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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

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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)]**

1 that's in our department, and then it proceeds through
2 alcohol testing, and each person who takes it out for
3 like if it's taken out of alcohol testing or a drug
4 screen, it's taken out, scanned into that person's
5 custody, the analysis is done, it's put back in, at which
6 point it gets assigned to me for confirmation, as the
7 signing toxicologist, and that happened on 7/27/2022.

8 Q. Now, all of those processes and, you know, I guess
9 you want to just say procedurally what you're doing to
10 make sure the integrity of the item is taken care of, the
11 initial information you received, I believe and you've
12 already testified to, is that this was a possible DUI
13 underlying offense, is that --

14 A. That's correct.

15 Q. -- correct? Okay. Does that help you as in making
16 your final analysis at the end to know kind of what to
17 look for after you've gotten the test results from the
18 other analysts?

19 A. Actually it guides us from the beginning.

20 Q. Okay.

21 A. It tells us which direction to go as far as testing
22 is concerned. It affects, you know, like whether it gets
23 an alcohol only or an alcohol and a drug screen, and we
24 look in our drug screen for compounds or classes of
25 compounds that are typically abused, in whether it's a

1 DUI situation or a death case, for pending toxicology.

2 So, yeah, it guides us through the process.

3 Q. Okay. And in regards to your expertise in
4 toxicology, that bit of information by guiding you in the
5 beginning can you possibly get those results back to the
6 agency faster if you know what it is that you're looking
7 for? Is that fair to say?

8 A. If we know what type of case it is and --

9 Q. Yes.

10 A. -- and so we have criteria for how to test different
11 types of cases, yes.

12 Q. So, whenever you received it on your end as the
13 expert toxicology, as the supervisor who is going to
14 review everything that was done by the other analysts,
15 what were the results of the testing both for alcohol and
16 other substances?

17 A. Okay, so it would initially get an alcohol test and
18 then it would get a drug screen. If anything is positive
19 on that drug screen, and then it's my responsibility to
20 see that that gets confirmation test. And in this case
21 because the alcohol was negative, in a DUI situation we
22 do a more comprehensive screen, which is what I also took
23 care of as well. So, once I get all of that information
24 back then the report is issued.

25 Q. Thank you for clarifying that for me as well. So

JURY TRIAL

1 initially you do the alcohol test.

2 A. Yes.

3 Q. Which is for what's the analyte -- the ethanol.

4 A. Ethanol. Well, we look for ethanol, methanol, IPA,
5 and isotone.

6 Q. Got it.

7 A. But that's mostly for death cases.

8 Q. Okay. And if you could please tell us what the
9 findings were specifically to the alcohol testing.

10 A. They were negative.

11 Q. They were negative, all right. So, you've said that
12 that is negative. So, then we're going to the next stage
13 of potential impairment from maybe drugs that could've
14 been included -- or could've been in the blood; is that
15 fair to say?

16 A. Yes.

17 Q. All right, so tell the jury what happens at that
18 point.

19 A. So, it will get an initial drug screen. Basically
20 what that means is we look for specific compounds or
21 classes of compounds, as I stated earlier, that are
22 abused in this typical type of situation, in a driving
23 situation. And then anything that's negative will be
24 listed out on the second page of that -- of our report.
25 Anything that's positive will not be listed there, we

1 will go on and do a confirmation, and that will be
2 reflected later on in the report.

3 Q. Okay. And I know that you mentioned that there are
4 certain illicit drugs, or drugs that are abused, that you
5 look for in regards to your screening through SLED, does
6 SLED have a very specific list of drugs that are tested
7 for?

8 A. Yes.

9 Q. All right. Does it go outside of those particular
10 drugs that's on that list, unless there's a request for
11 you to actually send it elsewhere?

12 A. Again, like I said, in this case, because the
13 alcohol is negative we did do a more comprehensive
14 screen, which that covers somewhere around 400 and
15 something compounds in our libraries alone. If there's a
16 request for something that we don't test for in our lab,
17 we will send it out to NMS Labs for further testing.

18 Q. Okay. Please tell the jury what the illicit
19 analytes or the analytes within illicit drugs that you
20 actually test for and what the results were on this
21 particular --

22 A. Do you want me to go through the whole list of
23 everything -- I mean, 'cause it's --

24 Q. No, I'm talking about just on your report.

25 A. Uh-huh (affirmative).

JURY TRIAL

1 Q. Just this list here.

2 A. Okay. Well --

3 Q. What -- what the results were.

4 A. Oh, so on -- do you want me to name them and type --

5 Q. Yes, please.

6 A. Okay. Amphetamine was negative, barbiturates was
7 negative. Now, barbiturates covers about five different
8 compounds.

9 Q. Okay.

10 A. Benzo 1, 2, and 3, those are panels of screens that
11 cover several drugs in each panel, and those were all
12 negative. Buprenorphine, cocaine, dextromethorphan,
13 generic opioids, meprobamate, all of these things are
14 negative, methadone, methamphetamine, opiates, Oxycodone
15 1, Oxycodone 2, phencyclidine, which is PCP, and then
16 tramadol, tricyclic antidepressants, and Zolpidem. The
17 only ones that we would screen for that aren't listed
18 there because they screened positive, is fentanyl and
19 cannabinoids, which is your marijuana.

20 Q. Was there any test that showed any kind of result in
21 regards to THC in this particular case?

22 A. Well, yeah, the screen indicated that it was
23 positive for cannabinoids, so we went on to do a
24 confirmation test.

25 Q. Okay.

1 A. Okay? And in the confirmation test we only saw the
2 11 carboxy tetrahydrocannabinol, which is the inactive
3 metabolite, it's the very last metabolite that your body
4 gets it to before it removes it from your system.

5 Q. Okay. So, in other words, is that something that
6 would've been in a person's system like within 24 to 72
7 hours?

8 A. That I can't put -- I cannot say.

9 Q. That's fine.

10 A. Because it is lipid soluble, it's fat soluble. It's
11 particularly for people who repeat smoke, who are
12 habitual smokers, it will dissolve into your fat and
13 leach out over time. The key here is that you're not --
14 I'm not seeing tetrahydrocannabinol, which is the parent
15 compound in hydroxy tetrahydrocannabinol, which is also
16 active in the system, as far as being a psychoactive
17 substance, which is the next metabolite down before it
18 gets metabolized into the carboxy, which is what I'm
19 seeing. Those two are metabolized fairly quickly, within
20 three to six hours they're through the system. The
21 parent drug and the most immediate metabolite that are
22 active, psychoactive, so within three to six hours
23 they've cleared the system. You will still see the 11
24 carboxy stick around for quite some time.

25 Q. So that sticks around for a while, but the

1 immediate, you know, if you smoke marijuana the immediate
2 part of what's going into your system would only be
3 present for about you said three to --

4 A. Three to six hours.

5 Q. Three to six hours?

6 A. Yeah, they metabolize very quickly in the body, and
7 so at the time of this blood draw we have 11 carboxy
8 present is what we have.

9 Q. Okay. So, you have basically the leftovers that you
10 say go into the fatty tissue.

11 A. They inactive metabolite that the body is trying to
12 flush from the system.

13 Q. Thank you, I'm sorry. I'm not good with all of your
14 terminology.

15 A. That's okay.

16 Q. I just want to make sure that the jury understands.
17 Okay, all right. Now, once you get these results -- and
18 are those results actually put into what's referred to as
19 iLab, which is a way for law enforcement, prosecutors, to
20 actually retrieve the records of what your testing shows?

21 A. Yeah, we have a laboratory information system that
22 we put all of our results in and we generate a report.
23 And then once my report is drafted, my supervisor will
24 review it to confirm that everything is correct, and then
25 he will sign off of it. At that point within an hour's

1 time after he signs off, it hits iLab, and then you guys
2 can have access to it.

3 Q. So in regards to your initial report and findings,
4 and your findings as an expert in toxicology, was that
5 there were no actual active drugs in his system at the
6 time whenever --

7 A. At the time of the blood draw.

8 Q. At the time of blood draw, okay. Now, I'm going to
9 just, if I may retrieve that -- the actual chain of
10 custody from you, just so I can refresh my memory. Now,
11 at some point did you receive additional information
12 requesting a follow-up or possible testing of the blood
13 sample outside of the SLED analysis?

14 A. Yes, I did.

15 Q. All right, you did. And what are some things that
16 may show up in an outside lab that are not -- I know you
17 said there's like 400 things that you would look for in
18 the SLED testing at the lab. What about things like
19 synthetics and that type of thing?

20 A. Yes, sometimes we will go call -- and if there's any
21 reason to think that, you know, based off of their report
22 they received and they -- they still think okay, clearly,
23 something's going on, this person was presenting a
24 certain way, can you have this checked for additional
25 drugs or panels of drugs. And they will request that and

JURY TRIAL

1 then if it's synthetic cannabinoids, we don't have a
2 testing method for that in our lab so we will send that
3 to NMS Labs in Pennsylvania to have that tested.

4 Q. Okay. In this particular case, was there a request
5 for that additional testing in that outside lab in
6 Pennsylvania?

7 A. Yes.

8 Q. Please tell the jury approximately when that request
9 was made, if you can tell from looking at the chain. And
10 if you don't that's --

11 A. I -- I can't tell that. I mean, I can't tell that.
12 That would be something in our narratives, that we would
13 keep a narrative of when they called and asked for that
14 request.

15 Q. Absolutely, that's not a problem. You did actually
16 get the results back from that outside lab; is that
17 correct?

18 A. I did.

19 Q. Now, and you've had nothing to do with the testing
20 or how it was handled or anything like that; is that
21 correct?

22 A. No, I did not.

23 Q. All right. So, but did you make it a part and
24 parcel of your records based on this particular case and
25 the request made for additional testing?

1 A. I did. We -- we provide -- when they send their
2 report back to us, what they find or what they don't
3 find, this report was issued on 12/22 of 2022, we include
4 it in our system as a courtesy and for anybody who's
5 requesting it.

6 Q. And so that information that was actually provided
7 to SLED from the lab, which I believe was NMS Lab; is
8 that correct?

9 A. Yes.

10 Q. Yup, here it is. From NMS, what was the results
11 that you saw on their report?

12 A. Negative for the panel of drugs that they screened
13 for.

14 Q. And under -- once you receive that information you
15 said that it was documented in your system around
16 December 22nd of 2022?

17 A. December 22nd of 2022 is when they issued their
18 report.

19 Q. I'm sorry. Oh, there it is. They issued their
20 report, however it was actually made part and parcel of
21 your lab report, correct?

22 A. That's correct.

23 Q. Okay. Did you have any other testing or any other
24 follow-up with this particular case, other than what
25 you're testifying here to today?

1 A. Other -- other than -- well, they requested that we
2 do a rescreen of the drugs, and we did, and we had the
3 same results. And then they requested for the NMS labs
4 to do a test, and we did that.

5 Q. Okay. All right. And that was through the blood,
6 and his blood would be the better --

7 A. Absolutely.

8 Q. -- actual item to test? Okay.

9 A. That's correct.

10 Q. All right. Thank you so much. Answer any questions
11 the Defense may have.

12 JUDGE GIBBONS: All right, Mr. Frick?

13 MR. FRICK: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. FRICK:

16 Q. I'll give you that in a second. Good morning. How
17 are you doing?

18 A. I'm good.

19 Q. Good. Okay, so you tested it -- well, I guess I am
20 going to ask you about the chain of custody, sorry about
21 that. You tested the blood that was received in July of
22 '22, right?

23 A. Yes.

24 Q. And then that would be the report that you read off,
25 there was no ethanol in the blood, and then you went

1 through the entire list --

2 A. Yes.

3 Q. -- of stuff that --

4 A. Those are the things that were negative, anything
5 positive we would go onto do a confirmation.

6 Q. Right, I'm gonna get to that in just one second.

7 A. Okay.

8 Q. And then I'm looking at the -- kind of the bottom of
9 that report there.

10 A. Yeah.

11 Q. It kind of lists out the -- it says opioids here.

12 A. Right.

13 Q. And that's a whole lot of stuff.

14 A. It is.

15 Q. This kind of breaks it down, right?

16 A. Actually that breaks down the opio -- so -- okay,
17 so, opi --

18 Q. Opiates.

19 A. All right, it's opiates, oxycodone, all of those are
20 opioids, okay.

21 Q. Right.

22 A. Opioids. But then fentanyl was -- I think what
23 you're getting at is, fentanyl was the thing, which is
24 also an opioid that was -- that screened actually
25 positive, and that's why you don't see fentanyl negative

JURY TRIAL

1 up at the top.

2 Q. Okay.

3 A. So, we went onto confirm whether or not that was in
4 fact there.

5 Q. Uh-huh (affirmative).

6 A. There's an indication that it's there but it's below
7 our limited detection, so we do not call that.

8 Q. So it's not a recorded --

9 A. That's correct. And that's why that says opiates
10 under -- it -- it just listed it under -- if you can look
11 in -- on that maybe one, two, three, fourth line down,
12 it'll say --

13 Q. Right.

14 A. -- fentanyl, that's the compound.

15 Q. Uh-huh (affirmative).

16 A. It's just showing you that we ran that panel.

17 Q. Okay.

18 A. For all of those drugs.

19 Q. Right.

20 A. And none of them showed positive to an extent that
21 we can call them.

22 Q. Right. 'Cause there's a threshold --

23 A. Right.

24 Q. -- that it's got to reach when you run it through
25 your gas chromatographer or whatever it is.

1 A. LC Mass Spec on this one, but, yes.

2 Q. So, but if it doesn't reach that threshold it's not
3 necessarily reliable?

4 A. Right, 'cause the limited detection, what that is is
5 -- is the limit of the concentration that we can reliably
6 test and re-test, and re-test, and confirm it. Anything
7 below that is not reliable.

8 Q. And the only thing that you did find is this
9 metabolite of THC that indicated --

10 A. Correct.

11 Q. -- that it might've been consumed but it was some
12 time ago?

13 A. There's no way for me to know. All I can tell you
14 is that this is what we can see at the time of the blood
15 draw.

16 Q. Right.

17 A. Yeah.

18 Q. But I mean that metabolite is indicative -- you
19 don't have -- if I fired up a joint and smoked it right
20 now and you drew my blood, what would you expect to see?
21 You'd see THC correct?

22 A. I would see THC. I'd see the parent compound. I
23 would see hydroxy, that -- they both metabolize very
24 quickly. It's like I said, anywhere between three to six
25 hours, they've cleared the blood stream. If it's your --

JURY TRIAL

1 if you're doing a single smoke.

2 Q. Right.

3 A. Yeah.

4 Q. Okay. But this 11 carboxy --

5 A. Uh-huh (affirmative).

6 Q. -- indicates that a period of time has passed.

7 A. Right.

8 Q. You can't put an exact timeframe --

9 A. I cannot.

10 Q. -- on it.

11 A. I cannot.

12 Q. It could be days, it could be weeks.

13 A. I wouldn't go as far as weeks if it was a single
14 smoke, but it could be, you know, more than a day.

15 Q. Okay. I've heard three is typical; is that fair?

16 A. Yeah, it depends on how -- the difference is if you
17 have a single smoke, or if you have someone who's a
18 habitual smoker.

19 Q. Got you.

20 A. Because what it does is it will dissolve into your
21 fat tissues and it will leach out over time.

22 Q. Okay.

23 A. And go back into your bloodstream and then that
24 cycle just keeps going until it's completely removed.

25 But if you're smoking continuously --

1 Q. Right.

2 A. -- you can see it for longer.

3 Q. But, if I were smoking continuously you would expect
4 to see that metabolite and other ones, wouldn't you?

5 A. Right.

6 Q. Okay. And those aren't present?

7 A. Well, like I said, if you -- like if you smoked a
8 joint today, okay, and then you turned around and smoked
9 one in the morning.

10 Q. Okay.

11 A. If I took your blood that night -- or let's say an
12 hour before you smoked the single joint, I wouldn't
13 necessarily see the parent -- I wouldn't see the parent
14 in hydroxy, but I may still see the carboxy.

15 Q. Got you.

16 A. You follow? Okay.

17 Q. Got you. The laymen's version of that though is,
18 it's some period of time that has passed.

19 A. Yes.

20 Q. Okay. And in this particular case you were
21 requested -- you don't decide on your own hey, I'm going
22 to send this to NS -- NMS Labs, right?

23 A. No, sir. We actually have to get the permission of
24 the submitting agency to do that.

25 Q. Okay. And in this one that was Highway Patrol?

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1 A. I -- I would have to look at the notes from our
2 narratives, but, yeah, I believe that it's -- whoever
3 submits it, those are the people we have to call and
4 either we talk to the officer who submitted it.

5 Q. Right.

6 A. Or their supervisor. But that -- that's the
7 process.

8 Q. Okay.

9 A. Like we have to get their approval, and it has to be
10 narrated in our system, and then we can go on and send
11 it.

12 Q. So when you generate the report, you send it back to
13 the submitting agency, correct? When you come up with
14 your --

15 A. This report, our report, yes.

16 Q. Yeah.

17 A. Yes.

18 Q. And that's the one you --

19 A. And that's what happened, yeah.

20 Q. That's the one you got in your hand, right -- is
21 that right?

22 A. It is. Well, a copy, yeah.

23 Q. Okay. Yeah, I know it's a copy, I got one too.

24 Look on your front page there, who did you send that --
25 or who did -- whoever generated the report send it back

1 to?

2 A. When you say send it back to, we're not mailing the
3 reports out. Like we put it on the iLab system and then
4 they can get access to the report. Like we don't
5 actually mail the reports to anybody.

6 Q. All I'm trying --

7 A. Like whoever -- whoever has access to the iLab, if
8 he has access -- if -- if CD Morgan from the South
9 Carolina Highway Patrol has access to the iLab system,
10 then yes, he can -- he would be able to get this report.

11 Q. Okay. But because that address is in this block,
12 Highway Patrol is the submitting agency, correct?

13 A. Yes.

14 Q. Okay. And it was Highway Patrol then that would've
15 asked for the additional testing, correct?

16 A. That would be the -- yeah, that -- that would
17 usually be the way we do it, yes.

18 Q. Okay. And y'all have already run a panel that's got
19 400 and something things in it.

20 A. Uh-huh (affirmative).

21 Q. NMS tests things -- do y'all's overlap or do they
22 have at least --

23 A. Not really, no. We -- we only really send --
24 'cause, you know, we have to pay for that testing. So,
25 we only really send things to them that we don't test in-

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1 house for.

2 Q. Okay. So this is additional stuff?

3 A. Right.

4 Q. And they have a huge panel themselves, don't they?

5 A. Actually the panel that they run for synthetic
6 cannabinoids is not all-inclusive, it's just like usually
7 the cannabinoids that they see most prevalent --

8 Q. Right.

9 A. -- and that can change like over a couple of months,
10 they might see something else pop up that's very
11 prevalent and they'll add that to the panel.

12 Q. Gotcha.

13 A. So yeah, but that's not all-inclusive.

14 Q. Okay. But it was for the cannabinoids that were
15 available at the time?

16 A. That they -- they were -- that they had on their
17 screen at the time, yes.

18 Q. I gotcha, okay. And their results were?

19 A. Negative for the --

20 Q. Negative.

21 A. -- specific cannabinoid -- synthetic cannabinoids
22 that they ran, yes.

23 Q. Okay. And I'm going to ask you to refer to the
24 chain of custody.

25 A. Okay.

1 Q. I think on the final page here, can you -- something
2 happened on December the 3rd. Is that fair to say?

3 A. That's -- that's where we -- that's -- it says
4 examiner disposition, which is just the category,
5 evidence sent for outside testing, that's when it
6 would've been sent out to NMS for testing.

7 Q. Okay.

8 A. So on the 13th, and then they issued their report on
9 the 22nd.

10 Q. Gotcha.

11 A. Of December.

12 Q. Gotcha. So December 2nd that's when it's being sent
13 --

14 A. December 13th --

15 Q. Okay, yeah, I'm sorry.

16 A. -- is when they -- yeah, it says December 13th is
17 actually the day that we would ship it out, and it's all
18 packed in ice -- ice packs in a cooler, and then December
19 22nd is when they issued their report back to us.

20 Q. Gotcha. And do you know, does it come back to y'all
21 after that?

22 A. No, unless we re -- unless we request it
23 specifically in writing that the remainder of whatever
24 they don't use, they just discard. I believe it says on
25 their report something about maybe six days or so, if we

1 don't request it specifically to be returned. The sample
2 that we sent them. Now, the evidence itself, the core
3 evidence, we keep. We just take -- we allocate a sample
4 for them to test. They tell us, you know, for this type
5 of testing this is how much I need, this is how much
6 blood, and that's how much we send them in a separate
7 tube.

8 Q. The end result is there was no alcohol.

9 A. Correct.

10 Q. Other than the THC metabolite, there was no drugs,
11 and then in the subsequent testing by NMS there was --
12 there were negative findings, correct?

13 A. Yes, for the substances that were tested for.

14 Q. Okay. Thank you, ma'am. That's all the questions I
15 have.

16 JUDGE GIBBONS: Redirect?

17 MS. LIVELY: No, Your Honor. That's all for
18 the State.

19 JUDGE GIBBONS: Thank you, ma'am. You can
20 step down, you're free to leave. Call your next
21 witness.

22 MS. LIVELY: Yes, sir, Your Honor. The State
23 would call Trooper Wes Rivett, or Rivett.

24 THE CLERK: Please state your full name.

25 MR. RIVETT: Weston Craig Rivett.

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

4 MR. RIVETT: I do.

5 THE CLERK: Thank you, sir. If you'll step
6 around.

7 JUDGE GIBBONS: All right, Madam Solicitor.

8 MS. LIVELY: Thank you, Your Honor.

9 WESTON RIVETT

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. Good morning, Trooper Rivett. You're not Trooper,
15 what is your actual title?

16 A. My rank is Lance Corporal. My title is
17 investigator.

18 Q. So Lance Corporal Rivett. Please tell the jury what
19 -- you said -- you mentioned investigator, so, please
20 tell the jury what your background is with the South
21 Carolina Department of Public Safety and working in the
22 South Carolina Highway Patrol.

23 A. So, I started at the South Carolina Highway Patrol
24 in 2016 and in 2021 I was selected to go to the MAIT
25 team, which is the Multi-disciplinary Accident

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1 Investigation Team to become an investigator. We
2 investigate collisions and then do traffic collision
3 reconstruction.

4 Q. And how intensive is that particular training that
5 you receive?

6 A. To be a fully qualified MAIT member you have to go
7 through at least three classes that are about two weeks a
8 piece and then from there there's continuation training,
9 so over the course of the last three years I have over
10 800 hours of traffic collision specific and investigative
11 classes as well.

12 Q. So, Lance Corporal Rivett, if you can tell the jury
13 typically whenever you get involved in a collision
14 investigation like this, who decides who's going to do
15 what part of the investigation for the MAIT team?

16 A. There's no direct like telling of something. We
17 show up to a scene, and if you feel like you want to do
18 something that day you do it, sometimes you're told to do
19 things, just -- just to -- because of the team-wise we're
20 splitting it up so that no one person's doing one thing.

21 Q. And that was kind of where I was going to go with my
22 questioning. Is it -- you didn't do the entire
23 investigation for the collision that happened on July
24 10th of 2022; is that right?

25 A. That's correct, I did not do everything.

1 Q. You did not do everything. Is the actual process
2 very comprehensive, which actually helps to have other
3 individuals involved that also have the same or more
4 training that you?

5 A. Yes.

6 Q. All right. If you could please just tell the jury
7 of this particular case what you were assigned, or what
8 you decided that you were going to do to actually assist
9 in the investigation of the collision that happened July
10 10th, 2022.

