same point there, does it say when he -- there was a gap
16 where he wasn't taking the medication and then he resumed
17 it.

18 A. Would you like me to read it?

19 Q. Yes, ma'am.

20 A. Okay, sure. He reported that he was prescribed
21 Ritalin as a child, he did not take medication for
22 attention for many years, but started again four to five
23 years ago due to work related stress, and resulted in
24 difficulty keeping up with work and problems focusing.

25 Q. Okay. Thank you, ma'am.

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1 A. Yeah.

2 Q. Yeah, that's all the questions I've got.

3 JUDGE GIBBONS: Okay. Redirect?

4 MS. LIVELY: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. LIVELY:

7 Q. Dr. Crawford, you already testified that your expert
8 opinion was that he suffers severe brain injury --

9 A. Correct.

10 Q. -- as a result of the collision. Does ADHD cause
11 that type of severe brain injury?

12 A. No.

13 Q. Is that type of severe brain injury that he actually
14 had was one that could have killed him?

15 A. Yes.

16 Q. But he did not die obviously, correct?

17 A. Correct.

18 Q. Was the ADHD that he suffered at two years old, did
19 it actually cause his bladder problems?

20 A. No.

21 Q. Is the bladder an organ?

22 A. Yes.

23 Q. And that organ is now damaged, correct?

24 A. Well, the connections to it are damaged, yes.

25 Q. Okay, so it's not working, it's not functioning

1 properly.

2 A. As a result of the brain injury.

3 Q. Okay, did I send you the definition of great bodily
4 injury?

5 A. Yes.

6 Q. From the State of South Carolina?

7 A. Yes.

8 Q. So, he could have substantially -- there was a
9 substantial risk of death from the severe brain injury
10 the has; is that your opinion?

11 A. Yes.

12 Q. Okay. Or a permanent disfigurement or a loss or
13 impairment of the function of a bodily organ; is that
14 right?

15 A. Yes.

16 Q. Including his bladder?

17 A. Yeah.

18 Q. Thank you.

19 JUDGE GIBBONS: Any recross based upon that?

20 MR. FRICK: No, sir.

21 JUDGE GIBBONS: All right, thank you. You can
22 step down, you're free to leave. The State can call
23 its next witness.

24 MS. LIVELY: Yes, Your Honor. I may just one
25 second, because these witnesses are one that my co-

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1 counsel was going to call. I just need to see if
2 they're here.

3 JUDGE GIBBONS: Okay.

4 MS. LIVELY: Just let me double check if I
5 could. Lawrence Zivkovich.

6 JUDGE GIBBONS: All right. All right, sir, if
7 you'll step up there so the Clerk can swear you in.

8 THE CLERK: Please state your full name.

9 MR. ZIVKOVICH: Lawrence Zivkovich.

10 THE CLERK: You do solemnly swear or affirm
11 the testimony you give to be the truth, the whole
12 truth, and nothing but the truth, so help you God?

13 MR. ZIVKOVICH: I do.

14 THE CLERK: Thank you, sir.

15 LAWRENCE ZIVKOVICH

16 was called as a witness, and having been first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. LIVELY:

20 Q. Good morning, Mr. Zivkovich. Will you please spell
21 your last name for the Court Reporter?

22 A. Z-I-V-K-O-V-I-C-H.

23 Q. Thank you so much. Where are you currently
24 employed?

25 A. The State Law Enforcement Division, commonly known

1 as SLED.

2 Q. And how long have you worked for SLED?

3 A. Approximately 18 and a half years.

4 Q. What division do you work in?

5 A. I work in the drug identification section.

6 Q. And is part of the drug identification section the
7 section that actually does analysis of substances that
8 comes to SLED?

9 A. Yes, ma'am.

10 Q. And how many -- you said you've been -- have you
11 been doing drug analysis for 18 years or just been with
12 SLED for 18 years?

13 A. Same position for 18.

14 Q. Okay, same position for 18. Have you ever been
15 qualified as an expert in drug analysis?

16 A. I have.

17 Q. More than 10 times possibly?

18 A. Yes, ma'am.

19 Q. Your Honor, at this time the State would offer
20 Lawrence Zivkovich as an expert in drug analysis.

21 MR. FRICK: No objection.

22 JUDGE GIBBONS: Without objection, he's
23 qualified as an expert. Ladies and gentlemen,
24 remember an expert can give an opinion.