11 A. Okay. So this was what's called a deferred case, so
12 we did not go out to the scene immediately. We were
13 called and then we went ultimately the next day. My
14 supervisor at the time Corporal Gilbert, Master Trooper
15 Lindsay, and then a Corporal with Troop 4, Hughes,
16 decided that we were going to meet at wrecker yard for
17 where the vehicles were located, and then from that point
18 on we would decide who was going to do what at the tow
19 yard. For this case we initially went to Danny's Towing
20 where the suspect vehicle was, the 2017 Chevy Express
21 van. Once we got there it was determined that I would do
22 a general vehicle exam on the vehicle, and then my
23 supervisor would do the EDR download, and then Master
24 Trooper Lindsay would take photographs.

25 Q. Okay. And we'll kind of break that down a little

1 bit as you testify. So, you were going to do the general
2 vehicle examination, and the first place that you went to
3 was where the van was actually located.

4 A. That's correct.

5 Q. All right. Now, whenever you get that information,
6 are you required to have some type of a like a search
7 warrant or some -- some type of legal document so that
8 you can actually go in there and do a complete
9 examination of the vehicle?

10 A. That's correct.

11 Q. All right.

12 A. Either we will obtain the search warrant or we will
13 request the agency that we're assisting to obtain the
14 search warrant, and then once the search warrant is
15 obtained then we will then begin to process the vehicle.
16 In this case Corporal Hughes obtained the search warrant,
17 and she had it already ready for us when we got to the
18 tow yard.

19 Q. Okay. So once you got to the tow yard, at that
20 point tell the jury what you observed whenever you got
21 there regarding the van itself.

22 A. The van itself was still on the back of the
23 rollback, so we do a cursory walk through of the van. We
24 jumped on top of the rollback to make sure that the VIN
25 matched what the search warrant says, so that we are

1 searing the appropriate vehicle. We then had the tow
2 company put -- or they photographed it, and then we had
3 the tow company put the van onto level ground so we could
4 begin to do the examine on it.

5 Q. And while you're doing the examination, you
6 mentioned there were other members of the MAIT crew that
7 was there with you, are those individuals taking pictures
8 and documenting things while you're doing your part?

9 A. That is correct.

10 Q. Now you said the first place that you went to was
11 Danny's Towing, I'm going to show you just a few
12 pictures, and once again were you present while the
13 pictures were being taken by your other team member?

14 A. I was.

15 Q. Do you recall who that individual was that actually
16 took the photographs while y'all were at Danny's Towing?

17 A. That would've been Master Trooper Mark Lindsay.

18 Q. Is Master Trooper Mark Lindsay in the courtroom with
19 you here today?

20 A. He is.

21 Q. Okay. I'm just going to show you a few pictures
22 initially, just a second. I'm going to show you State's
23 Exhibit 33 through 43, and just ask you if you recognize
24 what is in those photographs.

25 A. These are photographs of the 2017 Chevy Express van.

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1 Q. And do the pictures reflect how it looked on the
2 date that y'all went to the lot with the search warrant
3 on July the 11th of 2022?

4 A. They do.

5 Q. All right.

6 MS. LIVELY: Your Honor, the State would move
7 State's Exhibits Number 33 through 43 into evidence
8 at this time.

9 MR. FRICK: No objection.

10 JUDGE GIBBONS: Without objection, admitted.

11 (State's Exhibits 33 through 43
12 were introduced into evidence)

13 BY MS. LIVELY:

14 Q. Now, what exactly is meant by you doing a general
15 vehicle examination? Explain that to the jury.

16 A. So, what it is is just documenting the vehicle post-
17 collision. It's sort of like a checklist we go down,
18 it's documenting everything on the exterior, and then
19 anything that's related to the checklist, as far as tires
20 and anything we see, seatbelts, everything that's
21 currently on the vehicle post-collision.

22 Q. So, is this one of the photographs that actually --
23 that you actually saw whenever you got to the lot?

24 A. Correct, this would be the vehicle still on the tow
25 truck when we arrived on -- at the tow yard.

1 Q. And so this is State's Exhibit Number 33. All
2 right. Then, we have -- also now the van is where?

3 A. The van has been rolled off the back of the tow
4 truck, and is now sitting on the ground, so we can begin
5 doing the general vehicle exam.

6 Q. And that's State's Exhibit Number 34. And so what
7 is the purpose of where -- of getting these different
8 visuals?

9 A. We want to show the full scope of the vehicle, so
10 we'll take -- or in this case, Mark Lindsay will take
11 photographs showing all around the vehicle, and then
12 it'll slowly go in on areas of interest, or areas that
13 are required to just be taken pictures of. So, this is
14 going to be the front of the vehicle showing the damage
15 to the front from the collision.

16 Q. And that one was State's Exhibit Number 35. And
17 would your response to my question be the same for this
18 particular photo?

19 A. That's correct.

20 Q. Okay. Just getting a full 360 view. So, that would
21 be State's Exhibit Number 36. And then finally, what are
22 we seeing here in this picture?

23 A. Again, the rear of vehicle just getting the full 360
24 of the vehicle as it sits post-collision.

25 Q. So that would be 37. Now, going into some of the

1 general vehicle examination, is one of the things that
2 you're doing is also documenting the damage to the
3 vehicle?

4 A. Correct, we're going to document the damage to the
5 vehicle as well as tires and anything else that's on the
6 checklist, as far as steering, braking, or seatbelt
7 usage, airbag deployment. So, for this picture here it's
8 going to be documenting that is the left front or the
9 driver's side tire, the damage that's on there is --
10 appears to be from the cable barrier, and then on the
11 general vehicle exam, since the tire is detached from the
12 rim, we have to explain on here that the -- why there's
13 no tire pressure in the tire itself, and there is no tire
14 pressure there because of impact damage.

15 Q. Okay. And that's State's Number 38. And I believe
16 this is an additional photo showing the same -- is that
17 the same kind of damage?

18 A. Yeah, that would be continued onto the driver's
19 door, beyond the wheel well heading towards the rear of
20 the vehicle.

21 Q. All right, that's State's Number 39. And is this
22 the same thing, State's Number 40?

23 A. Yes, ma'am, still continuing towards the rear.

24 Q. And so we're heading towards the rear of the vehicle
25 now. And once again what -- so this -- which side of the

1 vehicle is this tire that you're going to be inspecting?

2 A. That's still the driver's side, but that's going to
3 be the driver's rear tire.

4 Q. Rear tire, okay, State's Number 48. And I believe
5 this is a better picture of that as well, State's Number
6 42.

7 A. That's correct. That's the driver's rear tire.

8 Q. Okay.

9 A. And then there's cable barrier damage just located
10 above the bumper in between on the fender.

11 Q. Okay. So even though we're seeing in this
12 particular photos the ones where there's obvious damage
13 that's being documented through the pictures, are you
14 going to check all of the tires on this vehicle?

15 A. I check every tire on the vehicle.

16 Q. Okay. And then one of the things that you had
17 mentioned, just a minute ago, when we talked about what a
18 general examination included, what about the airbag?

19 A. It's which airbags in the vehicle deployed.

20 Q. Okay.

21 A. And then --

22 Q. All right. So in this -- is this picture of an
23 airbag?

24 A. So, that would be the driver's airbag, which is from
25 the steering wheel.

1 Q. And that's State's Exhibit Number 43. Thank you so
2 much for verifying that for the Court and the jury. Now,
3 let's talk about your actual general vehicle examination.
4 Is there a specific checklist that you as -- you know,
5 since that is your role in this particular case, is there
6 a specific checklist that is generated by South Carolina
7 Highway Patrol for the MAIT team that you're supposed to
8 follow?

9 A. Yes, it is a standardized process that the form was
10 created by the MAIT team for the processing of the
11 vehicle.

12 Q. Do you have a copy of that in front of you?

13 A. I do.

14 Q. You do, okay. If you could please refer to your
15 general vehicle examination of the van, and please tell
16 this jury what your conclusions were in regards to those
17 items that you're required to actually review and
18 document.

19 A. Okay. So, what it starts with is just the vehicle
20 itself, what type of vehicle, the year of the vehicle and
21 the VIN in the vehicle. Then from there we go down and
22 we start to -- I try to do every vehicle the exact same
23 way, so I start at the right rear tire, which is the
24 passenger tire. I document what kind of tire it is, the
25 size of the tire, their tire pressure, and then the tread

1 depth. And then I do that systematically all around the
2 vehicle, and document each of that identifying features.
3 All of the tire pressures on the vehicles were -- were
4 within the means of what's recommended for the vehicle.
5 Inside of most vehicles there is a sticker on the
6 driver's door that says the tire size that's recommended
7 for the vehicle, and the pressure that should be in the
8 tire at that time. All of the tires were within the reg
9 -- size requirements, and all of them were within the
10 pressure requirements. We then take a gauge, it has a --
11 it's in 30 seconds, and then millimeters, it's a sliding
12 ruler gauge that shove down into the tread to get the
13 tread depth. All of the tread depths were fairly new
14 tires with good amount of tread on them. Once we have
15 done everything on the exterior, then we move on to the
16 inside where we start documenting seatbelts, the steering
17 wheels, and then brake pedals.

18 Q. Let me just add, just to get your conclusion, okay
19 for in regards to all of the tires that you did the
20 general vehicle examination on, was there anything that
21 you were concerned about in regards to possible
22 preexisting damage or issue to those tires?

23 A. No, they seemed fairly new with good tread and good
24 pressure.

25 Q. All right, so no problem with the tires whatsoever?

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1 A. Correct.

2 Q. All right, so then you move -- thank you. So then
3 you move forward to what?

4 A. Then we start to move inside the vehicle. Like I
5 said we start looking at -- first you're going to see the
6 airbag deployment, so I usually document which airbags
7 have deployed in the vehicle, and then we do what's
8 called a seatbelt examination. So, we'll look at the
9 seatbelt to see if there was any indication that it was
10 worn or not worn. In this case -- there was no evidence
11 for or against seatbelt usage. There's certain
12 indicators that we're looking for for seatbelts. So,
13 when you're involved in a collision your seatbelt has
14 what's called a pretensioner, so sometimes you know when
15 you push forward your seatbelt locks, well the car will
16 decide if that needs to be locked during the collision,
17 and it'll look the seatbelt in the position it was at
18 when the collision occurred. This vehicle's pretensioner
19 did not fire and there was no stretching or burn marks to
20 the seatbelt to indicate it was used, but it also doesn't
21 say that it doesn't -- it wasn't used. So, the
22 documentation for the seatbelt usage for the driver of
23 the Chevy Express van was inconclusive because there just
24 wasn't any evidence to show either way. The driver front
25 airbag had deployed and then we then checked the steering

1 wheel. The steering wheel seemed normal. And then part
2 of the process is pushing your foot on the brake pedal.
3 In the case of this one, it went to the floor, which
4 means that there wasn't any pressure on it at the time
5 when I checked it post-collision. We then measured the -
6 - and then that is everything that's done on the interior
7 of the vehicle.

8 Q. Do you go if -- when it's -- this is called a
9 general vehicle examination, is there a more in-depth
10 examination that will take place after you've completed
11 your just general overview?

12 A. There will be. There will be what's called a
13 mechanical examination, in which a mechanic will come out
14 and check any issues that we've had or discovered during
15 the general vehicle exam.

16 Q. Okay. And also knowing that this was the unit, I
17 believe it's unit 2, is what's identified based on the
18 collision report and the information you have; is that
19 correct?

20 A. I believe so.

21 Q. Okay. So, based on what unit 2, which is the van,
22 what you know through the MAIT team that was actually --
23 it was actually listed as being the at-fault driver in
24 this particular case. Are there going to be certain
25 mechanical things that are going to be looked at that

1 you're not going to do?

2 A. Correct.

3 Q. Okay. Sorry if that was a little confusing, but I
4 was trying to get to a point of what you're doing is just
5 the general kind of following around making sure that
6 there's nothing obvious going on like there's a bald tire
7 or like a big nail sticking out one of the tires --

8 A. Yes, ma'am.

9 Q. -- or something like that.

10 A. All I am doing is just documenting what I see at the
11 time.

12 Q. All right. Now, you mentioned that the last thing
13 you looked at was the fact that there was a deployment of
14 the actual airbag after you've looked at the seatbelt.
15 What is the other thing that is very valuable that the
16 MAIT team actually will extract once you see that there
17 has been a deployment of the airbag?

18 A. So, with certain vehicles, it's depending on the
19 year and the make, what we'll do from there is we will
20 check what's called the box crash data retrieval, which
21 is a system -- a software system that we'll check to make
22 sure to see if the vehicle is supported. So, your airbag
23 has what's called airbag control module, and it will
24 decide if the airbag deploys, what this software does is
25 allow us to read what that is called which is colloquial

1 known as the black box inside your vehicle.

2 Q. Okay. Did you have anything to do with actually the
3 EDR, which is the Event Data Recorder, or the information
4 that you're talking about, did you have anything to do
5 with that actually being taken or imaged off of the van?

6 A. For the van, no. I was present during the time, but
7 my supervisor did the actual ER image of that van.

8 Q. All right, so that -- so I was going to ask you
9 about that. So, after you did your general examination
10 review, and you filled out the necessary paperwork in
11 regards to unit two, which is the van, did you then --
12 was that all that you did in relationship to that
13 particular vehicle?

14 A. That's correct.

15 Q. Okay. So let's move on then. What was the next
16 vehicle that you actually saw and reviewed at that point?

17 A. So, again Corporal Hughes had already obtained a
18 search warrant for a 2011 Ford Explorer, that was located
19 at Hy-Gloss, the other tow yard. We then went over there
20 to do pretty much the exact same thing, a general vehicle
21 exam, photographs, and then a EDR image of the airbag
22 control module.

23 Q. Sorry, beg the Court's indulgence while I gather
24 these. Once again, I'll just ask you this while Defense
25 is reviewing those photographs. Whenever you went to

1 these -- to the other lot, which I believe would've been
2 Hy-Gloss Towing; is that correct?

3 A. That is correct.

4 Q. All right. When you went to that lot did -- you
5 called him a very Major Corporal --

6 A. Corporal.

7 Q. Corporal.

8 A. He was a Corporal at the time.

9 Q. Okay, thank you. Lindsay, did he actually accompany
10 you to -- and also take pictures of those?

11 A. That would be yes, Master Trooper Lindsay was the
12 one that took --

13 Q. Okay, Master Trooper, that's what I was trying to
14 think of, thank you. I'm going to show you State's
15 Exhibit Numbers 49 through 62, and just ask you if this
16 is -- if that refreshes your memory in regards to the
17 vehicle at Hy-Gloss towing lot.

18 A. Yes, this is the 2011 Ford Explorer.

19 Q. Thank you. And the 2011 Ford Explorer was listed as
20 unit 1, I believe, in y'all's MAIT report; is that
21 correct?

22 A. That's correct.

23 MS. LIVELY: Your Honor, the State would move
24 State's Exhibits Number 49 through 62 into evidence
25 at this time.

1 MR. FRICK: No objection.

2 JUDGE GIBBONS: Without objection, introduced.

3 (State's Exhibits 49 through 62

4 were introduced into evidence)

5 BY MS. LIVELY:

6 Q. Now, I'm going reference you to your report -- or
7 your general vehicle examination for unit 1, which would
8 be the Ford Explorer in this particular case.

9 A. Okay.

10 Q. Now, whenever you got there, is this the condition
11 that you found that vehicle?

12 A. It is.

13 Q. Once again is this one of the things you had to do
14 is kind of get the entire view of the actual vehicle in
15 360 degrees?

16 A. That's correct.

17 Q. Now at this point what are we seeing?

18 A. We're seeing the rear of the vehicle on the
19 passenger side.

20 Q. Okay.

21 A. And then we'll look at that and again compare it to
22 the damage on the other vehicle. So, the reason we're
23 taking these pictures is to see what damage is there, and
24 what it correlates to.

25 Q. Okay.

1 A. So, with the rear of the vehicle we know that it was
2 a rear end collision, so we'll start taking pictures from
3 the rear. We usually start in the same location anyway,
4 but this is just showing the rear of the vehicle, and you
5 can see some indication on there the black it's just on
6 the -- above from the corner of the vehicle next to the
7 license plate, that's not organic, so that would be
8 something other than the tree that it struck hit the rear
9 of the vehicle.

10 Q. And the van that we were just now looking at, is the
11 front of the van pretty high up off the ground?

12 A. I would -- I would say it was --

13 Q. Do you recall?

14 A. -- yes.

15 Q. Yeah, from we're looking at your -- so, does this
16 look consistent with what you're saying is not organic?

17 A. That would be the front of the -- the front of the
18 van.

19 Q. The front of the van, okay. All right, so then we
20 move on, and looking here at the damage to the -- closer
21 to the front of the passenger side, correct?

22 A. Correct. So, on the far bottom corner on the left,
23 that would be the door that was removed. You can see
24 that it's warped in nature, and then if you were to look
25 at it closer there's bi -- biological matter on there,

1 which would be the tree bark and everything, and the
2 above the passenger door on both sides, front and rear,
3 there's tree matter on that as well, which would indicate
4 that that's where a tree had struck that side of the
5 vehicle. Or that, correction, the vehicle had struck
6 that side of the tree.

7 Q. Oh, okay, I see. And so, in regards to some of the
8 discoloration here --

9 A. Correct, all the browns --

10 Q. -- that kind of looks like a greenish --

11 A. -- and the -- and the grays.

12 Q. Okay. All right, I see that. So, as you're looking
13 through all of this, obviously the damage here, does that
14 interfere with your ability to do your general vehicle
15 examination?

16 A. No.

17 Q. No? Okay. So that would be State's Exhibit Number
18 50. Now, once again, still going around the vehicle,
19 correct?

20 A. Correct.

21 Q. At this point is this still consistent with the
22 information you have regarding the collision?

23 A. Correct.

24 Q. And driver's side and driver -- passenger side of
25 the vehicle, correct?

1 A. Correct.

2 Q. All right, so that's going to be State's Exhibit
3 Number 52. Now, we're back to, this is State's Exhibit
4 Number 53, and the damaged side of the vehicle, okay.
5 So, when you're starting your inspection at this point,
6 and I'm going to show you also State's Number 54, just
7 because you had mentioned that there was some evidence of
8 biological matter --

9 A. Yes.

10 Q. -- from the trees, is that a close-up of what you're
11 referring to?

12 A. That is a closer-up of it, yes.

13 Q. Okay, I got you. All right. And that's State's
14 Number 55. Okay, so where did you start your tire
15 examination at that point?

16 A. I always start in the right rear, which is the
17 passenger rear tire, and go around the vehicle right --

18 Q. Let me see if I can --

19 A. -- right, left, left.

20 Q. -- find that. Hold on just a second, let me go
21 back. All right, here we go. The passenger rear tire.

22 A. Correct.

23 Q. So, tell us what you're findings were in regards to
24 the passenger rear tire.

25 A. The tire pressure and tire size of the ones that

1 were on the vehicle were consistent with what's
2 recommended to be on the vehicle, and the tread depth was
3 with -- had had a good tread depth on it.

4 Q. So, no problem with rear tire passenger side.

5 A. Correct.

6 Q. Then we move up to -- how about that?

7 A. That would be the front -- front right tire, or the
8 front passenger tire. Again, size was correct. There
9 was no tire pressure in it, just because of the impact
10 with the tree had caused the tire to detach from the rim.

11 Q. But what about the tread on --

12 A. The tread depth was good.

13 Q. Tread depth was good, okay. So, no obvious concerns
14 with that particular tire?

15 A. No.

16 Q. I know I'm jumping around, I apologize.

17 A. That's okay.

18 Q. This is the back driver rear tire, what were your
19 conclusions in regards to that tire?

20 A. It was the correct tire size that needed to be on
21 the vehicle, as well as tire -- within tire pressure
22 recommended, and then the tread depth was good on that as
23 well.

24 Q. Okay. Here we go, front driver tire, what were your
25 findings in regards to that?

1 A. That it had the correct tire size on it that was
2 recommended, same PSI that was recommended, and then the
3 tread depth was good as well.

4 Q. So, no concerns in regards to the four tires based
5 on your general vehicle examination of those tires?

6 A. Correct.

7 Q. So, then what do you move to at that point?

8 A. So, at this point we're just again going to start on
9 the driver's side looking into the vehicle, again looking
10 for airbag deployments and then the seatbelts. We know
11 that there were four occupants in this vehicle, which
12 means that I'll have to go and check every seatbelt and
13 every airbag. So, starting on the driver's side the
14 seatbelt -- the pretensure, again, that I said it decided
15 to fire so it was stretched and it had burn marks on it.
16 So, the burn marks are from when the guide plate of the
17 seatbelt comes around there's friction. So, when you're
18 involved in a collision that friction causes the webbing
19 that's a plastic type material to cause little burns on
20 it. And because it's -- the webbing also stretches, so
21 we'll look for that and that's an indication that it was
22 worn. And then the driver front -- or, I'm sorry, the
23 driver's side curtain airbag had deployed.

24 Q. So, the curtain airbag deployed and there was
25 evidence she was wearing her seatbelt at the time?

1 A. That's correct.

2 Q. Okay.

3 A. So then from there I went to the seat directly
4 behind her on the driver's side. That seatbelt was --

5 Q. Let me see if I can find that (inaudible). I think
6 --

7 A. That's the front passenger.

8 Q. That's front passenger. Could you tell us front
9 passenger, do you mind --

10 A. Sure, so the front passenger was actually it's cut,
11 that's a standard thing that the fire department will do,
12 because again, the seatbelt's under tension, so for them
13 to easily extricate the suspect -- or the victim, they
14 will instead of unbuckling it, they'll just cut the
15 seatbelt 'cause it's quicker to get it out. That one has
16 enough webbing in there for a grown adult to sit in it.
17 So if you were to put those two pieces together, and then
18 extend it out, it's going to show enough room in there
19 for a grown adult to be sitting in there, and then as you
20 can see there's -- there's some stretching to the
21 seatbelt as well, 'cause you know a normal seatbelt
22 doesn't have that bowing in it, so the seatbelt's been
23 stretched indicating that it was worn at the time. And
24 then the -- the -- for the front passenger, the passenger
25 side curtain airbag had deployed, as well as you can see

1 in there the passenger seat airbag.

2 Q. Here? Is that part of the airbag, can you see?

3 A. Yes, that would be the --

4 Q. Okay.

5 A. -- pass -- it's coming out of the seat's passenger
6 seat airbag.

7 Q. Okay. All right. That's showing the front driver's
8 seat area. And we'll talk about that in a minute.

9 A. Correct, so --

10 Q. But -- let's go back here. So, this is the back --

11 A. That would be --

12 Q. -- passenger -- yeah, this is the back passenger
13 area, so you can tell us about that.

14 A. Correct. So that -- what you're seeing there is a
15 child booster seat, that is going to be sitting behind
16 the passenger side. You can see that the seatbelt is
17 extended and locked. The lower portion of the seatbelt
18 is through the lap area. Everything about that booster
19 seat and the seatbelt arrangement, based on what I saw
20 was that the booster seat and seatbelt were worn, and the
21 booster seat -- everything was done properly.

22 Q. Was there any indication from looking at this that
23 the seatbelt had been cut?

24 A. No, there was no -- the seatbelt had not been cut.

25 Q. The seatbelt for this back passenger had not been

1 cut?

2 A. No, it was still inside the buckle receptacle.

3 Q. It was still inside the buckle receptacle, okay.

4 Thank you for telling us that. Now, in regards to the
5 passenger behind the driver, what --

6 A. Right, that seatbelt that you can --

7 Q. -- do you see?

8 A. Yeah, that seatbelt you can see there is actually
9 the middle seat seatbelt.

10 Q. Okay.

11 A. No one was sitting in that seatbelt.

12 Q. Okay.

13 A. There would be another seatbelt which is closer to
14 the Solicitor, you can't see, then that one had again
15 stretching and burn marks, indicating that it was worn at
16 the time of the collision.