25 MS. LIVELY: Thank you, Your Honor.

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1 BY MS. LIVELY:

2 Q. Now, Mr. Zivkovich, did you actually receive a -- I
3 guess we'll just call it just a substance from the South
4 Carolina Highway Patrol, that was actually labeled as
5 possibly crack cocaine, in a case that involved a
6 collision on July 10th of 2022?

7 A. Yes, ma'am, I did receive a case that was labeled
8 L22-12831.

9 Q. Yes, sir. The actual subject name on that was that
10 Palmer, the last name?

11 A. Jason Palmer, yes, ma'am.

12 Q. Jason Palmer, okay. So, whenever you received that
13 information from the actual agency, was that from the
14 South Carolina Highway Patrol?

15 A. Yes, ma'am.

16 Q. Whenever you received the items from them, tell the
17 jury in what condition those items are whenever you get
18 them, like how they're packaged and that kind of thing.

19 A. They're packaged in a tamper evident bag, and what
20 that means is that it has markings around the outside and
21 heat seals, so that if somebody has tampered with it
22 there'd be evidence of that.

23 Q. And if an individual who actually collects those
24 items is going to send those items to SLED, do they have
25 to specifically use SLED's packaging in order for y'all

1 to accept it and then follow-up and do the test?

2 A. No, ma'am, we'll take anything that has tamper
3 evidence seals on it, such as evidence tape or evidence
4 bags.

5 Q. Got it, thank you. And that's the reason for my
6 question, is everything that comes to you are you
7 required before you test it to actually look at whether
8 or not it was packaged appropriately?

9 A. Yes, ma'am.

10 Q. I'm going to show you what's actually been marked as
11 State's Exhibit Number 94. There's also a chain of
12 custody from the originating agency that's a part of
13 this, and I'm just gonna ask you if you would look at
14 that, and then you can actually open it up and take a
15 look at what's inside. And please tell the jury what it
16 is that you're seeing as you open up State's Exhibit
17 Number 94.

18 A. So, when I open it up these are what we call BEST
19 kits, and they're just BEST evidence sample testing kits
20 that we issue to outside agencies, and as you can see
21 they have tamper evident markings on the sides, and on
22 the backs, and then they have a glue strip on the top,
23 and this one is marked as L22-12831, submission number
24 three.

25 Q. And that matches the number on your report; is that

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1 correct?

2 A. Yes, ma'am.

3 Q. All right. Now, in that tamper evident packaging,
4 is there -- are there actual names or initials that tell
5 you who may have been the one that sent it to SLED?

6 A. It says the submitting agency is South Carolina
7 Highway Patrol and that it was sealed by, could be CC Dye
8 or CE Dye.

9 Q. Yes, sir, thank you; CC Dye, all right. And do you
10 see anything in that packaging that shows that it's been
11 tampered with, altered, in any fashion?

12 A. No, ma'am.

13 Q. And if I can, I'm going to walk up to you please,
14 sir, and have you look at that. When you received this
15 do you -- does the information that you get from the
16 agency tell you basically what they believe may be the
17 substance that they're sending for testing?

18 A. Sometimes, sometimes they just say for testing, they
19 don't mention anything. But if they do itemize anything
20 we check to make sure that what they've written down
21 matches what they submitted.

22 Q. Okay. So, I'm seeing that there is this outside
23 almost look like a vacuumed sealed top here, is that from
24 SLED or who is that from?

25 A. Yes, ma'am, when I finally finish analyzing the case

1 then I will put it inside there and heat seal it with my
2 initials and date.

3 Q. Got it, all right. Now, so this original packaging
4 that has CC Dye on it, which you've already told the
5 jury, that's how it came to you whenever you were going
6 to then test it; is that correct?

7 A. Yes, ma'am.

8 Q. Okay. Now, if you could please tell the jury what
9 was the actual results of your testing of this item,
10 which is as you stated lab number 22-12-831?

11 A. Yes, ma'am. I found inside was a rock substance
12 that I identified as cocaine base, commonly known as
13 crack, with a net weight of 0.10 grams.