17 Q. So, based on everything that you got from looking at
18 the airbags, as well as the seatbelts in the vehicle, was
19 it consistent with the information you had regarding the
20 collision and the individuals who were seated in this
21 Ford Explorer?

22 A. Correct.

23 Q. It was, okay. And the only seatbelt that you saw
24 that was actually cut, was that the one of the front
25 passenger seatbelt?

1 A. Correct.

2 Q. Now, you told us about the tires, and the seatbelts,
3 and the actual airbag deployment. Was there anything
4 else -- and you're saying that everything was done
5 properly, no concerns about any abnormal findings?

6 A. Correct.

7 Q. Correct, okay. So, after all that is done, what was
8 the next thing that you assisted with that was a little
9 bit different than what you did with the van, here with
10 this particular vehicle?

11 A. So, again, like I stated with the Bosch CDR, so
12 Bosch is the company that makes the crash data retrieval
13 software. We have to be trained to be a technician on
14 that for how to retrieve the data using the software.
15 So, that laptop right there is explicitly for the purpose
16 of CDR downloads. So, what we'll do is we'll set up the
17 laptop in what's called the help file. So, what it'll
18 tell us is if the vehicle is supported. So we'll have to
19 look up the year, and the make and model of the vehicle,
20 in help file and it'll say if it's supported. And then
21 it'll tell us what cables we need for it to be imaged,
22 and then where the actual ACM is located inside the
23 vehicle, if you needed to do what's called a direct to
24 module download.

25 Q. That's a lot of technical terminology, so if you

1 could just in laymen's term tell us basically what kind
2 of information are you imagining to get off of this --
3 this module?

4 A. So, as the technician, all I am doing is checking to
5 make sure that I have the appropriate cable that's meant
6 for that ACM, putting in all relevant data into the
7 software, and then plugging the cable into the actual ACM
8 for the vehicle.

9 Q. And what's ACM?

10 A. The airbag control module, the box -- the box.

11 Q. Okay, so the box. So, the airbag control module is
12 basically what drives what the findings are going to be
13 once you've done the imaging from this -- from that
14 module?

15 A. Again, yes, as the technician all I'm doing is
16 making sure that I'm gathering the data to be analyzed at
17 a later time.

18 Q. Okay.

19 A. And then with that -- yeah, that's it.

20 Q. So, I'm going a little too far, so I'll stop with
21 you and I will ask the other MAIT team about the other
22 information. So, when we see this particular photo here,
23 we've seen the one that was State's 59, what is it that
24 it's telling us that you've now put in the VIN number,
25 the make and model of the vehicle, and that kind of

1 thing, so what is this telling you at that point?

2 A. So, after I put the VIN in and everything, it's
3 going to run three passes to make sure that what I put in
4 is matching, and then that it's actually speaking to the
5 box. So, it'll run and it'll -- it'll do an internal
6 thing and then it'll tell me that it's passed one, so
7 then from there I just wait until I get all three passes,
8 which means that I successfully got whatever data was on
9 that box is now saved within the software.

10 Q. And once you get a pass three, and it's been saved
11 from that software, is that information imaged
12 specifically from that vehicle, and now it can be given
13 to the next person in the lineup who's going to actually
14 read that data?

15 A. Correct. So, with most of them there's three
16 abilities to save it. There's -- there -- Bosch has
17 their proprietary data, which is saved that can't be
18 manipulated in any way. So, that's the first thing it
19 saves automatically, that file. And then we save what's
20 -- a pdf file, which is essentially not a Word document,
21 it's just a pdf file, you just can't doc -- change
22 anything, and then it'll save an Excel file which is an
23 xml file. So we just save all three. Again, I just make
24 sure that it saved them, and then I put them onto a
25 drive, and then I pass it on to the next person.

1 Q. So, that's going to be State's 59, 60, 61, and 62,
2 which actually shows that it was a successful imaging
3 from the Ford Explorer, correct?

4 A. Correct.

5 Q. And you did not actually use your computer for the
6 imaging of the Ford van, is that my understanding or did
7 you?

8 A. I'm sorry?

9 Q. Did you actually -- was it your computer that
10 actually did the imagining --

11 A. No.

12 Q. -- of the Ford van?

13 A. No, that computer right there is specifically just
14 for the Bosch system.

15 Q. I got you.

16 A. So, any vehicle we do is always used on just that
17 computer.

18 Q. Okay. But this is the one you can testify to as --

19 A. Correct.

20 Q. -- actually hooking up the cables?

21 A. Correct.

22 Q. Okay, that's what I wanted to clarify, thank you.

23 Now, other than what you've testified to in regards to
24 your general vehicle examination, and your conclusions
25 regarding both of those vehicles, as well as the -- I

JURY TRIAL

1 don't want to say extraction, the imagining of the data
2 off of the Ford Explorer, just to have it actually ready
3 to go to the next person on the MAIT team, was there
4 anything else that you did in this particular case
5 regarding the investigation?

6 A. I interviewed Ms. Felicia Logan.

7 Q. Okay.

8 A. And then her husband James Logan later on once we --
9 like later on into the investigation.

10 Q. But as for the vehicles that are at each lot, that
11 was the end of what you did in regards to those vehicles?

12 A. Correct.

13 Q. So, you called and actually spoke to Felicia and
14 James Logan. And if you could just remind the jury who
15 they were, and were they eyewitnesses to the actual
16 collision?

17 A. So, James and Felicia Logan are husband and wife.
18 They were both -- they were travelling, I believe, from
19 vacation in Florida, heading home and they were traveling
20 north on I-77. They were ultimately passed by the van,
21 and then witnessed the collision itself, and then they're
22 the ones that called 911, and then assisted with
23 everything on the scene as far as trying to get first aid
24 to everybody.

25 Q. Okay. And were they willing to speak with you and

1 assist you with the investigation?

2 A. They were.

3 Q. Were they able to provide you any information that
4 was helpful for you in your follow-up investigation,
5 regarding what happened in this particular matter?

6 A. Yes, I believe they were able to say which lanes
7 they were in, and then ultimately where each vehicle was
8 on the interstate. They were also somewhat able to say
9 who was in the vehicle and where they were sitting at in
10 the vehicles.

11 Q. Were they able to give you any idea as to the nature
12 of the driver of the van's driving on that particular
13 day?

14 A. If I remember correctly Ms. Logan, Felicia, said
15 that it had passed them at an extreme high rate of speed,
16 and she was very frantic screaming at her husband,
17 they're going to hit him -- or he's going to hit them,
18 he's going to hit them, and then she's screaming at her
19 husband to slow down, because she doesn't want to be
20 involved in the wreck either.

21 Q. And all of that was that documented through an audio
22 recording?

23 A. It was.

24 Q. And was it made a part of your MAIT report?

25 A. It is.

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1 Q. I believe those were the only two witnesses that you
2 actually interviewed; is that correct?

3 A. That's correct.

4 Q. And was Mr. Logan's information provided to you, was
5 it also helpful and consistent with what his wife told
6 you?

7 A. Correct. I think the only inconsistency between the
8 two of them is Mr. Logan said he was in the left lane,
9 and Ms. Logan said they were in the right lane, just
10 based on what they both saw. He even mentions in his --
11 I think they had an internal talk because I don't think
12 they either -- either one of them agreed 'cause he
13 mentioned it in their interview.

14 Q. Okay. Thank you so much. I appreciate your
15 information. Please answer any questions that the
16 defense has for you.

17 JUDGE GIBBONS: All right, Mr. Frick, your
18 witness.

19 MR. FRICK: I haven't gotten these marked yet,
20 but I want to show you some additional pictures from
21 the tow yards --

22 MS. LIVELY: Oh, yeah. Yeah, I think the only
23 one we have is that last one that you have that's
24 already in. So, no, that's fine.

25 MR. FRICK: Okay.

1 MS. LIVELY: Your Honor, there will be no
2 objection from the State in regards to the ones he's
3 getting ready to mark.

4 JUDGE GIBBONS: All right, they're admitted
5 then.

6 (Defendant's 13 through 22
7 were introduced into evidence)

8 CROSS-EXAMINATION

9 BY MR. FRICK:

10 Q. Investigator, I'm going to show what's been marked
11 and admitted as Defense's 13 through 22.

12 A. Thank you, sir.

13 Q. Do you recognize those pictures as you look through
14 them?

15 A. Yes, sir, this is the 2017 Express van.

16 Q. And that's at Danny's tow yard?

17 A. That's correct.

18 Q. And you were present when these pictures were taken?

19 A. I was.

20 Q. Okay. And just quickly go through them. Number 13,
21 Defense's 13, that's the back part of the van?

22 A. Yes, sir.

23 Q. And Number 14, that'll be the front of the van?

24 A. Yes, sir.

25 Q. And you're showing the damage that has occurred?

JURY TRIAL

1 A. Correct.

2 Q. Okay. 15, this is the interior of the van?

3 A. Yes, that would be looking from the driver's side
4 inward towards the passenger side.

5 Q. And in the passenger side you see a -- looks like a
6 12-pack to me?

7 A. Appears to be a 12-pack of Modelo.

8 Q. Okay. And then 16, that's just a close-up of that?

9 A. I believe so.

10 Q. 17, would that be from the passenger side?

11 A. That would be passenger side looking in towards the
12 driver's side.

13 Q. Okay. I'm going to go a little out of -- 19?

14 A. That appears to be the sliding door on the passenger
15 side looking in.

16 Q. Okay. And I know you're law enforcement, I know you
17 work traffic wrecks mostly.

18 A. Yes, sir.

19 Q. But that -- there's a glass thing right there, do
20 you know what that might be?

21 A. It has burnt residue in it and a brown substance and
22 it's clear glass.

23 Q. And that's in the door opening, the sliding door of
24 the van?

25 A. Yeah, it would be the step plate coming into the

1 sliding door of the van.

2 Q. Back to 18, is that a close-up of what we were just
3 talking about?

4 A. Yes, sir.

5 Q. 20?

6 A. That's looking down at the driver's floorboard
7 underneath the steering wheel.

8 Q. And there appears to be some kind of footwear there?

9 A. There's a Nike slide type slipper.

10 Q. And then 21, that's another picture of the back,
11 right?

12 A. Correct.

13 Q. Does there appear to be any damage to the back
14 corner there?

15 A. Yes, sir, up at the top corner of the -- of the van.

16 Q. And then 22 that's another picture of the damage of
17 the front of the van, correct?

18 A. That's correct.

19 Q. Okay. So, in your -- you didn't do the mechanical
20 examination, correct?

21 A. No, sir.

22 Q. You were just essentially looking at the tires,
23 making sure everything --

24 A. All I do is document.

25 Q. And tires were right size, right --

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1 A. Right size, right pressure, good tread.

2 Q. On the van?

3 A. On the van.

4 Q. Okay. And the brakes, you said you pressed the
5 pedal and it went to the floor --

6 A. Correct.

7 Q. But there had been significant damage to the front
8 of that van, correct?

9 A. To the extreme front of the van, yes.

10 Q. Correct, okay. But then we'll have the mechanical
11 examination to go further into that?

12 A. Correct.

13 Q. Now, correct me if I'm wrong, did you say the
14 mechanical examination is done on the van because that
15 was determined to be the at-fault vehicle?

16 A. I believe so.

17 Q. Okay. The non at-fault vehicle, is there a
18 mechanical examination done?

19 A. There was not done on this one.

20 Q. On this case? Okay. And you said it's typical when
21 you see the cut seatbelts when the -- when first
22 responders get on the scene and they have to extricate
23 somebody, get them out of there, they -- in this case
24 they had to get the door off and then they had to cut the
25 seatbelt, correct?

1 A. Correct.

2 Q. And that's typical for -- for fireman to do?

3 A. Correct.

4 Q. In fact in this case when you look at the passenger
5 seat where the booster seat was, that seatbelt is not
6 cut?

7 A. It is not cut, no.

8 Q. It is -- it is also locked in place?

9 A. There -- it was -- I believe the pretensioner had
10 fired on it.

11 Q. Okay.

12 A. But there was still -- it's -- it locks where it was
13 when the collision occurred.

14 Q. Okay. Did you have any information about the height
15 and weight of the individual that was occupying that
16 booster seat?

17 A. No.

18 Q. And going on to the, I'm going to call it the black
19 box.

20 A. Okay.

21 Q. I know that's the laymen's term of it, but you know
22 what I'm talking about, right?

23 A. Correct.

24 Q. It looked that y'all had to remove it. It's usually
25 it's under the seat or a console or somewhere around

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1 there?

2 A. So, based on the help file it'll locate -- or it'll
3 say where it's at. It'll say it's -- it's ideally in the
4 center of the vehicle. It'll say underneath driver
5 console, underneath center stack, which would be your
6 radio and everything would be underneath there. It could
7 say underneath the left front seat, right front seat, so
8 it's just based on where -- wherever the manufacturer
9 decided to put it. It's told to us in the file --

10 Q. Okay.

11 A. -- when we look it up.

12 Q. And maybe you don't do it in every case, but at
13 least in this case, you removed it from wherever it was?

14 A. No, in this -- in the case 'cause -- are you talking
15 about the Ford or the Chevy?

16 Q. I'm sorry, yeah, there's two vehicles, I'm sorry.
17 It's getting close to lunch, I'm trying to get through
18 here. Let's go with the van.

19 A. Okay, I didn't -- I did not do the imagining on that
20 van.

21 Q. Okay, let's go with the one that you actually did
22 then.

23 A. Okay.

24 Q. Let's go with the Explorer then.

25 A. Okay.

1 Q. What did you do? Did you remove it? Or did you
2 just plug into it or what?

3 A. So, due to the damage of the vehicle, I believe --
4 so the ideal way of doing it if the vehicle was not
5 damaged so extensively, you have an OBD-II port, so
6 anytime a mechanic hooks up to your vehicle, if you've
7 ever looked under there there's a little plug, you can
8 plug directly into that and then it'll speak to the box.
9 But if there's some sort of failure in the electrical
10 system then we'll have to go directly to the box itself.
11 I believe in this case it was located center -- center
12 tunnel -- center tunnel towards the front. So, we have
13 to go directly into where the box is at. We like to
14 leave the box in place if we're able to plug the cables
15 that it requires into it, and in this case the box was
16 left in place inside the vehicle.

17 Q. Okay. I saw there was a crowbar sitting in the
18 seat, what did you use that for?

19 A. So, the center console is very thick plastic, just
20 to get the plastic that's on your side in between your
21 seat the console, you just got to pop that open and up,
22 so the crowbar is just used to lift the plastic out.

23 Q. Okay. So, in this case it was -- it was not removed
24 from the vehicle, it remained in the vehicle?

25 A. Correct.

JURY TRIAL

1 Q. And it's not -- y'all don't take it into evidence,
2 right?

3 A. No.

4 Q. It --

5 A. Unless it's needed to be.

6 Q. Okay.

7 A. But in this case it was not.

8 Q. It was not because you did the -- I'm going to call
9 it a download, I don't know if that's the actual correct
10 term.

11 A. Imaging.

12 Q. Imaging. So, you plug it in, you got this computer
13 that is specific to doing these imaging's, and then you
14 get the data from there, correct?

15 A. Correct.

16 Q. And then you put it on another drive?

17 A. It saves on -- internally on the computer.

18 Q. Right.

19 A. And then we -- we'll save it onto a flash drive to
20 put it onto the server for everyone to look -- or
21 everyone on MAIT to look at it.

22 Q. Okay. And you were not involved with the --

23 A. Analysis of it, no.

24 Q. The analysis of it, okay. All right. I may be
25 done, just give me one second. Thank you, sir, that's

1 all the questions I have.

2 MR. RIVETT: Thank you.

3 JUDGE GIBBONS: All right.

4 MS. LIVELY: I have no questions on redirect,
5 Your Honor.

6 JUDGE GIBBONS: All right, thank you. You can
7 step down. Thank you, sir.

8 MR. RIVETT: Thank you, sir.

9 JUDGE GIBBONS: Foreman, you want to go ahead
10 and take a lunch break now? Yes? All right, sounds
11 good. We'll take a lunch recess. Y'all good with
12 1:15, that'll give you enough time to -- or y'all
13 want to be back at 1:30?

14 MS. LIVELY: Your Honor, the State's fine with
15 1:30.

16 JUDGE GIBBONS: 1:30? See you then. Don't
17 talk about the case.

18 MS. LIVELY: Thank you.

19 (JURY EXITS)

20 JUDGE GIBBONS: All right, anything from the
21 State before we break?

22 MS. LIVELY: No, Your Honor.

23 JUDGE GIBBONS: Anything from the Defense
24 before we break?

25 MR. FRICK: No, sir.

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1 JUDGE GIBBONS: All right, thank you. We're
2 down.

3 (BREAK)

4 (JURY ENTERS)

5 JUDGE GIBBONS: All right, thank you ladies
6 and gentlemen, I know the bailiff told you about the
7 smell, and you'll get used to it. You'll only get a
8 headache after about 30 minutes. Just kidding.
9 He'll get it -- and it'll all be good. We have to
10 do something because it was a constant thing, it's
11 not y'all's fault. With older buildings come older
12 things and that's what always happens. No worries.
13 All right, call your next witness.

14 MS. LIVELY: Yes, thank you, Your Honor. The
15 State would call Mark Lindsay to the stand.

16 JUDGE GIBBONS: All right, sir. Raise your
17 right hand. Do you swear or affirm that your
18 testimony will be the truth, the whole truth, and
19 nothing but the truth, so help you God?

20 MR. LINDSAY: I do.

21 JUDGE GIBBONS: Thank you, sir. Have a seat
22 here.

23 MARK LINDSAY
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. All right, Mr. Lindsay, please tell the jury your
4 full name and what your title is with the job that you
5 do.

6 A. Mark Daniel Lindsay, my rank is Master Trooper. I'm
7 an investigator with the Multi-disciplinary Accident
8 Investigation Team with the State of South Carolina
9 Highway Patrol.

10 Q. And when you say the Multi-disciplinary Accident
11 Investigation Team, is that referring to MAIT?

12 A. Yes, ma'am.

13 Q. All right, so we've kind of heard that mentioned
14 earlier today. So, you're actually one of the team
15 members of MAIT, correct?

16 A. Correct.

17 Q. What type of training do you have to undergo in
18 order to become a member of the MAIT?

19 A. Multiple classes through the Criminal Justice
20 Academy, as well as the Highway Patrol, to qualify you to
21 -- and years of service to qualify you for this position.

22 Q. And how many years of service do you have?

23 A. A little over 10 years now.

24 Q. 10 years, all right. And have you ever been
25 qualified as a collision reconstructionist?

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1 A. I have.

2 Q. You have? Is that both in civil cases, criminal
3 cases --

4 A. It was a criminal case in general reconstruction.

5 Q. In general recon -- collision reconstruction?

6 A. Yes, ma'am.

7 Q. All right. And have you -- we've already had one
8 individual, you were in here whenever Rivett testified,
9 regarding the general examination of the vehicle. Are
10 you qualified in all these different areas also to do
11 these types of examinations?

12 A. Yes.

13 Q. Okay. And with your training that you have, just
14 tell the jury based on this particular case the types of
15 things that you were asked to do.

16 A. Basically in this particular case I was tasked with
17 taking photographs, conducting -- or assisting in
18 conducting a mechanical examination of what was
19 determined to be the at-fault vehicle, and conducting
20 interviews.

21 Q. And conducting interviews, all right.

22 MS. LIVELY: Now, at this time, Your Honor,
23 the State would offer Master Trooper Mark Lindsay as
24 an expert in general collision reconstruction.

25 MR. FRICK: No objection, Your Honor.

1 JUDGE GIBBONS: What's that?

2 MR. FRICK: No objection, Your Honor.

3 JUDGE GIBBONS: All right, you're so qualified
4 as an expert. Ladies and gentlemen that means he
5 can give an opinion.

6 MS. LIVELY: All right, thank you.

7 BY MS. LIVELY:

8 Q. Now, Master Trooper Lindsay, let's talk about how
9 you became involved in the investigation of the collision
10 that happened on July 10th of 2022. Were you notified
11 about and given some information about this particular
12 event?

13 A. Yes, I was sent an email from Corporal Gilbert
14 stating where the collision occurred and basic
15 information, a two vehicle collision, northbound I-77 in
16 Chester County.

17 Q. And once you received that information at that time,
18 is there a certain way that you qualify or that you tag
19 the particular event as to what your response is going to
20 be?

21 A. That's up to whoever takes the call, the supervisor.

22 Q. Okay. And you were not the supervisor in this
23 particular matter?

24 A. Correct.

25 Q. So, at the time when you received the call did you

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1 respond or begin your investigation on the day of the
2 actual collision?

3 A. No, ma'am, the next day.

4 Q. The next day, so that would've been July 11th of
5 2022.

6 A. Correct.

7 Q. So, when you started that -- your part of the
8 investigation on July the 11th of 2022, tell the jury
9 what -- kind of how you started your investigation.

10 A. So, I first went to Danny's Towing, which is where
11 the white Chevy van was towed to. Corporal Hughes, now
12 Sergeant Hughes, met us at the tow yard with a warrant so
13 we could begin processing the vehicle.

14 Q. And who all was with you other than Sergeant Hughes
15 who had the search warrant that allowed you to actually
16 go into the vehicle?

17 A. It was myself, Trooper Cooke, now Sergeant Cooke,
18 Trooper Rivett, Corporal Gilbert, Sergeant Sisler was not
19 there at that time.

20 Q. And who is Sergeant Sisler?

21 A. Sergeant Sisler was our supervisor at the time, he
22 has since retired.

23 Q. He has since retired, okay. Were you present and
24 involved in everything that he did for the evaluation of
25 these -- the vehicle?

1 A. I was, and that was 11 days later on the 22nd.

2 Q. That was 11 days later. We'll talk about that as
3 well. I'm going to show you what's been marked as
4 State's Number 32 through 47, and just ask you, once
5 again -- well, let me back up. You already stated you
6 were the one that actually was tasked with taking all the
7 photographs of the vehicles on the 11th; is that correct?

8 A. Correct, for the general vehicle exams, for the
9 mechanical exam that was Sergeant Sisler.

10 Q. Okay, got it. I'm going to (inaudible) going to
11 show you this stack of photos, hold on let me just get
12 them to you real quick. I'm going to show you these
13 photos, again, it's State's Number 32 through 47. Are
14 those some of the photos that you took when you went to,
15 I believe, you said Danny's tow lot?

16 A. Yes.

17 Q. And which vehicle was at Danny's tow lot?

18 A. This was the Chevrolet Express.

19 Q. The Chevrolet Express, and that would be the van,
20 correct?

21 A. Correct.

22 Q. I'm going to -- well, Your Honor, I would move --
23 ask that these -- State's Exhibits through 47, and I
24 think it's beginning with 32, be entered as evidence at
25 this time.

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1 MR. FRICK: No objection.

2 JUDGE GIBBONS: Without objection, admitted.

3 MS. LIVELY: Thank you.

4 (State's Exhibits 32 through 47
5 were admitted into evidence)

6 BY MS. LIVELY:

7 Q. And I'm going to show you what's already in evidence
8 starting with 33 through 43, those I believe most of them
9 involve the van at Danny's tow lot. And tell me if you
10 recognize those as well.

11 A. Yes, I took those.

12 Q. Okay. Perfect. Thank you so much. Now, when you
13 got to the -- to Danny's tow lot and you're actually
14 starting to do your part, which is taking all the
15 photographs, what else was going on around you with the
16 rest of your team?

17 A. We had Trooper Rivett was doing a general vehicle
18 exam and Corporal Gilbert was standing by for the imaging
19 of the EDR.

20 Q. Okay. And would you please, 'cause we've had EDR
21 mentioned a few times, and since you are an expert
22 general collision reconstructionist, will you please
23 explain to the jury what EDR is, and what kind of
24 information it provides without getting too far into the
25 weeds, just a general overview.