14 Q. Okay. And is this based on your expertise and your
15 training as a drug analyst that that was actually the
16 substance in that particular item?

17 A. Yes, ma'am.

18 Q. All right. And is that an illicit drug here in the
19 state of South Carolina?

20 A. Yes, ma'am.

21 Q. All right. Now, in regards to once it's actually
22 tested -- oh, one thing I did want to ask you, there's a
23 -- there's an item that's in there with the drugs, if
24 you'll take a look at that, was that item included in the
25 packaging whenever you received it from the Dye

1 individual?

2 A. So, what I received was this foil that had the rock
3 substance in it. So, I removed the rock substance from
4 the foil, weigh it, test it, and then I took the rock
5 substance and the foil and put it in another bag and
6 packaged it as a repacked back.

7 Q. So, however it's actually sent to you then you
8 repackage it and put everything back in to your heat seal
9 to send back to the agency?

10 A. Yes, ma'am. The only thing added in here is the
11 piece of paper holding the rock substance is the weigh
12 paper we use to put on the scale when we weigh the
13 material.

14 Q. Okay. Thank you. Let me grab that from you.

15 MS. LIVELY: Your Honor at this time the State
16 would move State's Number, I believe it's 94, based
17 on the -- 94 into evidence.

18 JUDGE GIBBONS: All right.

19 MR. FRICK: No objection, Your Honor.

20 JUDGE GIBBONS: All right, introduced.

21 MS. LIVELY: Thank you.

22 (State's Exhibit 94

23 was introduced into evidence)

24 BY MS. LIVELY:

25 Q. Let me grab that from you. Other than the testing

1 of the crack cocaine, was there any other testing that
2 you did or drug analysis in this particular case with
3 your lab number?

4 A. No, ma'am.

5 Q. Okay, thank you. Answer any questions the Defense
6 may have.

7 JUDGE GIBBONS: All right. Mr. Frick?

8 MR. FRICK: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. FRICK:

11 Q. Good morning, Mr. Zivkovich.

12 A. Good morning.

13 Q. Just to be clear, you don't go to the scene and
14 collect evidence; is that correct?

15 A. No, sir.

16 Q. You're lab is on -- in a building on Broad River
17 Road in Columbia, right?

18 A. That's correct.

19 Q. And you test what is submitted to you, right?

20 A. That's correct.

21 Q. In this particular case, I just -- I want to be
22 clear, the outside bag is what is heat sealed, correct?

23 A. That's correct.

24 Q. And this inside bag that says SLED drug analysis
25 security envelope, that's the BEST kit you were talking

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1 about?

2 A. Yes, sir.

3 Q. And this is what was submitted to you in this case?

4 A. Yes, sir.

5 Q. With this little -- I'm going to call it a little
6 Ziploc bag; is that correct?

7 A. The Ziploc bag is what I added. What was submitted
8 was the piece of foil that is in that bag.

9 Q. Okay.

10 A. The --

11 Q. So, what you --

12 A. -- other piece of paper in there that's what I used
13 to put on the scale to weigh the substance.

14 Q. Gotcha. So this BEST kit that was sealed up CC Dye
15 on looks like 7/11/22; is that correct?

16 A. That's what it looks like, yes, sir.

17 Q. The only thing that was in that evidence bag was
18 that foil thing that had this evidence in it, correct?

19 A. Yes, sir.

20 Q. There was no other item in there?

21 A. No, sir.

22 Q. Okay. And when you analyzed it, it did come back
23 and have the chemical components of cocaine base,
24 correct?

25 A. That's correct.

1 Q. And you weighed it out to be a hundredth of a gram?

2 A. A tenth of a gram.

3 Q. A tenth of a gram.

4 A. Yes, sir.

5 Q. Sorry, I'm horrible at math, that's I went to law
6 school. Okay, so a tenth of a gram -- well, the report
7 I'm reading, I've got .01.

8 A. 0.1.

9 Q. There you go, I'm looking at the bottom when I'm
10 looking on that, sorry about that. Yeah, that's the give
11 or take on there, okay, all right. So it's a tenth of a
12 gram?

13 A. Yes, sir.

14 Q. Can you quantify a tenth of a gram, is that -- I
15 mean, do you equate through anything -- that's not a
16 large item?