1 A. Correct. In your vehicle you have a small box
2 depending on the year, make, and model of your vehicle,
3 that controls your airbags, and there's data going
4 through it, and when it senses that something has
5 happened that it is bad enough for it pop the airbags,
6 depending on, again, year, make, and model, and the
7 manufacturer of that data recorder, it can give you so
8 many seconds before pre-impact data from the vehicle,
9 things such as speed, seatbelt usage, things of that
10 nature.

11 Q. And the EDR, the event data recorder, as it records
12 this information, are you able to then image it and pull
13 that data off and come up with conclusions about what
14 happened in a collision?

15 A. Correct. It would be imaged, saved, and then an
16 analyst would have to analyze that data.

17 Q. Okay. And in regards to that information, you're
18 not here to testify about those findings in this
19 particular case; is that correct?

20 A. Correct.

21 Q. Okay. So, let's talk about kind of what you did in
22 regards to the pictures that were taken. You've told us
23 that you've taken the pictures of the van at Danny's tow
24 lot, did you also take the photographs of the Ford
25 Explorer at Hy-Gloss lot?

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1 A. Yes.

2 Q. And we also -- you already mentioned on July the
3 22nd of 2022, tell the jury what you did, along with
4 Sisler, that was a follow-up examination regarding the
5 van.

6 A. So, it was determined that this collision would
7 require a mechanical examination to check for any
8 potential mechanical defects in the steering, braking, or
9 suspension of the Chevrolet Express van.

10 Q. So, you were present during that entire examination;
11 is that fair to say?

12 A. Yes, I was.

13 Q. And were you actually handling like the parts off of
14 the van, such as the tire, looking into the engine area,
15 the brake lines, and all of that?

16 A. Yes, I was.

17 Q. Okay, so we'll talk about that in a minute. But
18 those photographs that we now have from you from both
19 July the 11th through July the 22nd, on those two
20 individual dates, all of that was documented and made a
21 part of your full MAIT report; is that fair to say?

22 A. Yes.

23 Q. So, I'm just going to show you, just to go ahead and
24 address that, State's 48, which is your identification of
25 the lot that you went to. And then these are the ones

1 that are on the scene; and then Sisler. So, I'm going to
2 cumulatively show you, you've got documentation Number 48
3 that you went to Hy-Gloss in Chester, is that your
4 handwriting? Or is that an indication that that's where
5 y'all were whenever you did your pictures?

6 A. Correct.

7 MS. LIVELY: I move State's 48 into evidence,
8 Your Honor.

9 MR. FRICK: No objection.

10 JUDGE GIBBONS: All right, introduced.

11 (State's Exhibit 48
12 was introduced into evidence)

13 BY MS. LIVELY:

14 Q. Then we have a stack of photos -- again, when did
15 you go to where the scene of the collision was, what date
16 did you do that?

17 A. The scene of the collision, I believe, was the same
18 day.

19 Q. July the 11th?

20 A. July the 11th.

21 Q. Okay. So, when you say same day, the same day that
22 you began your investigation?

23 A. Correct.

24 Q. So you -- and where again did you go for the scene
25 of the collision?

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1 A. That would be I-77 northbound around the 65 mile
2 marker.

3 Q. Okay. And 65 mile marker is that the on and off
4 ramp to -- from Richburg in Chester?

5 A. It is near there.

6 Q. Near there, okay. And in your pictures as well, are
7 these the last -- I'll just let you look at these real
8 quick. Are these last stack of photos, whenever you were
9 actually looking at the components of the van to
10 determine whether or not there was any mechanical issues
11 present?

12 A. Correct, these -- these are going to be from the
13 mechanical exam.

14 Q. The mechanical exam, all right. So you recognize
15 all of those and you did take those, correct?

16 A. The mechanical exam pictures were taken by Sergeant
17 Sisler, but I was there when he took them.

18 Q. I'm sorry, okay. But y'all were kind of working
19 together, because the two of you were looking and
20 reviewing the van and the different components, correct?

21 A. Correct.

22 Q. So, that would be State's Number 69 through 82.

23 MR. FRICK: No objection, Your Honor.

24 MS. LIVELY: Okay, thank you.

25 JUDGE GIBBONS: All right, introduced.

1 (State's Exhibits 69 through 82
2 were introduced into evidence)

3 BY MS. LIVELY:

4 Q. So, let's first, if we could, look at when you were
5 on scene, and when I say that I'm talking about actually
6 where you were that you just testified to on July 11th,
7 2022, when you went to the area on I-77, okay. All
8 right, so, tell us where -- and just kind of get yourself
9 acclimated to it, where you are at this point, and if you
10 need to step down at any point in time you can, in order
11 to see what the picture is showing.

12 A. That is the northbound shoulder of I-77.

13 Q. The northbound shoulder, okay. All right so you're
14 documenting basically looking down towards the -- the
15 possible incident location?

16 A. Correct.

17 Q. Is that your belief at that time that that's what
18 you were looking at?

19 A. Correct.

20 Q. And that would be State's Exhibit Number 63, okay.
21 Now, this is State's Exhibit Number 64, what are you
22 documenting here?

23 A. Right here we're documenting the path of the vehicle
24 into evidence. The paint there is painted on tire marks,
25 so we're documenting the vehicle going off the roadway.

1 We -- normally we'd walk the path of the vehicle, but
2 with this being an open interstate obviously we can't be
3 standing on the interstate or in a lane. So, we're just
4 following the path of the vehicle until it reaches the
5 shoulder.

6 Q. And once again, in the same line of what you're
7 talking about, in this particular photo, which is State's
8 Exhibit Number 65.

9 A. Those are furrows leading up to the tree that was
10 struck.

11 Q. Furrows leading up to the trees that were struck,
12 all right. Now, what angle are we seeing here, which is
13 State's Exhibit Number 66?

14 A. So, this is still the northbound shoulder, it's
15 facing south, the direction we're facing is south, that
16 is paint in the roadway that the Troop had put there.

17 Q. And what does that orange paint there mean?

18 A. That is where the Troop determined the area --
19 general area where the collision began.

20 Q. Where the collision began, okay. And at that point
21 from where you were standing, and from the furrows in the
22 pathway that you found, was that at that time -- was it
23 consistent with what you were seeing?

24 A. Correct.

25 Q. Okay. Now, that was State's 66. Now, we're looking

1 at State's Number 67, can you see the orange paint marks
2 on here, or do you want me to hand you the photograph?

3 A. I can see it.

4 Q. You can see it? Okay. So, tell the jury what it is
5 that you're looking for here as you're taking the
6 photographs.

7 A. So, this is a tire mark in the roadway that is going
8 off onto -- into the median from one of the vehicles that
9 was involved.

10 Q. And did you have enough information at that point in
11 time to know which vehicle went which way?

12 A. I don't recall.

13 Q. Okay. 'Cause this is the very next day, and I
14 wasn't sure what information you actually had.

15 A. Right, I don't recall if I went to the scene first
16 or went to the vehicles first.

17 Q. I understand, that's fine. Now, that you've heard
18 everything, are you aware of which vehicles obviously --
19 and at the time of the MAIT report you would've know
20 which vehicles were going which way.

21 A. Yes.

22 Q. Okay. So this was just the very next day and you're
23 not 100 percent sure.

24 A. Correct.

25 Q. And at the time of the MAIT report, what are we

1 seeing in regards to the vehicle that went into the
2 median?

3 A. That is a tire mark from the Chevrolet Express van.

4 Q. From the Chevrolet Express van, okay. And that
5 would be State's Number 67. Now, in this particular
6 photograph, what is it that we're seeing, and what did
7 you learn about from that?

8 A. These were tire marks from the van leading into the
9 median and down into the -- the cable barrier. There's
10 also some debris right there that appears to be
11 consistent with a taillight from a Ford Explorer.

12 Q. From a Ford Explorer, okay. And based on what we --
13 that's actually State's Number 68. Based on what we have
14 here in regards to the point of impact, do you have any
15 opinion, 'cause now we're staying here, and the next
16 photograph where the actual -- where the actual, I guess,
17 debris is how you refer to it, from the Ford Explorer, do
18 you have any opinion as to how it may have ended up over
19 on the end the next day?

20 A. After the initial impact, it could've been carried
21 over by the van. It's also possible that it was swept
22 over there by people as they were cleaning up the scene.

23 Q. And also in regards to this particular area, did you
24 ever -- did you know anything about whether or not there
25 was heavy traffic, and whether or not it was chaotic or a

1 lot of vehicles coming and going after the incident
2 actually took place?

3 A. That I don't know.

4 Q. Okay.

5 A. 'Cause without being there --

6 Q. Sure.

7 A. -- when the -- when the collision had just occurred,
8 I can't speak to that.

9 Q. Okay. That's fine, it's not necessary. All right,
10 so can the vehicles who are maybe going 70 or 80 miles an
11 hour blow debris like that anywhere?

12 A. Yes.

13 Q. If it's in the middle of the road?

14 A. Yes.

15 Q. Okay. So, thank you for that. Let me go back. All
16 right, so that was State's 68. Now, continuing on, this
17 is Number 69, what are you documenting here?

18 A. This is still a path of travel for the Chevrolet
19 Express van, it came through the cable barrier, and is
20 now on the southbound side of the median. We're just
21 documenting path of travel of the vehicle, as well as
22 evidence left.

23 Q. Okay. And what about in this particular picture, is
24 it more documentation of the path?

25 A. Correct.

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1 Q. And that was the last one. Now, based on the
2 information that you have regarding these two vehicles,
3 and what you've documented, regarding the pictures and
4 the pathway, once again, based on your experience as an
5 expert in collision reconstruction, is the scenario of
6 the Explorer being hit from behind by the van and the
7 point of impact, is it consistent with what you saw in
8 the photographs that were taken?

9 A. Yes, it was.

10 Q. And later on, Major Trooper Lindsay, did you
11 actually also follow-up with an interview witnesses as
12 well as the defendant regarding the collision?

13 A. I did.

14 Q. One thing I do want to ask you is that -- is this
15 the investigation that's done by MAIT, is it done kind of
16 in a funnel, is it like y'all each do one thing, or does
17 it all come together and you have a final conclusion at
18 the end?

19 A. It all comes together and we have a final conclusion
20 at the end.

21 Q. So, were these parts of the puzzle, at this point in
22 time, that y'all were trying -- that you were looking at,
23 was it going to be provided to Grant Cooke who ended up
24 completing the final report?

25 A. Yes.

1 Q. Now, let's talk about after you've done your
2 photographs, and you are assisting with -- and you are
3 actually assisting with putting all this information
4 together for the final report, what was the next
5 examination that needed to be done that was recommended
6 regarding the unit 2, the van?

7 A. A mechanical exam.

8 Q. Tell the jury what is the difference between a
9 mechanical exam and a general vehicle exam?

10 A. A mechanical exam is more in-depth, it involves us
11 actually jacking the vehicle up, taking the tires off,
12 inspecting the brakes, looking at the steering, checking
13 fluid levels, looking for anything that may be obviously
14 wrong with the vehicle that could've contributed to the
15 collision.

16 Q. And as you're doing that, you're physically removing
17 tires from the vehicle?

18 A. Correct.

19 Q. And who is -- I mean, are y'all having to get up
20 under the vehicle and document what you're finding, or
21 more importantly what you're not finding?

22 A. Yes.

23 Q. Okay. So, let's talk about that in regards to what
24 you actually did on that day. Now, this is already in
25 evidence, it's pictures of the van whenever it was taken

1 off of the tow lift, and I'm going to hand those to you.
2 And there's some others, and then I'm going to show you
3 the ones that are in evidence that document the
4 mechanical, okay.

5 A. Okay.

6 Q. Okay, so first, just to refresh -- so, we'll just do
7 this real quick. So this is documenting when you went --
8 when you were dealing with the actual van, correct?

9 A. I'm sorry?

10 Q. This was the van?

11 A. Yes, this was --

12 Q. At Danny's?

13 A. Yes.

14 Q. Okay.

15 A. This was the general vehicle.

16 Q. Okay, that's fine. So, this is the general vehicle,
17 however, you were there taking the photographs, correct?

18 A. Correct.

19 Q. Okay, this is what we're seeing on the day of July
20 the 11th.

21 A. Uh-huh (affirmative).

22 Q. Is that right?

23 A. Yes, ma'am.

24 Q. This is all documented. And damage to the vehicle,
25 correct?

1 A. Correct.

2 Q. And since you took these photographs -- and I'll
3 just stop at that one. Since you took these photographs,
4 you were already aware about the outside, the exterior
5 damage to the van; is that correct?

6 A. Correct.

7 Q. Okay. Now, specific to what you said was happening
8 on July the 22nd, if you could please tell the jury what
9 it is that you're doing, what you're looking for, and why
10 it's significant, okay. So, what are we seeing? This is
11 actually State Exhibit Number 70.

12 A. So, this appears to be the right rear of the vehicle
13 with the tire removed, what's being documented right here
14 are the leaf springs and the brake lines that are coming
15 from the front of the vehicle towards the brake caliper
16 rotor.

17 Q. And what I'm going to do, because I want you to be
18 able to get the context of it, I know that it's hard to
19 tell just from the photo, I'm going to hand these to you.
20 They're State's 70 through 82, and they're already in,
21 just in case you have a question of what the photograph
22 is referencing, okay?

23 A. Okay.

24 Q. There you go.

25 A. Thank you.

1 Q. So, this is what -- and now when you're looking at
2 this particular photo, what if anything, was documented
3 of concern or, you know -- or problematic in regards to
4 the functioning of these parts of the van?

5 A. Nothing.

6 Q. Nothing? So, it's -- it was good to go. All right.
7 Now, in this one, what are we seeing in this particular
8 photo?

9 A. What you're seeing is -- sorry, the picture is a
10 little blurry.

11 Q. No, that's fine.

12 A. Lines going into the back of the brakes, and I
13 believe that one is the wheel speed sensor.

14 Q. And do you need to refer to your MAIT report or any
15 documentation let me know, I don't mind handing that up.

16 A. Okay.

17 Q. Okay?

18 A. Okay.

19 Q. Okay, are you good?

20 A. I'm good, yeah.

21 Q. Okay. So, what is it that you're looking for, and
22 Sisler were looking for, in this particular photo?

23 A. Anything being ripped or cut or torn, anything not
24 hooked up to where it's supposed to be hooked up,
25 anything leaking, things of that -- things like.

1 Q. What was your conclusion after looking at that part
2 of the van?

3 A. Everything looks as it should.

4 Q. As it should. So, no problems, no defects, no -- no
5 damage?

6 A. Correct.

7 Q. What is it that you're documenting in this
8 particular photograph?

9 A. So, right there we're documenting, we're trying to
10 see -- we don't take the calipers off in every case,
11 we're trying to get a look at the pads that are on there,
12 the brake pads, to make sure there's adequate friction
13 material.

14 Q. Okay. And this brake pad that you took a picture of
15 right here, are you -- what are you telling us in regard
16 to the friction material and whether or not there was
17 anything wrong with that brake pad?

18 A. There's a serviceable amount.

19 Q. Okay.

20 A. So every -- everything looked as it should.

21 Q. So no concerns with that one as well?

22 A. Correct.

23 Q. This one, and I don't remember, so you'll have to
24 refresh my memory too, what is it specifically we're
25 seeing on that close-up?

1 A. That is the brake pad inside the caliper, and again
2 we're for -- checking that friction material.

3 Q. The friction material, okay. Why is the friction
4 material important?

5 A. Because that's what makes contact with the rotor
6 that causes the vehicle to slow down and come to a stop.

7 Q. Slow down and come to a stop, okay. So, it's very
8 important, all right. But here there's no problem?

9 A. Correct.

10 Q. Now here we're kind of backed out a little bit
11 again, what is it that we're -- what we're looking for in
12 this particular photo?

13 A. So, that is an overview of the brakes, again, just
14 looking for anything that might be ripped, detached,
15 disconnected, leaking, things like that.

16 Q. And at this point you're there the next day, if
17 there had been anything, you know, detached or leaking or
18 -- is that something where in your experience you would
19 expect to see?

20 A. If you're there after the fact?

21 Q. Uh-huh (affirmative). I mean, like the detached --
22 if you're look at it and you see something detached -- I
23 know you can't tell me when exactly that would've
24 happened, I'm saying that because you're not seeing it
25 here, okay, and you're saying everything looks fine in

1 working order here, is that fair to say?

2 A. That -- correct, everything appears to be in working
3 order as it should.

4 Q. Okay.

5 A. Nothing's been detached or broken.

6 Q. Okay. And if it had been -- and if one of the lines
7 had been broken, and you saw some type of a liquid or
8 something coming out of it that's actually on a part of
9 what we're looking at here, is that something you would
10 document?

11 A. Yes.

12 Q. And would that be something that -- I don't know if
13 it would give you concern or not, I'm just asking you.

14 A. We'd want to try and figure out where that fluid
15 came from, document the area, and see if there's other
16 fluids similar to that, and see if we could find out
17 where that's coming from or if it's just water from it
18 raining.

19 Q. Okay. Fair enough, all right. So -- but you didn't
20 have to do that here?

21 A. Correct.

22 Q. Okay. All right, now, here obviously what are we
23 seeing in regards to the van?

24 A. That is the driver's side front tire.

25 Q. So, what are you going to be looking for that is

1 different from the general vehicle examination that was
2 done by Rivett?

3 A. So, we're still checking all the brakes, all the
4 suspension, steering components. We want to get a look
5 at the back side of that tire and find out why it's flat.

6 Q. Okay. And so who is holding the tire?

7 A. That is me.

8 Q. That is you, all right. So, what are we seeing to -
9 - that is problematic with the front driver tire?

10 A. It has been -- the sidewall is blown out and ripped.

11 Q. What are we seeing in this particular picture?

12 A. That is the caliper from the driver's side front
13 wheel, again that had adequate friction material on it.

14 Q. So kind of going back, this is after the tire has
15 been removed, and this is how it looked to you?

16 A. Correct.

17 Q. And once again, another actual angle, is this still
18 the front driver's side tire?

19 A. It is.

20 Q. As a matter of fact, is that a part of the front
21 bumper that we're seeing in the left side of the picture?

22 A. Yes, it is.

23 Q. All right. So, what are you documenting in this
24 particular picture of importance?

25 A. Being documented right there is the brake line at

1 the top, seeing if there's anything leaking, seeing if
2 it's ripped, seeing -- making sure it's still attached to
3 what it's supposed to be attached to. There is steering
4 linkage components in there as well as suspension.

5 Q. Okay. So what line is this?

6 A. That's the brake line.

7 Q. That's the brake line. And again, the brake line,
8 no concerns, no issues with that?

9 A. Correct. All lines were dry and tight.

10 Q. All were dry and tight. And was that documented in
11 your final mechanical vehicle examination?

12 A. It was.

13 Q. And the friction on the brake pad, is this what
14 you're showing here?

15 A. Correct, that's going to be the front passenger
16 side, and that's showing the amount of friction material
17 on that brake pad and it's serviceable.

18 Q. What is it we're seeing here it's like -- is that
19 you and the car (inaudible) holding a tire?

20 A. That's me.

21 Q. Okay. So, where are we in regards to what we're
22 looking at here?

23 A. So that's going to be, again, the front passenger
24 side tire, we're showing that -- showing the brake line,
25 showing parts of the steering components down there on

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1 the bottom as well as suspension.

2 Q. And the suspension, all right. The front passenger
3 side, any concerns regarding the mechanical components of
4 the vehicle?

5 A. Everything looked as it should, all brake lines were
6 dry and tight.

7 Q. Now, where are we looking at this point?

8 A. This is under the hood, this is the brake fluid
9 reservoir, showing you how much brake fluid is in the
10 reservoir.

11 Q. And just so that I could note what we're looking at,
12 where -- can you actually see from there where the brake
13 fluid is in regards to this reservoir, like how far up,
14 how low, or can you tell?

15 A. Yes.

16 Q. Okay. Tell me kind of -- I'm going to start going
17 up, tell me when to stop whenever I get to the point of
18 how full it is.

19 A. Stop.

20 Q. Stop here?

21 A. Correct.

22 Q. So, all of this below is going to be brake fluid?

23 A. Correct.

24 Q. Okay. Do you have any concerns, in regards to the
25 amount of brake fluid and its presence, that gives you

1 any kind of concern regarding the brakes?

2 A. No.

3 Q. What is it that we are seeing in this particular
4 photograph?

5 A. That is the power steering fluid reservoir, checking
6 to see if there's an adequate amount of power steering
7 fluid, so make sure that steering wasn't an issue.

8 Q. And we actually can see where it enters into the
9 actual reservoir, and was there power steering fluid
10 present?

11 A. There was.

12 Q. Once again, in your opinion, was there any concern
13 regarding the power steering?

14 A. No.

15 Q. All right, that's actually the last photograph I
16 have for your documentation of the mechanical evaluation
17 of the van. If I can, I'm going to grab those from you.
18 Thank you. Now, Master Trooper Lindsay, will you please,
19 in your expert opinion, regarding being a collision
20 reconstructionist and, you know, part of this MAIT unit,
21 in your opinion were there any mechanical failures or
22 concerns that you had with the van, based upon your
23 examination with Sisler on July the 22nd?

24 A. We were unable to identify any kind of preexisting
25 mechanical condition that could've contributed to this

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1 collision.

2 Q. And was all of that information made part and parcel
3 of the final MAIT report?

4 A. It was.

5 Q. So, let's go back to the actual location of what was
6 determined on July the 10th to be the point of impact.
7 Are there any -- anything around that point of impact
8 like skid marks or other types of things that were not
9 necessary -- I mean, visibly what we saw on your
10 pictures, was there anything else that you recall that
11 would've been helpful for your reconstruction of the
12 collision?

13 A. Just the roadway markings.

14 Q. Okay, just the road -- did you see any evidence
15 whatsoever in the road, and I would -- I'm not obviously
16 an expert like you, where someone may have slammed on
17 brakes, or had skid marks, or some type of evidence of
18 braking close to the point of impact?

19 A. I did not -- I do not recall identifying any pre-
20 impact skid marks leading up to the area of impact.

21 Q. So, you do not -- and if you had, would you in your
22 experience, have documented that and made it a part of
23 your report?

24 A. Correct, because that would be a part of the
25 collision.

1 Q. Okay. Now, there's been some testimony, and I know
2 you haven't been here the whole time, where there was a
3 question of whether the Explorer possibly overturned or
4 that, you know, rotated after the impact from the van,
5 were you able to -- after looking at the pictures, and
6 putting everything together, were you able to kind of
7 tell from looking at everything whether or not there had
8 actually been a rollover of the Explorer?

9 A. I was never able to identify anything that would've
10 indicated that the Explorer rolled over.

11 Q. And in those particular situations where the vehicle
12 had such extensive damage to a front, as well as the top,
13 and the windshield, and the way that it looks, it looks
14 like it could've rolled over just from a lay person's
15 perspective.

16 A. It could be perceived.

17 Q. Okay. And whenever you were dealing with the actual
18 scene area, and we were looking at the debris, were you
19 able to also have pictures from Trooper Holland who had
20 been there the day before?

21 A. Yes.

22 Q. And were those pictures actually incorporated into
23 the report as well?

24 A. They were.

25 Q. So, is this also part of everything you were doing

JURY TRIAL

1 in order to make a complete conclusion in this case?

2 A. Yes.

3 Q. Now, when you were at the van, I think you mentioned
4 that, you know, the EDR -- had to explain what the Event
5 Data Recorder was, who actually imaged the EDR from the
6 van, unit 2?

7 A. Corporal Gilbert did.

8 Q. Corporal Gilbert, okay.

9 A. Yes.

10 Q. We haven't really talked about Corporal Gilbert yet,
11 and I know he's here today. But, whenever that imaging
12 from the EDR of the van was done, did you have an
13 opportunity to review that at any point in time?

14 A. I didn't. I had an opportunity to review it; I
15 didn't go over it. At the time I was not an analyst, so
16 I stayed away from it.