17 A. No, sir, I mean, it's somewhat visible in that --
18 under the piece of paper.

19 Q. Okay. Somewhat visible.

20 A. The paper is a little opaque.

21 Q. Yes, sir. I understand. Beg the Court's indulgence
22 one second.

23 JUDGE GIBBONS: Yes, sir.

24 MR. FRICK: Thank you, sir, that's all the
25 questions I have.

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1 JUDGE GIBBONS: Redirect?

2 REDIRECT EXAMINATION

3 BY MS. LIVELY:

4 Q. Based on your experience of 18 years, would that .1
5 amount be for personal use? I mean, I know --

6 A. Yes.

7 Q. -- you're not using. But, no, let me ask you a
8 better way. Just based on the law if it was over a gram
9 would that be something that would be considered
10 possession, possibly with the intent that you're either
11 going to share or whatever?

12 A. Yes, ma'am, that -- the one gram is the threshold
13 for the intent to distribute.

14 Q. Okay. So, under one gram would be not for any kind
15 of intent to distribute.

16 A. Yes, ma'am, we just refer to that as simple
17 possession.

18 Q. Simple possession, okay. Thank you so much. No
19 further questions.

20 JUDGE GIBBONS: All right, thank you, sir.

21 You can step down. You're free to leave. State can
22 call its next witness.

23 MR. ZIVKOVICH: Thank you.

24 MS. LIVELY: Yes, sir, Your Honor. Colleen
25 Kelly.

1 JUDGE GIBBONS: All right. Madam Clerk, if
2 you'll swear this witness in please.

3 THE CLERK: Please raise your right hand,
4 place your left hand on the Bible, and state your
5 full name.

6 MS. KELLY: Colleen Kelly.

7 THE CLERK: You do solemnly swear or affirm
8 the testimony you give to the be the truth, the
9 whole truth, and nothing but the truth, so help you
10 God?

11 MS. KELLY: I do.

12 JUDGE GIBBONS: Ma'am, step around here,
13 please. Watch your step. Pull that microphone to
14 you, thank you. All right, Madam Solicitor, your
15 witness.

16 MS. LIVELY: Thank you, Your Honor.

17 COLLEEN KELLY

18 was called as a witness, and having been first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. LIVELY:

22 Q. Hi, Ms. Kelly, please tell the jury your full name
23 again and where you're currently employed.

24 A. My name is Colleen Kelly, and I am employed with the
25 South Carolina Law Enforcement Division, commonly known

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1 as SLED.

2 Q. And how long have you been at SLED?

3 A. I have been at SLED for approximately eight months.

4 Q. Eight months. And did you have to go through any
5 type of educational background or training in order to
6 start working at SLED?

7 A. Yes. So, I have my bachelors of science in
8 biochemistry from the University of Akron and upon being
9 hired at SLED I received (inaudible) legal training
10 through the South Carolina Criminal Justice Academy, as
11 well as four months of in-house training in marijuana
12 analysis and THC quantitation.

13 Q. All right. In regards to the marijuana testing and
14 THC quantitation, explain to the jury what the THC
15 quantitation means.

16 A. Yes, so the THC quantitation is due to the South
17 Carolina law that requires cannabis -- the determination
18 of cannabis between marijuana and hemp. We have to
19 quantitate the plant material in order to get a value for
20 the delta-9-tetrahydrocannabinol that is present. So, if
21 it is above 0.3 percent it is considered marijuana. If
22 it is below or equal to that it is considered hemp.

23 Q. Okay. And was that quantitative value something
24 that ended up actually becoming kind of an issue or
25 change in the law requiring y'all to make that

1 quantitative distinction?

2 A. Yes, that was changed in the law.

3 Q. And that's because hemp is legal, correct? Well,
4 let me say this, because a certain amount of the THC when
5 you're doing that actual analysis, once it's determined
6 to be marijuana, then at that point in time we know that
7 that is what is still considered an illegal substance in
8 South Carolina?

9 A. Yes.

10 Q. Okay. All right, thank you. I just want to make
11 sure I'm not confusing. But it is two different things,
12 correct?

13 A. Yes.

14 Q. So, in doing that how many different cases have you
15 had that you've tested so far, just a roundabout number?

16 A. I have tested close to 800 cases at this point.

17 Q. 800 cases, all right. And was part of that you
18 stated that you were kind of under training or that you
19 were under supervision for about four months; is that
20 right?

21 A. Yes, that's correct.

22 Q. So, whenever you received items from this particular
23 case, which was under the lab number, and I just had it
24 written down, hold on, L22-12831, the items that you
25 received were what was believed to be marijuana at the

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1 time?

2 A. May I refer to my notes?

3 Q. Oh, absolutely, yes. And I -- I'm just asking this
4 in general just to confirm. Yes, you can confirm that
5 with your notes and then I'll have another follow-up.

6 A. Yes, it was marijuana.

7 Q. And have you ever been qualified as an expert yet in
8 Court?

9 A. No, I have not.

10 Q. You have not. So this will be your first time,
11 correct?

12 A. Yes.

13 Q. But you have tested 800 different, I guess, samples
14 of marijuana that have been sent to you through SLED,
15 correct?

16 A. Yes, that's correct.

17 Q. All right. Your Honor, the State would offer Ms.
18 Kelly, Colleen Kelly, as an expert in THC analysis, and
19 what was the last thing you said?

20 A. Quantitation.

21 Q. Quantitation, thank you so much, yes.

22 JUDGE GIBBONS: Any further voir dire on
23 qualification, Mr. Frick?

24 MR. FRICK: I mean, since it's her first time,
25 I'd love to, Judge, but I don't have any.

1 JUDGE GIBBONS: All right, thank you.

2 MS. LIVELY: That's fine.

3 JUDGE GIBBONS: All right, well, Madam
4 Witness, this is your first time. I'm qualifying
5 you as an expert in that field, that means you can
6 testify in the form of an opinion.

7 MS. LIVELY: Oh, I thought he was going to
8 proffer her, Your Honor, I apologize.

9 JUDGE GIBBONS: No.

10 MS. LIVELY: Okay.

11 JUDGE GIBBONS: I've qualified her based upon
12 her experience and education.

13 MS. LIVELY: Yes, sir.

14 JUDGE GIBBONS: She can testify. Just
15 remember that I'm the one that did it.

16 BY MS. LIVELY:

17 Q. So, Ms. Kelly, now referring to your notes, did you
18 receive an item from the South Carolina Highway Patrol
19 regarding the case of subject Palmer, and what was
20 suspected to be marijuana?

21 A. Yes, I did.

22 Q. Okay. I'm going to hand you what's marked as
23 State's Exhibit Number 93, and you can actually open it
24 and pull out the contents as we go through your
25 questioning here today. And Ms. Kelly, would you please

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1 just look at the packaging and tell the jury how that
2 package was dropped off to you at SLED, and whether or
3 not it appeared that the packaging was intact, and had
4 came to you without being tampered with or altered.

5 A. So, when I received this evidence, this manila
6 envelope was the outer container that the evidence --
7 physical evidence was contained in. And once I opened
8 that up we repack it in this heat sealable pouch. So, I
9 have the lab number L22-12831, which is the case number
10 that matches my report, and my name and the date that the
11 seal was made is also under the seal here. And then on
12 the back side you can see the physical evidence for this
13 item number, in this case it was item number four.

14 Q. All right. And whenever that item, and when you
15 flip to the back so the jury can actually see what that
16 is, how did it come packaged to you? Was it in a -- was
17 it in some type of a like -- I know you said yours is
18 heat sealed, what type of a package and how was it
19 maintained before getting to you?

20 A. Yes, so in this case it was packaged in the evidence
21 bag and that evidence bag was within the manila envelope
22 which was sealed, and properly sealed according to my
23 notes.

24 Q. Okay. If it had come to you and it had -- it was
25 not properly sealed what is the policy of SLED in regards

1 to what you're going to do with those particular items?

2 A. If it was not properly sealed, it would be
3 documented in our notes, but we will still perform
4 analysis on the items.

5 Q. Okay. But it would be a part of your report is that
6 --

7 A. Yes.

8 Q. -- that is correct, okay. Was there any need for
9 you to document any concerns regarding the packaging and
10 how those item -- that particular item was brought to
11 SLED?

12 A. No, ma'am.

13 Q. So based on that information there's nothing in your
14 report talking about concerns of it being tampered or
15 altered with; is that fair to say?