17 Q. So you stuck with the crash site pictures and the
18 van and the mechanical review, is that fair to say?

19 A. Yes.

20 Q. Was there anything -- and you've already said that
21 there were not any mechanical issues or failures in the
22 van, what -- can you explain to the jury why a mechanical
23 evaluation was not done of the actual Ford Explorer?

24 A. That decision is made above me.

25 Q. Okay.

1 A. So we were told to do it on the van.

2 Q. Sure, I totally understand. And moving on from
3 that, did you actually, and I think I mentioned this in
4 the beginning, do you recall doing some interviews in
5 this particular case that were documented and audio
6 recorded?

7 A. Yes.

8 Q. Do you remember who you interviewed? If you don't,
9 I can name some names.

10 A. Both the involved drivers, as well as a witness, and
11 the investigating officer.

12 Q. Okay.

13 MR. FRICK: Can we approach real quick?

14 JUDGE GIBBONS: Yeah.

15 MS. LIVELY: Okay.

16 (BENCH CONFERENCE)

17 MS. LIVELY: Beg the Court's indulgence. One
18 second.

19 BY MS. LIVELY:

20 Q. So, briefly, I'm going to ask you about the -- a
21 couple of the interviews you did. You said that you did
22 the interviews of both drivers, one of the Explorer, and
23 one from the van, correct?

24 A. Correct.

25 Q. And whenever you talked to the driver of the Ford

JURY TRIAL

1 Explorer, would that be Jessica Shanks?

2 A. Yes.

3 Q. So she's the mother of Max Shanks, and the wife of
4 Corey, and mother of Griffin, correct?

5 A. Correct.

6 Q. Was she willing to talk to you and cooperate in
7 every way?

8 A. Yes.

9 Q. Now, you also said that you did the interview of
10 investigating officer, Cyteco Dye; is that correct?

11 A. Correct.

12 Q. And was that audio and video recorded?

13 A. It was audio recorded.

14 Q. I'm sorry, audio recorded, all right. And once that
15 was audio recorded, is this again some information that's
16 standard for y'all to follow-up as a part of your
17 investigation?

18 A. That's right.

19 Q. All right. Now, the next person that you spoke to
20 was that Mr. Jason Palmer, the defendant in this case?

21 A. Yes.

22 Q. And just briefly, whenever you went to talk to him,
23 do you recall it being around July 13th of 2022?

24 A. Yes.

25 Q. And whenever you went to talk to him, and prior to

1 actually talking to him, based on the information that we
2 now know, did you actually provide him with his necessary
3 Miranda warnings?

4 A. I did.

5 Q. You did? All right. And once you did that, did Mr.
6 Palmer actually agree to speak with you?

7 A. He did.

8 Q. Did you ask him what he had been doing on that day
9 of July the 11th, 2022?

10 A. I did.

11 Q. All right, and what did he tell you?

12 MR. FRICK: Object to hearsay on this, Your
13 Honor.

14 JUDGE GIBBONS: Objection overruled.

15 BY MS. LIVELY:

16 Q. Thank you. Just specific to what did he tell he had
17 been doing that day before the collision?

18 A. Helping someone move.

19 Q. Helping someone move, all right. And after he told
20 you that he was helping someone move, did he also tell
21 you where he had come from?

22 A. I believe Gastonia.

23 Q. Okay. Where he had come from that morning, I'm
24 sorry, was it like somewhere in Lugoff/Camden area? Do
25 you recall?

JURY TRIAL

1 A. I don't recall if he was coming from Lugoff and
2 going to Gastonia or going from Gastonia to Lugoff.

3 Q. He clearly puts himself on I-77 between those areas;
4 is that fair?

5 MR. FRICK: Your Honor, just so I don't have
6 to object every single time, I would object to
7 anything that elicits what my client said.

8 JUDGE GIBBONS: All right. Your objection is
9 noted, you're protected on the record.

10 BY MS. LIVELY:

11 Q. Okay. At some point does he tell you that whenever
12 he's driving that he notices a noise that's kind of
13 becoming a little obnoxious to him?

14 A. Yes.

15 Q. And what did he explain to you?

16 A. It was explained that he had incurred some damage to
17 his vehicle earlier in the day, on the 3rd brake light
18 portion of the vehicle up on that housing, and that was
19 what he determined had been making that noise.

20 Q. While he was talking to you, did he ever say that by
21 going a certain speed that it actually stopped making
22 that noise?

23 A. Correct.

24 Q. Tell the jury what speed he told he would get up to
25 and it would stop making that noise.

1 A. I don't recall the speed.

2 Q. Okay. If I show you his actual statement, would
3 that help refresh your memory?

4 A. Yes.

5 Q. All right, hold on. That bottom paragraph here,
6 just use that to refresh your recollection.

7 A. Okay.

8 Q. Okay. Now once he was telling you about the noise
9 that it was making, how fast did he say that he would go
10 and it would actually stop making that noise?

11 A. 80 up to 90.

12 Q. 80 up to 90? Okay. Just one second, I want to find
13 this one last question I want to ask you; give me just a
14 second. Do you recall him saying, and I'm just going to
15 -- that he was responsible ,and that maybe for something
16 like, do y'all have voluntary manslaughter or vehicular
17 manslaughter in South Carolina?

18 A. I recall him saying that.

19 Q. You recall him saying that, okay. So, at that point
20 in time did he take responsibility for what he had done?

21 A. I believe so.

22 Q. After that did you have any further involvement in
23 the investigation and collection of evidence in this
24 case?

25 A. Not that I can recall.

JURY TRIAL

1 Q. Okay. Other than being here today and also
2 assisting with putting together the final MAIT report?

3 A. Correct.

4 Q. Okay. Thank you so much. Answer any questions the
5 Defense may have.

6 JUDGE GIBBONS: Mr. Frick, your witness.

7 CROSS-EXAMINATION

8 BY MR. FRICK:

9 Q. Are you Investigator? I'm sorry, I missed my --
10 what's your title again? I'm -- I can't ever --

11 A. It's Investigator. My rank is Master Trooper.

12 Q. Do you mind if I just call you investigator then?

13 A. Yeah, it's fine.

14 Q. Investigator, the determination of at-fault, had
15 that been made by the Troop earlier?

16 A. Correct.

17 Q. That's not -- that wasn't your role in this, right?

18 A. Correct, we don't determine fault.

19 Q. Okay. And in this particular case, who would be the
20 key person that would make that determination, or write
21 the report that makes that determination?

22 A. That would be the investigating officer in the
23 Troop.

24 Q. Okay. And in this particular case do you know who
25 that was?

1 A. Trooper Holland.

2 Q. I'm going to show you, there's a report that y'all
3 do, right? Isn't there a report where the determination
4 of fault is? A TR-310?

5 A. The TR-310, yes.

6 Q. Okay. And that would be -- is that -- does that
7 appear to be that in this case?

8 A. Yes.

9 Q. And that's the report that says essentially what
10 happened and determines who at-fault is, correct?

11 A. That's the collision report.

12 Q. Correct.

13 A. It's not --

14 MS. LIVELY: Your Honor, I'm just going to
15 object that that report is not admissible in Court
16 and also it's full of hearsay and it's the initial -
17 -

18 MR. FRICK: I am not seeking to admit it. I'm
19 just --

20 MS. LIVELY: I just wanted to be sure before -
21 -

22 MR. FRICK: I just wanted to clarify who the
23 officer.

24 JUDGE GIBBONS: Objection overruled, it's
25 cross-examination.

JURY TRIAL

1 MS. LIVELY: Okay.

2 BY MR. FRICK:

3 Q. And on there it says who the investigating officer
4 is, correct?

5 A. Correct.

6 Q. And what does it say?

7 A. That's Trooper Dye.

8 Q. So, I know you don't remember if you went to the tow
9 yard or to the scene first, right?

10 A. Correct.

11 Q. But it was the next day. Obviously the cars had
12 been moved, right?

13 A. Correct.

14 Q. So when you're on I-77, what you've got to go by is
15 the paint marks that were put down the day before, right?

16 A. And the evidence that's still there.

17 Q. Right. Right. I mean, obviously the troughs are
18 still there, there were tire marks in the road, correct?

19 A. Correct.

20 Q. Okay. But, as far as trying to determine the point
21 of impact, essentially your go-by is what Trooper Holland
22 painted on the road that -- the day before, right?

23 A. The area of impact is based on what we -- they paint
24 that in the road, we base it off of where we first start
25 seeing evidence, and it can be somewhat determined based

1 off of that.

2 Q. Gotcha. But it is your starting point?

3 A. Correct.

4 Q. Okay. And essentially what you're doing is you're
5 just -- you're following the path, just trying to
6 reconstruct what occurred, right?

7 A. We're following the path of the vehicle and showing
8 the evidence that was caused by each vehicle.

9 Q. Okay. And I think there was some testimony that --
10 I'm going to keep -- you're calling it something
11 different what I'm calling it, but you call it what you
12 call it, but the point of impact that Trooper Holland
13 painted on the road, you said there was something about
14 some tire marks that went towards the median?

15 A. Uh-huh (affirmative), yes, sir.

16 Q. And that of course is the direction that the -- you
17 later learned that's the direction where the van went,
18 right?

19 A. Yes, sir.

20 Q. Other than pressing brakes or accelerating, is there
21 any other way he could've left those tire marks?

22 A. It could be post-impact, if you turn your wheel also
23 hard enough at certain speeds it can leave -- the tire
24 can leave a mark --

25 Q. Okay.

JURY TRIAL

1 A. -- based on the way your vehicle leans.

2 Q. Okay. Well, did it look like it was because of
3 turning his wheel?

4 A. At that point the vehicle is going that way, just
5 looking at the pictures, it could've been post-impact
6 turning the wheel, or it could've just been post-impact
7 from the tire possibly being deflated at that time.

8 Q. But nonetheless there are tire marks going off in
9 that direction, correct?

10 A. Correct.

11 Q. And then there was a debris off there on the left
12 side of the road in the northbound lane that you said
13 appeared to be consistent with the taillight of the Ford?

14 A. Correct.

15 Q. Okay. And it was still there the next day when you
16 got there, correct?

17 A. Correct.

18 Q. Did you collect it?

19 A. No, sir.

20 Q. Your examination of the -- the mechanical
21 examination of the van, I think that occurred on the
22 22nd, correct?

23 A. Yes, sir.

24 Q. So some 11, 12 days after the incident, 11 days
25 after you became involved in the case?

1 A. That's correct.

2 Q. But it was still over at Danny's tow yard, correct?

3 A. Yes, sir.

4 Q. And you started looking at -- you said the brake
5 pads, everything looked fine?

6 A. Yes, sir.

7 Q. You don't take the calipers off?

8 A. No, sir.

9 Q. I mean, I see that you did do a close-up of the
10 brake pad, and you can see that there is brake pad on any
11 of them, correct?

12 A. Yes, sir.

13 Q. But you don't remove the rotor to see -- to look
14 behind there?

15 A. No, sir.

16 Q. No issue with the brake lines?

17 A. None that we found, sir.

18 Q. Okay. And you saw that it had enough -- it looked
19 like it had sufficient brake fluid in the reservoir?

20 A. Correct.

21 Q. I don't know a heck of a lot about cars, but I know
22 enough to be dangerous, I didn't see a master cylinder in
23 there, how -- how would the brakes have been controlled
24 in this particular vehicle?

25 A. What -- you talking about the master cylinder?

JURY TRIAL

1 Q. Yeah.

2 A. That sits below --

3 Q. It's below the reservoir?

4 A. Below the reservoir, yes.

5 Q. Okay. Did you check the master cylinder to see if
6 there were any issues?

7 A. I don't recall if Sergeant Sisler did or did not.

8 Q. And just to be clear, the master cylinder is what
9 actually controls the outflow of the brake fluid to the
10 brake pads, correct?

11 A. Yes.

12 Q. Okay. And power steering seemed to be fine, didn't
13 have any issue there, correct?

14 A. Correct.

15 Q. Okay. The Solicitor was asking about the
16 possibility of a rollover, was the scene at I-77 still
17 muddy when you got there the next day?

18 A. It was.

19 Q. And you reviewed the pictures, it appeared to be
20 very muddy, there was water on the side of the road?

21 A. Yes.

22 Q. It was wet out there.

23 A. Yes.

24 Q. As an expert, if that vehicle had rolled over, would
25 you have expected to see mud on the top of it, given the

1 conditions?

2 A. It depends on how the vehicle rolls, it depends on
3 the speed.

4 Q. Okay. But you don't believe it rolled over? It
5 doesn't appear to have rolled over?

6 A. It doesn't appear to have rolled over.

7 Q. The damage that occurred likely was what occurred
8 when it hit that one -- that major tree right there; is
9 that fair to say?

10 A. Correct. Yes, sir.

11 Q. And I think when you look at the pictures, there
12 appears to have been a sunroof, do you recall?

13 A. I -- I don't recall.

14 Q. Okay. And you were present when the -- the EDR of
15 the van was done, correct?

16 A. Yes.

17 Q. And I guess, is that Trooper -- I guess that trooper
18 is -- is that trooper present here?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. I won't ask you anymore about that, 'cause that
23 wasn't your area then. The Solicitor asked, and I just
24 wanted to follow-up on this, you said the decision not to
25 make a mechanical evaluation of the Ford was -- was above

JURY TRIAL

1 you?

2 A. Correct.

3 Q. Is that something that y'all can do though, if you
4 feel it's necessary, is do an evaluation of the other
5 vehicle?

6 A. If we feel it's necessary we can do a mechanical
7 examine on the other vehicle.

8 Q. But in this particular situation, you were told not
9 to do it?

10 A. We weren't told not to do it, we didn't see a need
11 to do it on the Ford.

12 Q. Okay. Well, the person above you said we don't need
13 to do it?

14 A. I believe so.

15 Q. The interview with the parties that you spoke to,
16 everybody spoke to you voluntarily, right?

17 A. Correct.

18 Q. Even Mr. Palmer, right?

19 A. Yes, sir.

20 Q. You advised him of all his rights and he said yeah,
21 I'll talk to you?

22 A. Yes, sir.

23 Q. And he did tell you that there had been some damage
24 to the back of his car?

25 A. Correct.

1 Q. Did you note that in any of the pictures?

2 A. You can see that in some of the photographs, you can
3 see that bezel that holds the light in is detached on the
4 one side, and there's on picture in particular where it
5 looks like the cover for the third brake light is
6 actually popped out.

7 Q. I'm going to show you what's been marked as State's
8 Number 13.

9 A. Yeah.

10 Q. Does that show the damage you're talking about?

11 A. Correct.

12 Q. And I'm just going to point to it, that's the -- the
13 thing that was making the noise, I'm going to suspect?

14 A. Correct, that -- that's my best estimate.

15 Q. Beg the Court's indulgence one second. You were
16 present on the 11th, when -- I think you might've taken
17 some of the pictures, when they did the examination of
18 the van?

19 A. Correct.

20 Q. And just to clarify, I'm going to show you 15, 16,
21 17, from the Defense. Are those photographs that I'm
22 guessing you or one of the other trooper's took that day?

23 A. Yes, sir.

24 Q. And then y'all took a picture of the back of the
25 van, correct?

JURY TRIAL

1 A. Yes, sir.

2 Q. I don't know if this is documented in photos, did
3 y'all take any of that stuff into evidence?

4 A. I don't know if anything was taken into evidence.

5 Q. And again on number 18 --

6 A. That --

7 Q. -- this item that's documented?

8 A. That is a piece of glass with appears to be burnt
9 material inside of it.

10 Q. Was that taken into evidence?

11 A. No, sir.

12 Q. Okay. One more second, I might be done. Thank you,
13 sir, that's all the questions I have.

14 JUDGE GIBBONS: All right, redirect?

15 MS. LIVELY: No questions from the State, Your
16 Honor.

17 JUDGE GIBBONS: All right, thank you, sir, you
18 can step down. Y'all ready for the next witness or
19 do you want to take a break?

20 UNIDENTIFIED PERSON: Let's do one more.

21 JUDGE GIBBONS: All right. Call your next
22 witness.

23 MS. LIVELY: Yes, Your Honor. The State would
24 call Corporal Jason Gilbert to the stand.

25 JUDGE GIBBONS: All right, sir.

1 THE CLERK: Please state your full name.

2 MR. GILBERT: Jason Douglas Gilbert.

3 THE CLERK: You do solemnly swear or affirm
4 the testimony you give to be the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 MR. GILBERT: Thank you, sir.

7 JASON GILBERT

8 was called as a witness, and having been first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. LIVELY:

12 Q. Please state your name and your occupation and title
13 for the record.

14 A. I'm a First Sergeant Jason Gilbert. I'm currently
15 employed by the South Carolina Department of Public
16 Safety. I am the -- currently the project manager for
17 the -- our information technology law enforcement team.
18 At the time -- at the date of this incident, I was the
19 Corporal for the South Carolina Highway Patrol Midlands
20 MAIT team.

21 Q. And how long had you worked for the Midlands MAIT
22 team?

23 A. I believe I transferred from the Coastal team to the
24 Midlands team somewhere around 2019.

25 Q. And have you got the same -- have you done the same

1 type of training that we actually had Lindsay testify to
2 earlier in regards to collision reconstruction and
3 everything that it entails?

4 A. Yes. Prior to actually going to the South Carolina
5 Highway Patrol, I worked for the City of Columbia Police
6 Department, and I was a traffic officer there, where I
7 acquired most of my reconstruction training. After going
8 to the Highway Patrol and the Coastal MAIT team, which is
9 the Charleston area, I took the -- also took the ACTAR
10 exam and was accredited with a -- as a collision
11 reconstruction -- full accreditation as a collision
12 reconstructionist. I've also had a couple classes by
13 IPTM, and attended several conferences related to
14 collision reconstruction.

15 Q. And have you ever been qualified as an expert in
16 collision reconstruction?

17 A. I have, in several civil cases, as well as a handful
18 of criminal.

19 MS. LIVELY: Your Honor, we would offer him as
20 an expert in collision reconstruction.

21 MR. FRICK: No objection, Your Honor.

22 JUDGE GIBBONS: Without objection he's
23 qualified as an expert.

24 MS. LIVELY: Thank you so much.

25 BY MS. LIVELY:

1 Q. Now, when you got involved with the investigation of
2 this particular case, will you tell the jury exactly what
3 it was that were -- was your duties that were assigned to
4 you?

5 A. Yeah, when this -- when this collision actually
6 occurred, I was again the supervisor for the team for
7 taking on-call, I was the Corporal. We had another
8 Sergeant which was Jeremy Sisler, but I was the -- I
9 guess at the time second in command there. I received a
10 call from the Troop commander, or the on-duty Lieutenant
11 at the time, advising that they had a collision involving
12 a fatality, in which they're required to notify our team.
13 And it's up to us to determine -- or me to determine at
14 that point whether or not -- what our response is going
15 to be, whether we're going to go immediately or we're
16 going to come back -- we're going to come out at a later
17 time to evaluate the scene. If you'd like to go into it,
18 I have several -- several reasons why that I deferred the
19 case until the following morning.

20 Q. Okay.

21 A. Primarily due to the -- the -- at the time there was
22 no felony charges that were filed -- that were -- that
23 were made. When the initial call was made it was a fatal
24 collision, but we cover several counties, I believe 13
25 counties is what we cover, and we're running -- we have a

1 -- run on a two man team for an immediate call out. If I
2 were to send out our team for a fatality without felony
3 charges at the time there is a potential -- a high
4 potential for another case somewhere in the state in
5 which would have felony charges, which then we could not
6 respond to because we're already at a scene. So, I have
7 to kind of weigh -- there's a lot to weigh into it as far
8 as that decision goes. But between that and the
9 impending weather with the -- the rain and everything
10 that was going on, it's really limited on what we could
11 gain from being on scene at that exact moment. So, I
12 made the decision at that point on the initial call to
13 defer until the following day.

14 Q. Okay. And in that initial call, is that very like
15 fresh in the beginning of everyone figuring out what may
16 have happened on that day?

17 A. Yes. It was essentially immediately after the on-
18 duty Lieutenant was notified that there was a fatality
19 involved.

20 Q. And would that be, I think he's now Captain Darby?

21 A. It would be, yes.

22 Q. So you actually spoke with Captain Darby about what
23 you knew just initially, that there was a fatality, and
24 response by Highway Patrol at that point?

25 A. Yes. And I advised him that we would -- I would

1 send a team out the following day.

2 Q. All right. Now, as the day progressed, did you find
3 out or learn more information from Captain Darby?

4 A. I did. He called me back, I don't remember the
5 exact timeframe, I'm going to estimate a little over an
6 hour --

7 Q. Okay.

8 A. -- after that in which case he advised that they had
9 found some substances in the vehicle and -- and they were
10 sending a trooper to go speak with the driver and
11 determine whether or not charges would be filed. And
12 subsequently on a third call, I believe, he advised that
13 they were charging the driver of one of the vehicles with
14 felony DUI with death, at which case -- but however, at
15 that point, my next question was have the vehicle -- are
16 tow trucks on the scene, 'cause it had been a significant
17 amount of time, because if the vehicles had been moved
18 there's nothing that I can't get the following day from
19 the scene or from the tow yards that would be beneficial
20 to essentially -- for lack of a better way of putting it,
21 burning a call out team to go out that night. So -- so I
22 remained it as a deferred callout, because he advised
23 that there was in fact a tow truck on scene, and they had
24 already hooked up to one of the vehicles. I'm not sure
25 which one, but they had already hooked up to one of the

1 vehicles.

2 Q. So at that point, you've already got the emergency
3 responders, and you don't even know, 'cause you weren't
4 there, but obvious -- you know, probably with a fatality
5 and the people involved, emergency responders and the tow
6 trucks even by that time, had arrived to take possession
7 of the vehicles. So, at that point in your investigative
8 experience is it one of those things where you're going
9 to have to rely on the troopers who were actually present
10 and involved in that initial part of the investigation to
11 provide you that information?

12 A. There's -- there's a lot of information that is
13 gathered from the troopers that are on the scene. The
14 initial photographs that would be required to be taken by
15 the road troopers, the initial markings of what they
16 believe to be the evidence would be marked by the
17 troopers on the scene. You know, obviously, any type of
18 in-car video, body cameras or interviews they would do
19 would be recorded by them, and all that's looked at by
20 the -- by the MAIT team at an appropriate time prior to
21 the report being generated.

22 Q. Yes, sir, thank you. All right, so there was just
23 now Lindsay was asked about, you know, who decides what
24 to do in regards to the vehicles, are you the person that
25 made those decisions as to what was to be done in this

1 particular case?

2 A. Not entirely. I make a lot of the decisions on who
3 does what. I'm not -- it depends on how far you're going
4 down the list on that, the -- as far as initial duties of
5 what everybody is doing --

6 Q. A six-point list of duties that Captain Darby
7 actually already testified to in regards to what the
8 focus would be of the investigation, do you recall what
9 that was?

10 A. I don't know what the issues were, but, yes, that
11 would be myself and Corporal -- or Sergeant Grant --

12 Q. Okay.

13 A. -- Cooke.

14 Q. Just to help you refresh your memory, I'll hand you
15 up just a final report. I know you didn't write the
16 final report, correct?

17 A. Correct, I did not.

18 Q. But obviously your part of the investigation was a
19 part of what was incorporated into it, correct?

20 A. Yes.

21 Q. Okay, I'll just give it to you so you can -- if you
22 need to refresh your recollection, it's been marked
23 State's Exhibit Number 96, but just use it for a
24 reference, okay.

25 A. Sure, thank you.

1 Q. Sure. So, the things that were decided, you were
2 one of the supervisors, even though you may not have made
3 all of those decisions, what were the initial decisions
4 made regarding the -- the important information to be
5 gathered in a follow-up by your team?