16 A. Yes, that's fair to say.

17 Q. All right. So, tell the jury what you did and what
18 your actual conclusions were regarding this particular
19 item?

20 A. Yes, so that initially we do examine the seal before
21 we perform and begin our analysis. So, once that's
22 complete I then -- we'll open up that outer container,
23 and create sub-items based off of what is inside. In
24 this case there was just one item of physical evidence,
25 so that would be item 4.1; and item four is the outer

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1 container. Next, I took the net weight of the plant
2 material, which the net weight is just the weight of the
3 substance without any packaging. That is then followed
4 by an indicative test, which in this case was a
5 microscopic examination to check for three hairs that are
6 unique to the cannabis plant. That is then followed by a
7 confirmatory test. And my results were for item 4.1,
8 evidence bag containing plastic (inaudible) bag
9 containing plant material, marijuana, C1 found in the
10 sample tested, one tested, net weight 1.55 grams total
11 delta-9-tetrahydrocannabinol THC percent dry weight
12 greater than one percent.

13 Q. And does that meet the criteria for an illegal
14 substance in South Carolina?

15 A. Yes.

16 Q. Okay. And so in your expert opinion as a drug
17 analyst, this -- the items that you did test are
18 marijuana -- is marijuana?

19 A. Yes.

20 Q. Okay. Now, whenever you're finished with testing
21 the marijuana, what is your next step?

22 A. So, when that initial analysis is performed, we then
23 repack it in this heat sealable pouch, as I previously
24 stated, and once all the analysis is complete and my
25 report is generated, then I can return the evidence to

1 our evidence control department.

2 Q. Okay. And is that the last thing that you have to
3 do with the testing and the request from the South
4 Carolina Highway Patrol which was the initiating agency?

5 A. Yes.

6 Q. All right. Except to come here and testify today as
7 an expert, correct?

8 A. Yes.

9 Q. Okay. All right. And once again your report did
10 not indicate that there was any type of concerns
11 regarding the credibility of the item as you received it
12 from the Highway Patrol?

13 A. Yes, that's correct.

14 Q. All right.

15 MS. LIVELY: Thank you, please answer any --
16 oh, wait a minute. The State would move State's
17 Exhibit Number 93 into evidence at this time, Your
18 Honor.

19 MR. FRICK: No objection.

20 JUDGE GIBBONS: Without objection, entered
21 into evidence.

22 (State's Exhibit 93
23 was introduced into evidence)

24 MS. LIVELY: Okay, thank you.

25 JUDGE GIBBONS: Any further questions?

JURY TRIAL

1 MS. LIVELY: Not for this witness, no, thank
2 you.

3 JUDGE GIBBONS: All right. Mr. Frick, your
4 witness.

5 CROSS-EXAMINATION

6 BY MR. FRICK:

7 Q. I missed it, what did you say the threshold for the
8 percentage of delta-9 THC was to differentiate between
9 hemp and illegal substance?

10 A. 0.3.

11 Q. 0.3.

12 A. Yes.

13 Q. That's the percentage?

14 A. Yes.

15 Q. Okay, so 0.3 percent? We don't move the decimal to
16 change -- okay.

17 A. No.

18 Q. All right, so this -- this would've been over that
19 threshold?

20 A. Yes.

21 Q. Okay. All right. I'm going to show you what's been
22 marked as State's Number 93. You said the manila
23 envelope is what you received?

24 A. Yes.

25 Q. And it was sealed up with this tape, correct?

1 A. Yes.

2 Q. And inside there was a another evidence bag,
3 correct?

4 A. Yes.

5 Q. Okay. Do you know -- did you make any notes on who
6 had sealed that up?

7 A. No, I did not.

8 Q. Okay. All right. And you received this fairly
9 recently, did you not?

10 A. Yes. I began my analysis on August 26, 2024.

11 Q. Okay. And according to what this says, it was
12 seized on July 11th of '22, is that what that says?

13 A. Yes, that -- yes, on the sticker.

14 Q. All right. And when you received it, this envelope
15 did it have this Ziploc bag in it or it was inside that
16 sealed BEST kit, right?