6 A. So, the -- the issues that we basically agreed upon
7 with the Troop that we would address were to document the
8 scene, any physical evidence, to complete the mapping or
9 we call it CAD, of the collision scene, basically a
10 diagram or a scaled diagram of it, to image and analyze
11 the data recorder for unit -- both units 1 and 2, to
12 complete a mechanical examination of unit number 2, and
13 determine how the collision occurred.

14 Q. Okay. What was your specific and most important
15 role in everything that was done that was actually a part
16 of what you did -- what you actually did in this case?

17 A. I was the scene supervisor that following morning
18 and throughout that day. So, I was out -- I directed the
19 team essentially, division of duties on who's going to do
20 what. Myself, I actually flew the drone, the SUAV drone,
21 to take aerial photographs of the scene, and I also
22 personally imaged the airbag control module in the van.

23 Q. Okay.

24 A. The -- do you want to know the -- I mean, Grant
25 Cooke, was the -- he imaged -- or he mapped the scene.

1 Q. Okay.

2 A. Which was -- kind of goes along with the aerial
3 photographs that were taken at a later point.

4 Q. So, clarify this kind of the mystery of the five
5 feet of orange spots that Trooper Holland was talking
6 about he actually spray paints on the ground, tell us how
7 that ends up being helpful to you in the drone.

8 A. Well one, it makes it visible. The paint on the
9 roadway makes it -- makes it visible. It's -- what was
10 marked as what they believed was relevant to that
11 collision, what looks fresh, what looks like it was
12 caused as a result of the collision. In this case, I
13 believe what we're referring to is the area of impact
14 orange marks.

15 Q. Yeah, he actually of the pictures that we saw on the
16 asphalt, actually says POI, and there's like a circle
17 around it, so just tell us what relevance that was for
18 you in what you did.

19 A. Okay. A lot of people refer to it as a point of
20 impact, or POI, I really don't like that term as a point
21 of impact, because that signifies that an exact point in
22 space that this collision occurred. In -- in collision
23 reconstruction, I prefer to refer to it as an area of
24 impact, but it's an approximate area. I can't tell you
25 down to the nanometer where this collision actually

1 occurred, but I can tell you approximately, this is where
2 the evidence starts, so the collision likely would've
3 occurred at that point or very soon -- very -- very close
4 prior to that to cause the vehicles to push into the
5 ground and make the gouge marks, tire marks, and anything
6 like that. And in this case what they can see in the
7 roadway after the vehicles have collided and they come to
8 their final resting positions, is essentially what the
9 evidence that's left on the roadway there, which is very
10 close where that -- where that evidence all travels back
11 to and begins from is very likely -- or is the area of
12 impact, in which they had labeled as a -- as a point of
13 impact, but --

14 Q. And in regards to that information that you are able
15 to actually map, once you use the drone or the SUAV, and
16 you do all the aerial photos, what do you do with that
17 information, where does it go?

18 A. Well let me back up a little bit on the UAV. Prior
19 to actually flying the UAV, we place out what's called
20 ground control points, they're green -- green and black
21 squares, kind of look like targets if you -- kind of --
22 they are -- they are targets, but in the center of those
23 targets are as a whole in which case when whoever is --
24 I'm sure you've seen people surveying land before, but we
25 have what's called a GNS System, it's like a survey

1 instrument that records the GPS coordinates specifically
2 to where that -- end of that pole is, and both an X, Y,
3 and a Z are actual position on the earth along with
4 altitude or elevation. But with those five control
5 points that I placed out on the ground, I put them out in
6 a W formation, so you have one at the top, then it kind
7 of zigzags back and forth across the interstate. And
8 what that does is when I go through and map that with the
9 GNSS I can take those -- those points that were mapped
10 with -- with no GPS coordinates and process that along
11 with the imagery that was taken from the drone, and tell
12 them exactly this point on this image is this place and
13 time and when -- when the -- all those pictures are put
14 together, it basically puts it to scale with a very
15 minimal -- very small sub-inch level -- level of error.

16 Q. Okay.

17 A. So, to go back into the question I think you
18 initially asked, once the -- once we take the drone, I
19 fly a double grid mission over top of it, which is
20 basically longitude over the interstate and laterally
21 over the interstate in both directions. It takes several
22 hundred pictures. It's an automated flight, it's mapped
23 by the corners for the -- for the drone and basically the
24 -- program the drone to take pictures, it takes the
25 pictures, it makes the flights, and then we download

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1 those -- those imageries or those pictures and process
2 them with a -- with some software that puts that
3 together.

4 Q. I'm going to show you a few photographs and just ask
5 you if this is a reflection of what you just now
6 testified to that the CAD and the information that you
7 put into it spits back out, I don't know a nice way to
8 say it, but you can tell me the correct way, but just
9 look at this and if this is an accurate representation
10 then I'll have it marked, and have you discuss it with
11 the jury.

12 A. So to clarify, there are -- this is created with the
13 help of the SUAV imagery. This is -- this is
14 specifically surface roadways -- or in the CAD program
15 with all the imagery and point cloud that's made, we draw
16 the surface over -- on -- on that --

17 Q. Okay.

18 A. -- surface essentially. So it's -- this is
19 generated from as a -- the imagery that's generated from
20 the drone is a -- used to help validate and generate
21 that, so, yes, that is correct. This is a correct
22 representation.

23 Q. It is a correct representation?

24 A. Yes.

25 Q. Okay. Now what we're going to do is I'm just going

1 to keep all this together. We'll just have it as one
2 exhibit and I'm going to pull that up real quick so you
3 can explain -- we're going to have you explain what that
4 is to the jury, so they'll understand what you did with
5 this information.

6 JUDGE GIBBONS: All right, let's going to --
7 we're going to take a break real quick.

8 MS. LIVELY: Yes, sir.

9 JUDGE GIBBONS: Ladies and gentlemen, don't
10 talk about the case. Thank you very much.

11 (JURY EXITS)

12 (BREAK)

13 (BENCH CONFERENCE)

14 (JURY ENTERS)

15 JUDGE GIBBONS: Mr. Foreman, we'll talk about
16 the scheduling issue that I mentioned to y'all
17 during the break, we'll talk about that after the
18 last witness today, which won't be too much longer,
19 okay. Thank you. All right, Madam Solicitor, you
20 may resume your questioning.

21 MS. LIVELY: Yes, thank you, Your Honor.

22 BY MS. LIVELY:

23 Q. So, I'm just going to refer to State's Exhibit
24 Number 97, you said that it was a reflection of the
25 information that you were able to create by using the

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1 imagining from the SUAV; is that right?

2 A. Yes.

3 Q. So when you put that information in there, then we
4 have the visuals we're getting ready to see?

5 A. Correct. It's a 3D representation.

6 Q. 3D representation onto the paper.

7 A. Correct.

8 Q. Okay. All right, so State's Exhibit Number 97,
9 moved to enter it at this time, Your Honor.

10 MR. FRICK: No objection, Your Honor.

11 JUDGE GIBBONS: Without objection, introduced,
12 permission to publish.

13 MS. LIVELY: Thank you.

14 (State's Exhibit 97

15 was introduced into evidence)

16 BY MS. LIVELY:

17 Q. And I'll just flip through it for you -- or I'll let
18 you hold this as well, as State's Exhibit Number 97. So,
19 what is it that we're seeing in this particular visual?

20 A. Exhibit 97 is titled roadway, that would be the
21 roadway as it -- depicted basically prior to the
22 collision.

23 Q. Got it.

24 A. Without the vehicles or any post-collision roadway
25 evidence.

1 Q. Okay, so this is the basic flyover at this point?

2 A. Correct.

3 Q. Okay. And I've -- and I'll probably say it wrong,
4 so please correct me if I say something wrong, all right,
5 so what are we seeing here?

6 A. This is a -- a -- I hate to use the word cartoon,
7 but it's basically the animated or the drawn
8 representation of the vehicles at their area of impact at
9 the time of impact.

10 Q. At the time of impact?

11 A. And that's based on roadway evidence and damage
12 profiles on the vehicle.

13 Q. And damage profiles on the vehicle.

14 A. Correct.

15 Q. I just want to make sure that we've got that. So
16 from what you've inputted from the flyover and the damage
17 on the vehicles.

18 A. The roadway itself is from the flyover.

19 Q. Okay.

20 A. The vehicles are a -- based off the vehicle
21 examinations, photographs from the vehicle, basically
22 looking at what damage is on the vehicles and applying
23 that to the -- to the collision scene.

24 Q. Fair enough. What are we seeing in this particular

25 --

1 A. This is -- this is the -- the -- that's essentially
2 the secondary impact. So, the first one was the impact
3 of the two vehicles, this is the impact of the -- the
4 Ford versus the trees.

5 Q. Okay.

6 A. After it left the right side of the roadway, and the
7 -- the van is en route to its final destination, or its
8 final rest location. So, that would be its approximate
9 location at the time that the -- at some point during --
10 it's just showing that it's not quite reached its final
11 location. So it's -- it's -- it's just an interpretation
12 or relative location of where the van would be
13 approximately at the time that the other vehicle hit the
14 trees.

15 Q. The other vehicle impacted the trees?

16 A. Correct.

17 Q. Okay. And the red markings are kind of hard to see
18 here, but is that based on the photographs and the tire
19 marks from those photographs that you documented?

20 A. So, that's not only based off those photographs and
21 the evidence from there, it's based off the mapping that
22 was done with GNSS -- GNSS system that I referenced
23 earlier, which is all supporting itself, they all agree
24 with each other, so it's -- it's placed on -- on the
25 diagram as collision evidence.

1 Q. So that's conclusionary, the pathway of both of
2 those vehicles up until the tree impact?

3 A. Correct.

4 Q. Okay. And then what is this one at now? I think
5 this finishes up where you were kind of starting earlier.

6 A. Yes. This is an overview of the scene with the
7 vehicles placed in their respective final rest locations,
8 with all of the evidence that was mapped, illustrated on
9 the -- on the diagram.

10 Q. All right. So, then that's why in the picture four
11 we didn't see the resting spot of the van, because the --
12 you have the different impacts for the Ford Explorer?

13 A. Correct. Correct. And like I said, where that van
14 is placed in the diagram is just a -- on the previous
15 one, it is -- is an approximation.

16 Q. I understand.

17 A. That's not calculated in that location, it's just
18 showing that it's somewhere between -- in that area.

19 Q. Got it. Okay, but this is a conclusionary --

20 A. These are all mapped locations, actual final rest
21 locations and actual mapped evidence locations.

22 Q. Okay. And was what you found and what you actually
23 mapped made part and parcel of the final MAIT report?

24 A. Yes. Just to clarify it was the -- I took the
25 imagery and Corporal Cooke was -- or Sergeant Cooke was

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1 the one that mapped it with the GNSS.

2 Q. Okay, that's fine, but I mean what we're looking at
3 here, and what you're part of the whole role was, was
4 actually incorporated into the final report?

5 A. Yes.

6 Q. Okay. Thank you. And is there -- I know this is
7 technical, so I'm just going to ask it real quick, is
8 there an error rate in regard to the area of impact
9 whenever you're -- whenever you're doing your
10 calculations?

11 A. I can't specify there's an exact error -- there's a
12 -- there's a -- well, it's kind of referred to as the ish
13 factor. I mean, it's -- they're -- you're -- you're --
14 it's never 100 percent precise but you're talking sub
15 inch level on -- on everything. I mean, it's -- it's
16 extremely accurate. In fact, with the GNSS I can tell
17 you that it calculates the error rate on that and it's
18 like .02 feet --

19 Q. Okay.

20 A. -- and some change, so it's very -- it's very
21 accurate for --

22 Q. It's very accurate, okay. That's basically, yeah,
23 just -- it's a pretty good --

24 A. Yes.

25 Q. -- accurate -- okay.

1 A. Yes.

2 Q. All right. And were you one of the peer reviewers
3 of the work that was completed by all of the team members
4 for that final MAIT report?

5 A. One of them.

6 Q. You were one of them, all right. And is that a part
7 of the process that the MAIT report has to go through
8 before it is finalized?

9 A. Yeah, we have -- we have an internal with our team
10 so -- so to -- short answer, yes.

11 Q. Okay, perfect. All right. Thank you. If you will,
12 please answer any questions that the Defense has, I --
13 Your Honor, that's all I have for this witness.

14 JUDGE GIBBONS: All right, Mr. Frick?

15 CROSS-EXAMINATION

16 BY MR. FRICK:

17 Q. All right, you explained why it was a deferred
18 report; I do have to ask you one question on that, if you
19 don't mind.

20 A. Yes, sir.

21 Q. You said at the time you were not aware that the
22 felony charges were being brought?

23 A. That -- that is correct. There are several -- there
24 are several criteria for immediate MAIT response. I
25 could go into specifics, but the general overview,

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1 multiple fatalities, felony charges, hit and runs.

2 Q. I'm not really concerned about that. What I'm
3 concerned about is in your -- this is the MAIT report,
4 correct?

5 A. Uh-huh (affirmative).

6 Q. Does that appear to be the MAIT report?

7 A. Yes, it does.

8 Q. I'm looking at page two.

9 A. Okay.

10 Q. And I'm looking at the third paragraph, third full
11 paragraph, it says upon MAIT notification it was a
12 possibly felony DUI. So, y'all were on notice on the
13 10th that it was a felony?

14 A. But at the time that this report was written, yeah,
15 it was the same -- it was the same night. It was -- I
16 said it was like an hour or so, hour and a half
17 difference.

18 Q. Okay, okay.

19 A. But it was the same calendar day.

20 Q. So, it wasn't necessarily because it was not a
21 felony involved it's just you -- the situation led itself
22 to not be.

23 A. The way the situation progressed was from initial
24 notification, was the -- there was -- they only knew
25 there was a fatality involved. If it was just a fatality

1 I would -- I would defer it, so to keep the team
2 available for the other 13 counties, 12 counties that we
3 covered, at which point when it was determined that there
4 was going to be a felony charge at that point, again with
5 the weather and everything else that was going on, the
6 benefit of making an immediate response -- there wasn't a
7 huge benefit to what we would gather from our MAIT team
8 being out there that night, processing the scene to what
9 I would have to go the next morning anyway to be able to
10 fly the drone in the daytime to get the imagery and the
11 top and map the scene and see the -- take daylight
12 photographs. The only thing that I would have gathered
13 by going immediate would be the actual photographs of the
14 vehicles at final rest in which the road -- or the
15 investigating officers were directed to take.

16 Q. Right. So, y'all -- your starting point in your
17 investigation the next day was what the officers on the
18 scene that afternoon did, the painting, the pictures,
19 stuff like that, that was your starting point, correct?
20 When you start your investigation --

21 A. The starting point, the --

22 Q. -- when you start your investigation --

23 A. Yeah.

24 Q. -- to come --

25 A. I review -- right, I review their pictures, and we

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1 go to the scene, and then I disburse the tasks from
2 there, yes.

3 Q. Right, right. And I know I understand you like the
4 term area of impact versus point of impact, I understand
5 that, how big is an area of impact then?

6 A. I would say no more than a foot.

7 Q. Okay.

8 A. That would be a approximate area.

9 Q. So it is kind of the point of impact?

10 A. I -- I'm fine with -- with stipulating to it.

11 Q. Okay.

12 A. If -- if you want it -- the choice of words.

13 Q. That's fine. But even the data that you have to put
14 into your program that is very accurate, in this
15 particular circumstance, your starting point is still
16 what was done the day before, correct?

17 A. Well with the data that I'm putting in -- you
18 talking about the imagery, the UAV stuff, processing
19 imagery?

20 Q. I guess, I wasn't exactly following that.

21 A. So that's strictly just -- I put out my four, five,
22 control points, those are mapped, I initiate that. I
23 choose where those control points go. The imagery that's
24 taken is photographs, so -- so as far as that goes what
25 ties that whole image together and makes it to scale is

1 what a camera records, it's -- there's -- there's no bias
2 to it, it's just exactly what the camera sees from, I
3 forget the altitude that I flew it at, but probably 100
4 feet up.

5 Q. Okay. And I think there was an indication from
6 another trooper, you were involved with the imagining --

7 A. Correct.

8 Q. -- of the EDR from the van?

9 A. That is correct.

10 Q. When that occurred, same has been testified to
11 earlier today, you hook -- you hook the computer up
12 that's specific to that?

13 A. Yes, the reason why I imaged it versus the --
14 anybody else was because the battery on the van was --
15 was dead essentially or didn't have enough power to run
16 the vehicle.

17 Q. Okay.

18 A. And generally when they were -- there might be -- we
19 did -- we had back power in this case, but had I had to
20 back power the vehicle to get 12 volts to the module, I'm
21 generally the one that would -- would do that.

22 Q. Okay.

23 A. In this case, to be very specific, I hooked a 12
24 volt jumper box to the battery --

25 Q. Okay.

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1 A. -- and imaged it with success.

2 Q. Okay, all right. Is the EDR collected or is just
3 the image collected?

4 A. The image is -- it's imaged.

5 Q. Okay. The physical black box itself is not.

6 A. No, it's in the vehicle.

7 Q. Do you know where the vehicle is?

8 A. Not at this time.

9 Q. Okay. Beg the Court's indulgence.

10 JUDGE GIBBONS: Yes, sir.

11 MR. FRICK: Thank you, sir, that's all the
12 questions I have.

13 JUDGE GIBBONS: Thank you, sir you can step
14 down. You can call your next witness.

15 MS. LIVELY: Yes, sir, Your Honor. The State
16 would call Grant Cooke to the stand.

17 THE CLERK: Please state your full name.

18 MR. COOKE: Grant Emmett Cooke.

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

22 MR. COOKE: I do.

23 THE CLERK: Thank you, sir. Please step right
24 here.

25 GRANT COOKE

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. Tell us your name and what is your actual title?

6 A. My name is Grant Cooke. I am currently a -- the --
7 a Sergeant with the South Carolina Highway Patrol. I'm
8 the team leader for our Midlands team for the Multi-
9 disciplinary Accident Investigation Team. At the time of
10 this collision I was a Lance Corporal, and I was just an
11 investigator like several other people you've heard from
12 today.

13 Q. Okay, so the team that we've been talking to for the
14 last couple of hours at least is part of your team?

15 A. Yes, ma'am.

16 Q. So, Sergeant Cooke, in regards to this particular
17 case, were you the one who was, and I'm just going to use
18 this term lead, for the purposes of getting all of the
19 information gathered together from each of the team
20 members, and then providing a final report regarding the
21 findings?

22 A. Under that definition, yes, ma'am.

23 Q. Under that definition, okay. So, and what other
24 definition would there be? I just want to make sure
25 we're clear.

1 A. Well just to -- just to be clear, our team leader,
2 the Sergeant, makes the ultimate decisions as to what
3 investigative steps we take along the way.

4 Q. Okay.

5 A. But as far as assembling everything and making sure
6 -- and doing the initial cursory review of all of the
7 different things that the other investigators did, I went
8 through that as I was assembling the report.

9 Q. Okay. And I've got a copy of the final report, it
10 looks like it was prepared, and it was sent to both the
11 State as well as the Defense, in regards to what each one
12 of the members talked about today, we had Rivett, we had
13 Gilbert, who was just on the stand, and then we also had
14 Lindsay, and now we have you. Does this report reflect
15 those findings and everything that you put together?

16 A. Yes, ma'am, it does.

17 Q. Okay. And before I actually put it in, I do need to
18 ask you a couple of questions, have you been training in
19 collision or -- I don't want to say accident as much as
20 collision or general collision reconstruction?

21 A. Yes, ma'am, I have.

22 Q. You have? Have you ever been qualified as an expert
23 in that field?

24 A. No, ma'am.

25 Q. You have not? Well let's talk about your experience

1 then. Do you have -- did you -- have you actually taken
2 and passed the ACTAR test?

3 A. Yes, ma'am, I -- my ACTAR number is 3681.

4 Q. All right. So you know your number off the top of
5 your head. See, that's good. All right, so let's talk
6 about this, how many reconstruction events or collisions
7 have you actually done an investigation on?

8 A. I've been with MAIT since 2019, we average roughly
9 100 cases a year, so give or take about 500 cases.

10 Q. Okay. So, really this is the first time you've had
11 an opportunity to come into Court, and be actually
12 offered as an expert in that field?

13 A. Yes, ma'am.

14 Q. All right, so let's talk about the fact that you've
15 done the ACTAR testing. Training, we've heard already
16 Gilbert talk about his training, Lindsay talked about
17 his, how does your training compare in regards to theirs?

18 A. It's very similar. I started the programs offered
19 by the Criminal Justice Academy in Columbia in 2015. I
20 completed the basic three classes, which is at-scene,
21 technical, and phase three reconstruction, and I was
22 completely done with them in 2016. Started the advanced
23 courses, but after starting them I moved to the Highway
24 Patrol to pursue this job. And -- and from there I
25 continued to take trainings. At this point, I have

1 around -- just over 1,000 hours of training in the field
2 of collision reconstruction, including advanced training
3 offered outside of the state of South Carolina, as well
4 as reconstruction conferences where we are exposed to
5 some more ideas and subject matter for this field.

6 MS. LIVELY: Your Honor, at this time the
7 State would then offer Grant Cooke, or Sergeant
8 Cooke, as an expert in the field of collision
9 reconstruction.

10 MR. FRICK: I think we should specifically
11 talk about the EDR, correct?

12 MS. LIVELY: And -- and the Event Data
13 Recording imaging.

14 JUDGE GIBBONS: All right, you can voir dire
15 him about qualifications.

16 MS. LIVELY: That's fine.

17 MR. FRICK: Yes, sir. Yes, sir.

18 VOIR DIRE EXAMINATION

19 BY MR. FRICK:

20 Q. I'm sorry, did you say Lance Corporal?

21 A. I was a Lance Corporal at the time; I'm a Sergeant
22 now.

23 Q. Sergeant. Sergeant Cooke, how many EDR's have you -
24 - evaluations have you done or --

25 A. At this time --

1 Q. -- analysis?

2 A. -- I have analyzed EDR's from I -- off the top of my
3 head over 240 cases, there's generally two cars per case,
4 but, you know, with some error, probably around 400.

5 Q. Okay. In July of '22, how many had you done?

6 A. At that point in time between two and 300. I've
7 been certified in it since 2020.

8 Q. Okay. And I think you indicated you had over 1,000
9 of reconstruction investigation classes, how about EDR
10 training?

11 A. EDR training, my initial certification was a 40-hour
12 class. I've been through the CDR technician course
13 twice. I'm also a CDR technician trainer, so I'm an
14 instructor in the technician course. And at -- all -- at
15 the different conferences I go to there is -- at almost
16 every single one of them, there may be one where there
17 wasn't, but almost all of them there is a CDR update
18 where you go and they tell you about any problems or
19 anything that people are starting to see with different
20 module types or anything like that, so.

21 Q. And in July of '22, how long had you been doing
22 accident reconstruction?

23 A. Well, I started the training 2015, so I had -- I had
24 been using it probably since 2016, so about six years.

25 Q. Okay. That's all the questions I have, Your Honor.

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1 JUDGE GIBBONS: All right, thank you. Based
2 upon the testimony, I do find that this witness is
3 an expert in the field of what, Madam Solicitor, are
4 you offering him?

5 MS. LIVELY: So it would be collision
6 reconstruction and event data recorder imaging
7 analysis.

8 JUDGE GIBBONS: All right, he's qualified as
9 an expert. Ladies and gentlemen, it means he can
10 give you an opinion, like I told the previous young
11 lady who was a witness, now you can always remember
12 that I was the first judge who qualified you as an
13 expert. Go ahead.

14 BY MS. LIVELY:

15 Q. I'm going to actually hand up to you what's marked
16 as State's Exhibit Number 96, and ask you if this is the
17 final report that was peer reviewed and prepared for the
18 investigation of this particular case?