17 A. So, the evidence bag containing the plant material
18 was inside of the manila envelope.

19 Q. Okay. That's the only thing that was in there?

20 A. Yes.

21 Q. No other substances in there?

22 A. No.

23 Q. No other items in there?

24 A. Uh-uh (negative).

25 Q. Just that one thing?

JURY TRIAL

1 A. Yes.

2 Q. Okay. That you received in September?

3 A. Yes.

4 Q. Okay.

5 A. Or August, yes.

6 Q. Or August, sorry. I'm sorry. All right. And when
7 you analyzed it and weighed it out, it came out to a gram
8 and a half?

9 A. Yes.

10 Q. 1.55 to be exact?

11 A. Yes.

12 Q. Okay. And part of your job you got to be familiar -
13 - somewhat familiar with the drugs laws; is that fair to
14 say?

15 A. Yes.

16 Q. What's the threshold amount to go over simple
17 possession of marijuana in the state of South Carolina?

18 A. Twenty-eight grams.

19 Q. Twenty-eight grams.

20 A. Yes.

21 Q. And this is was 1.55 grams?

22 A. Yes.

23 Q. Thank you ma'am. That's all the questions I have.

24 MS. LIVELY: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. LIVELY:

2 Q. The Defense asked you about the fact that you didn't
3 test the drugs until August of 2024, is it true that
4 y'all get thousands of requests for drug testing
5 probably, I don't know, monthly, yearly?

6 A. Yes.

7 Q. Okay.

8 A. That's correct.

9 Q. So, at times is there a request from SLED that
10 unless the case is actually going to trial to wait to do
11 the testing because we have to prioritize those cases?

12 A. Yes, we work through the cases based off of when
13 they come into us, unless we have a priority request.

14 Q. And while the drugs were there at SLED or whenever
15 you got them, were they secured to where no one could've
16 tampered with it, altered it, or done anything with it
17 even though it had sat there since July of 2022?

18 A. Yes.

19 Q. Okay, thank you.

20 JUDGE GIBBONS: All right, thank you, ma'am.
21 You can step down. You're free to leave. You can
22 call the next witness.

23 MS. LIVELY: Beg the Court's indulgence once
24 again.

25 JUDGE GIBBONS: Okay.

JURY TRIAL

1 MS. LIVELY: Ms. Tucker is not in here, okay.

2 May we approach, Your Honor?

3 JUDGE GIBBONS: Yes.

4 (BENCH CONFERENCE)

5 JUDGE GIBBONS: The next witness is walking

6 in, so why don't we go ahead and take a quick

7 recess, 10 minutes and we'll get you back out here.

8 Don't talk about the case.

9 (JURY EXITS)

10 (OFF THE RECORD)

11 (JURY ENTERS)

12 JUDGE GIBBONS: Thank you, ladies and

13 gentlemen. The State can call its next witness.

14 MS. LIVELY: Yes, Your Honor, the State would

15 call Carmen Tucker to the stand.

16 THE CLERK: Please raise your right hand and

17 state your full name.

18 MS. TUCKER: Carmen Janine Tucker.

19 THE CLERK: You do solemnly swear or affirm

20 the testimony you give to be the truth --

21 MS. TUCKER: I do.

22 THE CLERK: -- the whole truth, and nothing

23 but the truth, so help you God?

24 MS. TUCKER: I do.

25 THE CLERK: Thank you, ma'am. If you'd step

1 up.

2 JUDGE GIBBONS: All right.

3 MS. LIVELY: Thank you, Your Honor.

4 CARMEN TUCKER

5 was called as a witness, and having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LIVELY:

9 Q. Ms. Tucker, where are you currently employed?

10 A. South Carolina Law Enforcement Division in the
11 toxicology department.

12 Q. And how long have you worked for SLED?

13 A. I've worked for SLED coming up on 19 years.

14 Q. And has that always been in the toxicology
15 department?

16 A. No, ma'am. The first four years and one month I
17 spent in the drug analysis department, and then I took a
18 transfer to toxicology.

19 Q. And have you ever been qualified as an expert in
20 toxicology?

21 A. I have.

22 Q. And have you had specialized training in order to
23 receive -- to actually do that position and to do drug --
24 or not drug screening, but actually screening for drugs?

25 A. I have.

JURY TRIAL

1 Q. All right. And how many times have you been
2 qualified as an expert?

3 A. Somewhere around 17 times.

4 Q. About 17 times, all right.

5 A. Uh-huh (affirmative).

6 Q. Now, whenever you get qualified as an expert in
7 toxicology, just explain to the jury exactly what it is
8 that you do.

9 A. Okay --

10 Q. What is toxicology?

11 A. In toxicology we test biological samples and non-
12 biological samples for the presence or absence of drugs
13 or poisons.

14 Q. Okay.

15 MS. LIVELY: All right, and Your Honor, at
16 this time the State would offer Carmen Tucker as an
17 expert in toxicology.

18 JUDGE GIBBONS: Any objection?

19 MR. FRICK: No objection, Your Honor.

20 JUDGE GIBBONS: All right, so qualified, thank
21 you.

22 MS. LIVELY: Thank you, Your Honor.

23 BY MS. LIVELY:

24 Q. Now, Ms. Tucker, did you receive a certain sample
25 from South Carolina Highway Patrol that was marked under

1 SLED lab number L22-12831?

2 A. Yes, I did.

3 Q. And what was that actual sample that you received?

4 Tell the jury what the actual type was, and what the
5 label was on it?

6 A. Just let me check my notes here real quick.

7 Q. Sure.

8 A. We received blood on this case and urine.

9 Q. Okay. And whenever you received it, do you label it
10 as a particular item for testing?

11 A. Okay --

12 Q. On your report?

13 A. On my report, yes. The blood and the urine are
14 separated out by item numbers. Item number one is blood,
15 item number two is urine.

16 Q. So, what ended up being tested in regards to this
17 particular case that you provided a report on?

18 A. In this case we tested the blood.

19 Q. The blood. And why is that?

20 A. Okay, the blood is the optimal sample for testing,
21 for particularly in a DUI because the blood is what is
22 travelling through your brain, carrying any substances
23 that might be present. The blood is what's going to tell
24 us whether or not you're impaired. Urine is only going
25 to tell us a history of use, it does not tell us about

1 impairment.

2 Q. And I'm glad -- thank you so much for telling the
3 jury that, because initially when you received the sample
4 -- can you tell the jury when you actually got the blood
5 sample from the Highway Patrol?

6 A. I'm going to need to see the chain of custody, if
7 you have it.

8 Q. I do. Hold on just a minute.

9 A. We have an electronic chain of custody at the lab,
10 so everything gets assigned a bar code. And so any time
11 it moves -- a piece of evidence moves from place to place
12 or from person to person, both place and person has a
13 specific bar code assigned to that person or that
14 location. So, that's how we -- we're able to track
15 everything.

16 Q. And is that to also ensure the integrity of the item
17 that's being tested?

18 A. Yes, it is.

19 Q. All right. And tell us then -- my question was,
20 when was the item actually taken and received by SLED
21 initially?

22 A. Okay, so the item initially was received by SLED
23 looks like the submitting person was PM Odom, of the
24 South Carolina Department of Public Safety, on July 15th
25 of 2022. And that would be received into our evidence

1 log-in department where everything will get processed and
2 put into our system and assigned a lab number.

3 Q. Does it have an incident date on anything that you
4 have in regards to when the actual incident occurred?

5 A. I don't have that paperwork on me, no.

6 Q. Not a problem, okay. So, it's July the 15th of 2022
7 where the blood sample was actually dropped off at SLED?

8 A. That's correct.

9 Q. When did you conduct your testing on that blood
10 sample?

11 A. Okay, so the blood sample comes into SLED in our
12 log-in department. Once it's done being processed, it
13 will be placed into a refrigeration unit, which is also
14 in the log-in department, until such time as one of our
15 technicians come downstairs to retrieve it for our
16 testing. Our tech -- the technician downstairs will then
17 scan it out of that refrigerator back into her custody
18 and scan it into our technician's custody, at which point
19 our technician will bring it upstairs, she will pre --
20 she or he will start an inventory, and what that consists
21 of is taking pictures of the bag that we receive, front
22 and back, and then opening the bag and everything from
23 the outside in there are pictures taken from all sides.
24 And then that technician will put that evidence back into
25 our refrigerator, scanned into that refrigerator custody