19 A. Yes, ma'am, it appears to be.

20 MS. LIVELY: All right, Your Honor, the State
21 would offer State's Number 96 into evidence at this
22 time.

23 MR. FRICK: No objection, Your Honor.

24 JUDGE GIBBONS: Without objection, introduced.

25 MS. LIVELY: Thank you, Your Honor.

1 (State's Exhibit 96
2 was introduced into evidence)

3 BY MS. LIVELY:

4 Q. Now, let's talk about -- let's talk about what
5 everybody's already talked about, okay, Sergeant Cooke.
6 What we want to talk about now is, when you get all of
7 this information together, and you get the imaging from
8 the -- from both vehicles, that being unit 1, which was
9 the Explorer, and then unit 2, which was the van, what do
10 you do with the information that you get?

11 A. Well, first and foremost, I do a cursory scroll
12 through those -- those files and make sure I don't see
13 any issues where there were -- I look for any evidence
14 that there was some type of issue when it was -- when it
15 was imaged and when it was saved to the computer or the
16 flash drive as it made its way to our drive that we store
17 our files for me to review. After that --

18 Q. Let's call it the black -- what came out of the
19 black box, or is that not correct?

20 A. I know if you -- if you -- if you want -- if people
21 get in the weeds with it, I know they're -- I have heard
22 instructors tell me don't call it the black box, because
23 it's reads in X, Y, and Z, but the easiest and best way
24 to explain it is by referring it to that black box. The
25 difference being a black box on a airplane is recording

1 all the time. Your airbag control module in your
2 vehicles require something to make it wake up and record
3 that data.

4 Q. That's a great explanation. So there has to be
5 actually like it says event data recording, there has to
6 be an event that causes it to wake up, and then all of a
7 sudden it's like bam, bam, bam, this is where we're
8 getting some type of -- we're getting some feedback about
9 what's going on with the vehicle?

10 A. Yes, ma'am.

11 Q. Okay. So, just simple terms helps, so thank you.
12 So you get that, you get it from both vehicles, and
13 what's the best way for me to ask you, I mean, do you --
14 did you start with one vehicle and just tell us what it
15 is that you were able to find out.

16 A. Would it be -- would it be helpful if I explain my
17 process of how I typically --

18 Q. Absolutely.

19 A. -- do this? It's the way I did it with this.

20 Q. Absolutely, please do.

21 A. So, we get this data and if you -- if you get in --
22 if you were to go and get into this field, what you're
23 going to learn about is it's going to tell you don't rely
24 solely on this data, you need to rely on your training
25 and your expertise and everything else you've learned so

1 you're not going and just reading what's here and saying
2 this is the gospel truth. So, the first step I do is I
3 review the Troop -- our pictures that our troopers took
4 that night when they were on the scene. I review the
5 pictures that we took as we went and processed the scene,
6 which in -- in our case actually had gone to the scene,
7 which had an added benefit, and then I'll review the
8 vehicle pictures to look at the damage. At this -- at
9 this point in 2022, I had been on MAIT about three years,
10 so I had already seen over 200 crashes, and -- and, you
11 know, so at that time I had an idea of what you could
12 expect to see in -- in your typical collisions and what I
13 might expect to see here. So -- and that is how I
14 approach these EDR's. I want to get an idea of what --
15 what am I looking for, before I go open this and start to
16 look at these numbers to make sure that they're going to
17 make sense. Now, as -- after doing that initial look at
18 that data, I'll start with the -- the unit numbers. And
19 with these unit numbers the way that it's mentioned in
20 our report, it's for the sake of not having to spell out
21 a 2011 Ford Explorer, 15 or 20 different times throughout
22 the report, so it's -- it's just for that reason. So,
23 I'll start with whatever it's listed as, unit 1 and in
24 the case of this was our 2011 Ford Explorer, so that is
25 where I started when I started my analysis of the data.

1 Q. So you started with unit 1, number 1. All right, so
2 tell us what you were able to determine in regards to the
3 imaging from the event data recording off of unit 1,
4 which was the Ford Explorer?

5 A. Yes, so as I got into the data, first and foremost -
6 - the first thing you do is you open that data is you go
7 through that data limitations in the program. It's --
8 when -- and that'll tell you some limitations, like if
9 there's a -- a speed or if there's an element in that
10 data where if it reaches this it's not going to record
11 any higher and you're going to have to do a little bit
12 more work to figure out what it should be. It tells you
13 definitions. Like we talked about airbag -- ACM, an EDR
14 all day long where -- and we've had to talk about what
15 those things mean. It's going to tell you, like with our
16 Ford, they actually refer to their module as an RCM, or a
17 restraint control module, but that's all -- but event
18 data recorder, airbag control module, that is -- it all
19 refers to the same thing --

20 Q. Same thing.

21 A. -- that you see in this. As I get through those
22 data limitations I come down here and I'll make sure that
23 in that file -- in some vehicles, not all, but in
24 particular with the Ford it tells you what -- it has the
25 VIN, so I know that I can look and see that the VIN is

1 programmed and the VIN -- and the current VIN is
2 programmed into this, they match. So, I know that this
3 matches what the VIN that was on our vehicle when we
4 executed our search warrant, all right, so so far we're
5 good. And then I start to move down and like -- and you
6 want to look -- I'm looking for problems the whole time.
7 I am looking for a reason to say that this data is not
8 any good, and that we can't use it. So, I -- 'cause we
9 don't want to -- we don't want to waste a lot of time on
10 it. But I didn't find that in this. The next thing I
11 really start to look at is our ignition cycles with our
12 car. In the case of unit 1, our Ford, the ignition -- it
13 recorded two events when this happened and the ignition
14 cycle when we downloaded it it was 20,314 from both of
15 them. Now, the ignition cycle, every single time you
16 turn the key over in your car, if you were to have a
17 supported vehicle that we could pull data from, that's
18 plus one. You turn it off and you turn it again, that's
19 another one, and so forth and so on for the life --
20 throughout the life of your car, until -- until you sell
21 it or junk it or it's involved in a crash and it's
22 totaled, whatever the case may be. So, then the next
23 thing I want to know as I start to get into that is what
24 is my ignition cycle when a crash happens. 'Cause
25 there's -- there's a big difference in those two things.

1 There's an argument that these -- this data that we're
2 about to see might not be related. In the case of this,
3 our ignition cycle at our crash was 20,313 for both of
4 the events. And then I say okay, so we're good. Now you
5 start to go down the list of what else can I prove using
6 stuff that we already know about. So, in the case of our
7 Ford module, it talks about seatbelts, we've already
8 talked about seatbelts some today, but this -- the airbag
9 module confirms that our driver and our passenger are
10 buckled. Okay, so that matches. And I start going
11 through. Now, when you -- so the next thing we -- that -
12 - the -- the -- you go through these classes, you learn
13 to pick apart this data, but ultimately in the work -- in
14 the field of collision reconstruction, the thing that
15 most people care about is the speed. And that's --
16 that's where we're headed right now. So, we see with our
17 speed on unit 1, our Ford, that it was at 77 miles per
18 hour at five second prior to the collision occurring.

19 Q. Well, let me just ask about that, 'cause that was
20 very helpful to me when I was asking you questions.

21 Whenever the actual event happens, Sergeant Cooke, the
22 event that we -- we're all hearing about which is like
23 that impact.

24 A. Uh-huh (affirmative).

25 Q. So, at that point of impact and the data starts to

1 record, how far back does it go in regards to timing?

2 A. So, with this module it is five second.

3 Q. Five seconds. So what we're seeing from -- so when
4 you say -- and we're going to use point of impact not in
5 relation to the orange spot on the road, okay, we're
6 talking about based on what you got off the event data
7 recorder, okay. So, when you -- you have that and you're
8 able -- were you able to find that obviously for the
9 Ford?

10 A. Yes, ma'am. There is a 0.0 second sample.

11 Q. Okay, so you've got that sample. And then backing
12 up five seconds, tell the jury what it is based on the
13 speed, which you were getting ready to go in there, but I
14 just wanted to make sure they kind of understood what
15 that meant, what we're seeing for that five seconds.

16 A. So, for that five seconds, and it's five seconds
17 before our event, and I think we've gone through it, but
18 the event is when -- is the thing that says something is
19 wrong, we need to wake up these deployment systems and
20 get ready to do something, whether it's deploy the
21 airbags, or the seatbelt pretensioners that we've talked
22 about today, or maybe it's waking it up because this
23 seems like it could go bad, but it -- then it stores it
24 as a non-deployment event. But with this at minus five
25 seconds, it's 77 miles per hour, and the speed increases

1 a little bit around the three and a half second mark to
2 78, and then at times zero -- or 0.0 seconds, right as --
3 which times zero is when that event is -- is occurring,
4 we have 76 miles per hour.

5 Q. So, and when you say at the time when that event is
6 occurring, what are you referring to?

7 A. That would be the collision, the thing that is
8 waking up that -- the -- the sensors in the car are --
9 are starting to experience something that is not right,
10 it is either accelerating more than it should, or
11 decelerating more than it should, over a given time
12 period.

13 Q. Okay, so now we have the systems are awake and it's
14 starting to record the speeds, and once again, would that
15 be the speeds of the Ford Explorer that Jessica Shanks
16 was driving?

17 A. Yes, ma'am.

18 Q. Okay. So and -- and just tell me those three speeds
19 again real quick.

20 A. 77 at minus five, just for the sake of splitting it
21 even, at minus 2.5 it's 78, and at time zero or 0.0
22 seconds it's 76.

23 Q. 76, okay. At that point -- now what's easier for
24 you, to go to the -- what the van is showing at that same
25 kind of breakdown that you just gave us for the Ford?

1 A. I think so, 'cause a lot of times I will --
2 generally I will go through them both, and then I will
3 pull up my -- my data side-by-side once I decide that
4 they both are related.

5 Q. Okay. If you will, tell us what in the same type of
6 sequence you determined in regards to the van, which was
7 unit 2.

8 A. All right, so with our van, same thing, just for --
9 for covering it, our -- our -- our ignition cycles that
10 are downloaded were 9,981, and our ignition cycle at our
11 event was 9,979. Our speed on our van at the time of
12 this event, and this one is not like our other module we
13 looked at. It does not have a 0.0 second sample. It
14 stops at minus 0.5, that is a half a second, 500
15 milliseconds before the -- before the module wakes up and
16 makes the decision as to what's about to happen. But, at
17 the beginning of our data it is 98 miles per hour.
18 Around two and a half seconds -- or at two and a half
19 seconds, it drops to 97, and then it increases again to
20 98.

21 Q. And that final 98 would be -- in your opinion what
22 does that conclude?

23 A. That final 98 is a half second before the crash. I
24 would say in my opinion it is accurate.

25 Q. All right.

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1 A. If anything it may drop a mile an hour.

2 Q. Okay. What's the speed limit on I-77 around the 67
3 mile marker?

4 A. It is 70 miles per hour.

5 Q. 70 miles per hour. So we're talking 27 or 28 miles
6 over the speed limit?

7 A. Yes, ma'am.

8 Q. And was your information and in your investigation
9 also document that the roads were wet from having rained
10 that day?

11 A. Yes, ma'am.

12 Q. All right. Now, does the EDR give us any type of
13 conclusion in regards to things like braking in a
14 vehicle?

15 A. It does.

16 Q. It does. Will you please tell us what you were able
17 to find in regards to the issue of whether or not the
18 brakes were -- were used in both the Ford, as well as the
19 van, unit 1 and unit 2.

20 A. All right, so with unit 1, our Ford Explorer, our
21 brakes come on at time zero. Now with the -- with the
22 hundreds of airbag modules that I have analyzed, one
23 thing that you will see frequently is at impact the
24 brakes can be activated from the collision forces. Now,
25 the other -- but with that it is -- and in my opinion it

1 is likely that is what it is from. And that is to say
2 that it happened somewhere between the last sample at
3 minus 0.5 and that 0.0 second sample.

4 Q. Okay.

5 A. With our Chevrolet, unit 2, the brakes were not
6 activated in event one, which is the initial collision
7 with unit 1 at all.

8 Q. Okay. All right, are you showing as a collision
9 one, because collision two, would that be the van
10 whenever it actually rested finally or hit the -- I don't
11 know, that's one of the things I was going to ask you
12 about the MAIT -- about the cable barrier.

13 A. Event record two is likely associated with the --
14 with the impact with the cable barrier. It may not be
15 right as it hits it, but it is going to be around the
16 time that it is hitting that cable barrier.

17 Q. Okay, thank you for explaining that. So, in regards
18 to the initial event one, your conclusion based on the
19 EDR, the event data recorder, is that he did not press on
20 the brakes?

21 A. He did not apply the brakes.

22 Q. He did not apply the brakes. Well let me ask you
23 this, 'cause there's been -- there's been testimony and
24 as an expert I know you haven't been here the whole week,
25 but there were lay witnesses who said they never saw the

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1 brake lights -- they never saw him hit the brakes, as in
2 they did not see the brake lights come on, okay. There's
3 also been -- there's also been some questioning about
4 whether or not the -- there was maybe a brake light or
5 something broken on the back of the van, the Defendant's
6 van, okay. Does the EDR know whether or not like the
7 bulb or the brake light or whatever's covering it has
8 broken off, will that affect whether or not the brakes
9 are applied?

10 A. No.

11 Q. Okay.

12 A. It does not. With the -- with this -- this brake
13 switch status, the service brake status, it is recorded
14 when the operator of the vehicle applies pressure to the
15 brake pedal in the car. It -- so the same thing that's
16 going to cause your brake lights to come on is also what
17 causes this to record --

18 Q. Okay.

19 A. -- that data.

20 Q. Okay, so it doesn't matter if your brake lights are
21 busted out or not, it's dependent on whether or not
22 pressure is applied to your brake pedal that's going to
23 be recorded on the EDR?

24 A. That is correct.

25 Q. Okay. And in your opinion, based on the data from

1 the EDR, the Defendant did not put his foot on the brake
2 at any point from five seconds up until, I guess, was it
3 .5?

4 A. No, ma'am.

5 Q. Do I have it backwards? Okay, that's right?

6 A. That is correct, he did not apply the brakes.

7 Q. Was there any evidence that he was using cruise
8 control in the van?

9 A. No, ma'am, not that I see. We -- this module also
10 records the accelerator pedal percentage or how much the
11 accelerator pedal is applied.

12 Q. Okay.

13 A. And with that -- with that van, we have steady --
14 it's fairly steady, he comes off -- off it and -- at two
15 different points in our -- in our event data, but it's
16 around -- between 28 and 23 percent from minus -- our
17 minus five second sample to our minus three and a half
18 second sample, and then he's off the accelerator at minus
19 three, which is why at our minus two and a half you see
20 that he drops a mile an hour.

21 Q. Okay.

22 A. And then he's back on it at minus two and a half, to
23 minus one and a half, and then he's off of it for the
24 remainder of the event, so the minus one and the minus
25 0.5.

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1 Q. Okay. So, there's also been some question about
2 whether or not there would be some type of tire marks or
3 skid marks on the roadway by the van if -- unless --
4 would that have been from him putting on the brakes, and
5 is it your testimony as an expert, based on the EDR,
6 there's no evidence that he touched on his brakes at all?

7 A. There's no evidence before this first collision that
8 he was on the brakes.

9 Q. Okay. Which would have been the first collision was
10 the --

11 A. The collision --

12 Q. -- Explorer.

13 A. -- with the Ford Explorer.

14 Q. And then into --

15 A. That would -- with that event the brakes do come on.

16 Q. The brakes do come on.

17 A. They do come on.

18 Q. Okay. All right. Now, in regards to the -- going
19 to the actual Explorer, and I'm going to refer to a page
20 that you told me on the event data recorder, page 16, to
21 explain to the jury -- I'll wait until you've gotten to
22 it.

23 A. All right. I'm there.

24 Q. Okay. Now, on this particular page with the pre-
25 crash data, we're still talking about the minus five

1 seconds to the zero, which is the impact, correct?

2 A. Yes, ma'am.

3 Q. One of the things that you've pointed out to me is
4 at negative two seconds, is that there was a significant
5 increase of speed to the Explorer, can you please tell me
6 what in your expert opinion that means? What is going on
7 with the Explorer at that point?

8 A. Okay, I'm going to have to explain it a little bit -
9 -

10 Q. Oh, I know.

11 A. -- just to get there.

12 Q. Please do.

13 A. Okay. So, when we have multiple events, you -- part
14 of doing the analysis is showing are these two events
15 both related to the same thing; because the majority of
16 airbag modules we deal with are capable of recording more
17 than one thing. They can record something that happened
18 six months ago, and it may still be there if you're
19 involved in a crash yesterday, or a week from now,
20 depending on the car you have. Some have capabilities of
21 overwriting that data. But, in this case both of these
22 events are from here. Part of what I did in analyzing
23 this data to show that was see where -- where does my
24 data between these two match up, and in this case it is
25 about the minus 3.0 sample on -- on our -- on event two.

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1 So, our minus 3 sample is 76 miles per hour, which is our
2 time zero sample from our event one -- our first record,
3 event one.

4 Q. That's from the impact by the van?

5 A. Yes. So event one, first record is our impact with
6 the van, this one is going to be as the Ford Explorer is
7 striking the trees as it has left the roadway.

8 Q. Okay.

9 A. But, what's interesting that you can see here is
10 that the minus two and a half, and the minus two sample,
11 the vehicle has experienced a very sudden increase in
12 speed with very little accelerator pedal. The -- in my --
13 - my opinion, the only thing that can cause that, the
14 only -- not the only thing that can -- the only thing
15 that did cause that is the impact from this crash, and it
16 accelerated this Ford Explorer 10 miles per hour.

17 Q. So, I'm just going to say it in my less technical
18 way, and I totally understand what you're saying, when
19 Mr. -- when the Defendant Palmer is in his van, and he
20 rams into the back of the Explorer at 98 miles an hour,
21 and she's going 76, that's our .0 -- or the impact, I
22 don't want to say .0 'cause I know I could tell that you
23 didn't like that, the impact of him hitting her at 98
24 miles an hour increases her last speed that you
25 documented from 76 miles per hour to 86 miles per hour.

1 A. Yes, ma'am.

2 Q. And in your opinion, the thing that did cause that
3 10 mile an hour increase in speed was because of the
4 Defendant hitting her going 98 miles an hour?

5 A. Yes, ma'am.

6 Q. Okay. And then as we're -- as the speed is
7 decreasing and we get to zero on the Explorer, what was
8 the final speed at the point of when it hit its final
9 resting point, the Ford Explorer?

10 A. So with -- with this comes the caveat, the roadway
11 evidence points to this vehicle is sliding, the wheels
12 are not going to be moving in a straightforward line,
13 doing everything that it's -- that it normally and --
14 that it normally does, that it is not designed to do, so
15 there may -- the speed I'm going to say is approximate in
16 this case, because they can be affected by such things as
17 the vehicle sliding off the road over uneven surfaces.
18 But, the speed at time zero with our tree impacts is 59
19 miles per hour.

20 Q. And in your opinion as a collision reconstructionist
21 and the type of force of a -- of an impact to a tree like
22 that, is that fairly catastrophic?

23 A. Yeah. Yes, ma'am.

24 Q. And you've seen the pictures of the Explorer and
25 that would be consistent with what you would expect from

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1 that type of an impact?

2 A. Yes, ma'am.

3 Q. All right. And what, if any, information did you
4 have -- and I believe that the -- one of the last things
5 I was going to ask, in regards to attempts being made by
6 the driver of the Ford Explorer, who we know to be Ms.
7 Shanks, to correct based on the steering, the data you
8 got from off the steering? I think it was page 17.

9 A. Okay. Bear with me. There we go.

10 Q. That's fine.

11 A. So page 17, so -- so talking about the steering
12 input, so the -- in addition to the numerous other things
13 this vehicle records, it records your speed, it'll tell
14 us -- it'll tell us if your seatbelt was buckled. It
15 tells you -- us about the -- the crash forces that you
16 may have experienced. But it also is gonna -- with this
17 particular module, all of them don't, our unit 2, our
18 Chevrolet, doesn't give us this data, but in our Ford it
19 would -- it provided us with steering wheel angles. And
20 what -- what that enables us to do is see what is our
21 driver doing as this is happening. So, in this case, as
22 we start at our minus five sample, and we work our way
23 down to our minus 2.8 sample, everything's fairly normal.
24 It's 1.1, it goes -- I think it goes as high as 3, it
25 goes as low as -- or as high as 5.0, as low as minus 2.4,

1 which in my experience from what I've seen from analyzing
2 all of these airbag modules, that is I am maintaining my
3 lane, imagine you're driving down the road, you're
4 applying a little bit of input this way or that way, keep
5 yourself centered in your lane as you drive down the
6 road. Now, at minus 2.7 we start -- at our minus 2.7
7 second sample, we start to see a break from that trend.
8 We start to see the numbers spike into the negative range
9 of going from 9.5 up into minus 82 before it starts going
10 back into the positive and it is -- and with the positive
11 it is 113, it's well over 100 degrees, it gets all the
12 way up to 151 degrees right there at the time zero
13 sample. Now, I just gave you a bunch of a numbers, and I
14 didn't tell you what any of them meant. But, generally
15 speaking with this, and with these data limitations it
16 doesn't -- it doesn't specifically state it, but from
17 doing the other ones, generally speaking, our positive
18 numbers are counterclockwise input -- are input to the
19 left. Our negative numbers are input to the right. As
20 that vehicle is hit, it's going to start to spin and
21 they're going to try to -- the -- what this shows me is
22 the driver is fighting to regain control of this vehicle.
23 And now something is caught and they're going off the
24 road. They're going faster and they're going towards
25 these trees. Now, they're steering left and they trying

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1 to get away from the trees. But, one thing in this field
2 that doesn't change is physics, and that car is going to
3 keep going towards them. But you can see here with this
4 data that she fought all the way.

5 Q. And just to kind of -- in regards to your MAIT
6 report, and your expertise as a general collision
7 reconstructionist, and also event data recorder analyst,
8 do you believe that the conclusions found in your -- in
9 the MAIT report, and the work done by your team, is an
10 accurate representation of the collision and how it
11 occurred on the day of July the 10th, 2022?

12 A. Yes, ma'am, I do.

13 Q. And based upon those conclusions, do you believe
14 that based on the speed of the Defendant, his failure to
15 place on the brakes, or attempt to avoid hitting the back
16 of the Explorer, was absolutely the contributing or
17 approximate cause of this collision?

18 A. Yes, ma'am.

19 Q. One thing I do want to ask you, because it was
20 brought up in one of the other officers, are you trained
21 in helping people with knowing how to put booster seats
22 and car seats in people's cars?

23 A. Yes, ma'am, I am a certified child safety seat
24 technician.

25 Q. Okay. And did you receive information as to the age

1 of the child Max Shanks -- throughout the investigation
2 did you learn that he was a seven-year-old child?

3 A. Yes, ma'am.

4 Q. Okay. And do you know what the law requirements are
5 in regards to a seven-year-old child and how they are to
6 be restrained whenever they are that age?

7 A. Yes, ma'am. Under 56-5-6410, which is our child
8 restraint law, if a child over the age of four can use a
9 booster seat, once they outgrow their forward facing car
10 seat.

11 Q. And you've seen pictures from the actual vehicle,
12 was the booster seat that you saw in the vehicle, based
13 on your experience and your training, was it appropriate
14 for a seven-year-old child such as Max Shanks?

15 A. That's what I would expect to see for a seven-year-
16 old, yes, ma'am.

17 Q. Thank you. Answer any questions the Defense may
18 have. Oh, hold on, just a second. There's one more
19 question that I really do need to ask you, because you
20 had brought it up before, when someone is going 98 miles
21 an hour, okay, and if there's going to be some type of an
22 attempt to like stop or avoid -- you know, sometimes in
23 our cars, my car is kind of cool it's got like the little
24 light on it and it tells you if you're getting too close
25 or you're like so many car lengths away and you need to

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1 slow down or back up, okay. So, if you're going 98 miles
2 an hour how many feet per second will you travel if you
3 actually tried to stop on a pin drop?

4 A. It's approximately 143 feet per second for every
5 second that vehicle is moving.

6 Q. So for every second the vehicle is moving.

7 A. Yes, ma'am.

8 Q. It'll go how many feet?

9 A. 143.

10 Q. 143 feet, okay, at 98 miles an hour. So, if he or
11 anyone, is going to bump into a vehicle or get that close
12 to a vehicle, even if he were to attempt to avoid it,
13 even putting on the brakes, he would still travel 143
14 feet --

15 A. Well obviously if -- if he was to have applied
16 brakes.

17 Q. If he was to apply.

18 A. It would decrease as -- as his speed slows. But,
19 yes.

20 Q. Okay. That's a long way to go in a second.

21 A. It is a very narrow margin of error. May I add to
22 that, please?

23 Q. Yes, please.

24 A. With the Ford Explorer speed, for just in the spirit
25 of fairness, to put it out there, the Ford Explorer going

1 76 -- 78 to 76 miles per hour, 78 miles per hour is 114
2 feet per second, and 76 is 111 feet per second. So, for
3 every second that the Ford Explorer was going the
4 Chevrolet van was gaining 30 feet. It was getting 30
5 feet closer every second that it traveled.

6 Q. Thank you so much, I appreciate it. Answer any
7 questions the Defense may have.

8 JUDGE GIBBONS: Mr. Frick?

9 MR. FRICK: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FRICK:

12 Q. Some paperwork so I need the podium this time.

13 A. All right.

14 Q. Okay, just so we're clear, both cars had two events,
15 correct?

16 A. Yes, sir, they did.

17 Q. The van had an event where it strikes something in
18 front of it?

19 A. Yes, it strikes unit one.

20 Q. That's the event one for the van?

21 A. Yes, sir.

22 Q. Event two is when the van hits the barrier in the
23 median?

24 A. That's what I believe it is most likely is
25 attributed to.

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1 Q. Okay. With the Explorer first event is when it is
2 struck?

3 A. Yes, sir.

4 Q. The second event is when it hits the tree?

5 A. It either one of the tree -- it's gonna be either
6 one of the first trees or that final tree.

7 Q. Okay. So, each event is recorded with these,
8 correct?

9 A. Yes, sir.

10 Q. And it -- I know it doesn't magically go back in
11 time five seconds on it, it's constantly taking in data,
12 correct?

13 A. Yes, sir, it's a circular buffer. It's constantly
14 recording, but it only locks in and stores that data if
15 something causes it to wake up and store it.

16 Q. Right. And that would be some event that would just
17 trigger it?

18 A. Yes, sir.

19 Q. So, let's start with the van, event one, five
20 seconds before the first impact, you say he is travelling
21 at 98 miles per hour, and that's pretty steady according
22 to this data, correct?

23 A. Yes, sir.

24 Q. And it slows down at two and a half seconds, and two
25 seconds to 97, according to this data; is that correct?

1 A. Yes, sir.

2 Q. And then it does have the accelerator pedal on
3 there, correct?

4 A. Yes, sir.

5 Q. At five seconds it's saying it's at 28 percent full
6 accelerator.

7 A. Yes, sir.

8 Q. Which means he's got his foot on the pedal?

9 A. About a quarter of the way that it can go.

10 Q. Okay, so we've got it at a quarter of the way --

11 A. Or just over, rather, you know, but.

12 Q. A quarter of the way down, not on the floor, and
13 he's doing 98?

14 A. Yes, sir.

15 Q. And then as it goes along at three and a half
16 seconds, it's decreased to 23 percent?

17 A. Yes, sir.

18 Q. Okay. And at three it's at zero?

19 A. Yes, sir.

20 Q. So, that would mean his foot is off the gas?

21 A. His foot is completely off.

22 Q. And we're still going 98 miles an hour?

23 A. Yes, sir.

24 Q. Okay. And it goes back to 18 and get up to 32, so a
25 third of the way down again and we're at 98 miles per

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1 hour, right?

2 A. Yes, sir.

3 Q. Okay. And then at one second before impact the foot
4 is not on the gas?

5 A. Yes, sir.

6 Q. And at half a second, which is the last that this --
7 this module records, correct?

8 A. Yes, sir.

9 Q. Foot is not on the gas?

10 A. That is correct.

11 Q. But it's still going 98 miles per hour on all of
12 that?

13 A. Yes, sir.

14 Q. Okay. And this also takes in the data about RPM,
15 correct?

16 A. Yes, sir, it does.

17 Q. That remains steady the whole time?

18 A. Uh-huh (affirmative). Yes, sir.

19 Q. Even with his foot coming on and off the pedal, the
20 RPM's remain steady at 2,496 revolutions per minute?

21 A. Yes, sir.

22 Q. Then on event two for the van, all right, and we
23 believe that this is five seconds before impact with the
24 cable barrier in the median?

25 A. Well, not -- not five 'cause you have -- you have

1 overlapping data, but it -- the -- both events are here
2 anyway -- or data from both.

3 Q. Gotcha. It's at least five seconds because that's
4 when the --

5 A. Well -- well, yeah, it's five seconds from data, but
6 at the point that this data starts the first collision
7 hasn't occurred yet. So, even though -- so, when the
8 first -- when the collision with the Ford Explorer
9 happens --

10 Q. Right.

11 A. Even -- it -- it -- it's still recording, there's
12 still -- that buffer is still going and it's still
13 recording, and then it detects something else, so now
14 it's going to grab that five seconds and lock it in.

15 Q. Okay. So, it's five seconds --

16 A. So, it's -- yes, it is five seconds from that. I'm
17 just stipulating that it's --

18 Q. Okay, so five seconds before we get to the barrier,
19 we're still at 98 miles per hour, it slows down to the
20 half second before impact to 73 miles per hour, correct?

21 A. Yes, sir.

22 Q. And we do see the brake switch, which would be
23 indicative of putting on brakes, does come on at one and
24 one and a half?

25 A. At one, one and a half, and it's also on at --

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1 Q. Two and a half.

2 A. -- two and a half.

3 Q. Yeah, okay. Now, on this one, at five seconds he's
4 got his foot on the accelerator, it's at 18 percent; is
5 that right?

6 A. Yes, sir.

7 Q. Okay. At three and a half seconds we're at --
8 foot's off the gas, zero.

9 A. Yes, sir.

10 Q. At three seconds we're at zero, correct?

11 A. Yes, sir.

12 Q. At two and a half seconds all the way through we're
13 at 99 percent, isn't that almost pedal on the floor,
14 right?

15 A. Yes, sir.

16 Q. Does that mean that's what the data's saying, right?

17 A. That is what the data says.

18 Q. And his speed is decreased while he's got foot on
19 the floor from 98 to 73? That's what the data is saying?

20 A. That is what the data says, yes, sir.

21 Q. And RPM's at this point they vary?

22 A. Yes, sir.

23 Q. We go from 2496 down to 2240. Just to clarify, at
24 five seconds with our foot on the gas, 18 percent, our
25 RPM's are 2496.

1 A. Yes, sir.

2 Q. Okay. At two and a half seconds when the foot's on
3 the floor it's down to 2240.

4 A. Yes, sir.

5 Q. Okay. And then it kind of varies, it goes down
6 again 2176, 2112, and then goes up, correct?

7 A. That's what it indicates, yes, sir.

8 Q. That's what the data is telling you, okay. Let's go
9 to the Explorer now. Now, I'm looking at the first
10 impact, five seconds before we've got the speed of 77
11 miles per hour, correct?

12 A. Yes, sir.

13 Q. It stays steady at 77 miles per hour until 3.5
14 seconds, correct?

15 A. Yes, sir. At three and a half it goes up to 78.

16 Q. It goes to 78 at three and a half seconds, stays at
17 78 until zero; is that right?

18 A. Well at zero it's at 76.

19 Q. Right. So, at half a second before impact we're
20 still at 78, but at impact we are 76, right?

21 A. Yes, sir.

22 Q. Now, back at five seconds we've got our foot on the
23 pedal about 15 percent?

24 A. Uh-huh (affirmative).

25 Q. Okay. And it stays about 15 percent, it's pretty

JURY TRIAL

1 steady, until we get to one second from impact. We've
2 established zero means foot is off the gas, correct?

3 A. Yes, sir.

4 Q. Okay. So, one second before impact, half a second
5 before impact, and at impact foot is not on the pedal of
6 the Ford?

7 A. That is correct.

8 Q. That's correct? Okay. And then we do see at zero
9 the brake switch is on.

10 A. Yes, sir.

11 Q. Okay. Now, you opined that sometimes this occurs
12 because of the impact?

13 A. Yes.

14 Q. It also occurs because you put your foot on the
15 brake, don't it?

16 A. That is correct.

17 Q. Okay. And at this particular situation, the RPM's
18 kind of vary a little bit with the speed, is that fair to
19 say?

20 A. Yes, sir.

21 Q. Okay.

22 A. Would you like to know why? Or why -- what -- why
23 you don't see it so much on one, but you do see it
24 varying on this one.

25 Q. Okay.

1 A. Okay, so with the Chevrolet, we talked about how
2 they remain steady, even though he's on and off the gas,
3 with RPM's. The -- all these modules are different in
4 their own way. Every manufacturer makes them different.
5 They -- the resolution rate on how they record data where
6 it -- it may indicate that without doing the math right
7 this second, they may say it's -- if it -- if it's -- it
8 records in 200 RPM samples. So, if it's -- if he's off
9 but it doesn't drop below this particular number it's
10 going to stay at this until it does something different.

11 Q. It comes from a different module doesn't it?

12 A. But that's a -- that's a different type of module.

13 Q. Right.

14 A. Whereas this one, it seems to be a bit more
15 sensitive where you see -- where you can see the small --
16 with the Ford you see the smaller increments as it drops.

17 Q. Okay. And that's because it's coming from a
18 different spot?

19 A. It's a -- 'cause it's a different type of module.

20 Q. EDR, according to all the data, but it's coming from
21 about three different spots, isn't it?

22 A. Well they do come from -- yes, sir; yes, sir.

23 Q. So other modules are recording this, so that's not
24 necessarily what's going on at that point in time?

25 A. Well it -- it is at least that, but it may be -- it

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1 may be more or it may be -- it may be more than that is
2 what I'm saying with the -- with the RPM's or -- it
3 should not be less than that, 'cause if it drops below
4 this number it should go to the next resolution rate.

5 Q. Okay. But it is not in the actual time with the
6 speed?

7 A. No, it's in time with it, it's all recorded at
8 synchronously.

9 Q. Right. And at synchronous means?

10 A. At the same time.

11 Q. At the same time, okay. But it's coming from
12 different spots?

13 A. Yeah, just depending on where -- where it is, like -
14 - but a lot of the time speed come from wheel speed
15 sensors.

16 Q. Gotcha. All right, let's go to event two on the
17 Ford. When we're five seconds from impact with tree or
18 trees, 78 miles per hour.

19 A. Yes, sir.

20 Q. And we got our accelerator at 15 percent, right?

21 A. Yes, sir.

22 Q. Brake switch does not come on until three, right? I
23 mean, we've got five seconds --

24 A. Well, it -- yeah, at three -- at the minus three
25 sample.

1 Q. It comes on at minus three, and stays at two and a
2 half, right?

3 A. Yes, sir.

4 Q. And then at two seconds -- well, let's go to two and
5 a half seconds, that's when we're at 86 miles per hour,
6 right?

7 A. Yes, sir.

8 Q. I've got an accelerator at 11.3, right?

9 A. Yes, sir.

10 Q. Okay. And our RPM's had gone up a little less than
11 300 RPM's from 2058 to 2328, correct?

12 A. Yes, sir.

13 Q. And that would be expected if your foot's on the
14 gas, right?

15 A. Or the vehicle experiences a increased load --

16 Q. Okay.

17 A. -- from being sped up by something else striking it.

18 Q. Okay. And that's caused by being struck from behind
19 is what you're testifying?

20 A. That -- that can -- it can do it.

21 Q. It can do it? Okay. So can putting your foot on
22 the gas, right?

23 A. Yes, but this is when the crash occurs, and that is
24 what is causing that.

25 Q. Right. But this is -- this is after the initial

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1 impact and two and a half seconds before the next impact,
2 right?

3 A. This is as that impact is still occurring. Like
4 we've already talked about, this is -- this is five
5 seconds before the next impact, but at this minus three
6 and minus two -- at minus two and a half, the collision
7 with the Chevrolet van, with unit 2, is actively
8 occurring, that is why you have that speed increase.

9 Q. Okay. As well as the possibility of having a foot
10 on the gas?

11 A. No, that is not possible, with an 11 percent it --
12 with your foot being on the accelerator, 11 percent, you
13 will not have a 10 mile an hour increase in speed in a
14 half of a second.

15 Q. But in the van I can have my foot off the gas and I
16 stay at the same speed?

17 A. Yes, have you ever gone down a hill and let your
18 foot off the gas you can coast.

19 Q. Did you examine the scene?

20 A. I did go to the scene, yes, sir.

21 Q. Okay. As part of your examination of this whole
22 thing, correct?

23 A. Yes, sir.

24 Q. You look at everything, right? Did you check the
25 speed of the surrounding vehicles?

1 A. Did we go out there and physically check each of --
2 the other vehicles?

3 Q. In your analysis of this, when you're making your
4 final determination, 'cause you said you can't just rely
5 on the data, you got to look at other stuff.

6 A. Uh-huh (affirmative).

7 Q. Did you get the information about the speeds of
8 other vehicles that were surrounding these two vehicles?

9 A. At the time of the crash?

10 Q. Yes, sir.

11 A. How are we supposed to have that data?

12 Q. Through interviews.

13 A. Okay.

14 Q. Did you review those interviews?

15 A. Yes, sir, we looked at the -- I did look at the
16 interviews.

17 Q. Okay. And they indicated in those interviews what
18 they estimated their speed to be at the time that they
19 witnessed the incident.

20 A. Okay.

21 Q. Did you use that in your calculations?

22 A. I looked at their interviews. Yes, sir.

23 Q. Did you use it in your calculations?

24 A. I looked at it, and it was a consideration when I
25 was completing my analysis, yes, sir.

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1 Q. But the answer is no, you didn't?

2 A. No, that is not what I said.

3 JUDGE GIBBONS: He said he did, move on.

4 BY MR. FRICK:

5 Q. All right. But in the end, your old statement is
6 you don't rely solely on the data.

7 A. Yes, sir.

8 Q. You have to look at everything, right?

9 A. Yes, sir, you do.

10 Q. In fact you talked about the situations where data
11 can be on there from previous events.

12 A. Yes, sir.

13 Q. So, we have to look at everything, it's not just
14 looking at what comes off this EDR.

15 A. Yes, sir.

16 Q. Okay. Beg the Court's indulgence.

17 JUDGE GIBBONS: Yes, sir.

18 BY MR. FRICK:

19 Q. Do you know whether any of these vehicles had a
20 governing speed on them?

21 A. I'm sorry, sir, what was that?

22 Q. Any of these vehicles had a governing speed on them?

23 A. Not to my knowledge, sir.

24 Q. Not to your knowledge? Okay. Thank you, sir.

25 JUDGE GIBBONS: Thank you, sir, you can step

1 down and you're free to leave. All right, ladies
2 and gentlemen, we're going to go ahead and recess
3 for the day, as I indicated to you. We'll start
4 back tomorrow morning. Mr. Foreman, have you
5 discussed with the jurors about what y'all would
6 like to do tomorrow, as far as how late you would
7 want to go?

8 MR. FOREMAN: Yes, Your Honor, we would like to
9 start the deliberation on Friday.

10 JUDGE GIBBONS: Okay, thank you very much.
11 So, the lawyers there you go, the jurors would like
12 to start -- would like to do their deliberation on
13 Friday morning. All right, so y'all could plan
14 accordingly and we'll go from there. And I'll talk
15 with y'all about how y'all want to handle that,
16 okay. All right, thank you very much. Y'all can
17 head on back to your jury room.

18 MS. LIVELY: What time are they coming back
19 tomorrow?

20 JUDGE GIBBONS: Let's say -- I'm sorry, y'all
21 can leave today, be here at 9:00 -- ready to roll at
22 9:15, okay. Thank you. Don't talk about the case.
23 Don't look up anything.

24 (JURY EXITS)

25 JUDGE GIBBONS: Just for the record, during

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1 the most recent break, I acknowledged to the jury
2 that I had concerns about tomorrow with Halloween
3 and downtown Chester is just nuts down here, plus
4 you have moms and dads and grandparents possibly on
5 the -- on the jury, and so I asked them about their
6 schedule. Y'all had indicated to me before we took
7 the break that y'all should be done tomorrow and we
8 may proceed right into closing arguments and then
9 deliberation. I told them that, and I said, you
10 know, once you start deliberating you must, you
11 know, deliberate and, you know, we can see where it
12 goes, and they said they would want to do that
13 Friday, so, let y'all know that so --

14 MR. FRICK: I just want to be clear, does that
15 mean we're arguing the charging on Friday?

16 JUDGE GIBBONS: Well, that's what I wanted to
17 talk to you guys about it, that's why we were
18 talking.

19 MR. FRICK: I mean, I would rather do the
20 arguing charge and then they go to deliberate.

21 MS. LIVELY: Yeah.

22 MR. FRICK: I don't really like the gap in
23 time.

24 JUDGE GIBBONS: Okay, we can do that. Y'all
25 want me to charge the law after y'all argue? Or you

1 want me to charge the law before y'all argue?

2 MS. LIVELY: You don't normally give us that
3 option.

4 JUDGE GIBBONS: I don't normally do, but I
5 asking in this case -- in this case since we're
6 gonna have -- possibly have time tomorrow, I could
7 go ahead and give them the law, and then y'all could
8 argue --

9 MS. LIVELY: Oh, I see what you're saying.

10 JUDGE GIBBONS: -- based upon the law that I
11 give them. I mean, you know, it doesn't matter
12 either way. You know, I'll -- I'm gonna defer to
13 you guys.

14 MS. LIVELY: Okay. Can we think about it?

15 JUDGE GIBBONS: Y'all think about it and let
16 me know how you want to handle it. I just don't
17 want there to be a bunch of space in between when we
18 finish tomorrow.

19 MR. FRICK: Are you going to send the written
20 instructions back?

21 JUDGE GIBBONS: No, no.

22 MR. FRICK: Okay, that's fine.

23 JUDGE GIBBONS: I'm not gonna do that --

24 MS. LIVELY: Okay.

25 JUDGE GIBBONS: -- unless both sides agree.

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1 MR. FRICK: Okay.

2 MS. LIVELY: Okay.

3 JUDGE GIBBONS: Y'all can look at it and
4 decide whether you want this sent back or not, but I
5 typically do not send written instructions back
6 unless both sides request, what both sides want me
7 to.

8 MS. LIVELY: Okay.

9 MR. FRICK: Okay.

10 JUDGE GIBBONS: Okay. Y'all think about how
11 you want to handle that and we'll see you tomorrow
12 morning.

13 MS. LIVELY: Thank you, Judge.

14 JUDGE GIBBONS: Court's in recess.

15 (The proceedings were adjourned
16 until 9:15 a.m., October 31, 2024)

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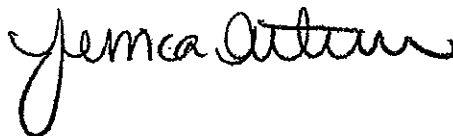
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I, Jessica Antonucci, a court-approved transcriber, do hereby certify that I transcribed the electronic recording of the foregoing proceedings in Docket Nos. 2023GS12317, 2023GS12248, and 2023GS12249 held on October 30, 2024, before the Honorable Brian 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

A handwritten signature in black ink, appearing to read "Jessica Antonucci", written in a cursive style.

Jessica N. Antonucci

Transcriber

JURY TRIAL

1 October 31, 2024

2 JUDGE GIBBONS: Mr. Frick, is there something
3 you want to bring up to the Court while we're on the
4 record?

5 MR. FRICK: Your Honor, I do want to address
6 the media presence, if I may.

7 JUDGE GIBBONS: Yes.

8 MR. FRICK: Your Honor, of course all week I
9 think we've had local print media here, and I know
10 they've done some reporting on the case, I haven't
11 read it, but I've seen it. Today, as the State is
12 about to rest their case, as they're about to call
13 their final witness, who is in fact the mother of
14 the decedent and the driver of the vehicle, I now
15 have camera coverage. We have a jury who hadn't
16 seen that all week and all of a sudden I've got that
17 now. I certainly understand courtrooms in South
18 Carolina the public media can be present, but I
19 think it's inappropriate at this time for there to
20 be camera coverage of it, and I would ask that you
21 not allow that.

22 JUDGE GIBBONS: Okay.

23 MR. FRICK: I think they can be present in the
24 courtroom, and report on what they want to report
25 on, but I don't think at this point in this trial

1 that it is appropriate for there to be camera
2 coverage of this event.

3 JUDGE GIBBONS: All right, what's the State's
4 response to that?

5 MS. LIVELY: Well, Your Honor, first of all
6 they have the ability this entire week to be here,
7 when they chose to be here is -- I mean, I have no
8 idea why today is the day they chose unless they
9 just figured it out on their own. But that aside,
10 this is an open courtroom, the First Amendment
11 allows them to be in here unless there's extreme
12 circumstance. The victim's mother, or we want to
13 say she was also a victim since she was in the car,
14 Jessica Shanks, is a grown woman and she is going to
15 be testifying in open court. So, I don't see how in
16 any way that prejudice's anybody or any part this
17 trial since we've had media here all week. So, I
18 just don't think that it -- that that is an issue,
19 and as long as they filed the appropriate notice to
20 be in here, then I think that it's completely
21 appropriate.

22 JUDGE GIBBONS: All right, what -- what media
23 is it?

24 UNKNOWN FEMALE: We're with WSOC-TV.

25 JUDGE GIBBONS: Is that Queen City Media I

JURY TRIAL

1 think?

2 UNKNOWN FEMALE: WSOC-TV --

3 JUDGE GIBBONS: Did I sign that one? Okay. I
4 got a bunch of them up here.

5 UNKNOWN FEMALE: Yes, sir.

6 JUDGE GIBBONS: I just want to --

7 UNKNOWN FEMALE: Yes, sir.

8 JUDGE GIBBONS: There's one I signed called
9 Queen City Media.

10 UNKNOWN FEMALE: They're not here.

11 JUDGE GIBBONS: All right, hang on a second.
12 Anything else on that issue?

13 MR. FRICK: Yes, sir, I do. I -- and I'm not
14 accusing the Solicitor of notifying anybody, but I
15 have been doing this long enough to know that the
16 media does not show up unless somebody notifies
17 them. So they have been notified by somebody.

18 JUDGE GIBBONS: Okay. Yes, ma'am, state your
19 name.

20 MS. TERRY: My name is Tina Terry, I'm
21 reporter with WSOC-TV.

22 JUDGE GIBBONS: All right, and do you swear or
23 affirm that the testimony you give will be the
24 truth, the whole truth, and nothing but the truth,
25 so help you God?

1 MS. TERRY: Yes, sir.

2 JUDGE GIBBONS: Why are you here today instead
3 of not being here Monday, Tuesday, or Wednesday?

4 MS. TERRY: Yes, sir. So, just to let you
5 know how the news process works, we have a editorial
6 meeting every morning, and every morning we talk
7 about what's going on in general in multiple
8 counties in South Carolina and North Carolina. And
9 because we had other assignments on Monday and
10 Tuesday and Wednesday, today is the day that I did
11 not have another assignment, that's the day and why
12 we're here.

13 JUDGE GIBBONS: Okay.

14 MS. TERRY: We were covering --

15 JUDGE GIBBONS: Did anybody contact you from
16 the State of South Carolina from the Prosecutor's
17 office.

18 MS. TERRY: I have not talked to the Solicitor
19 at all. I -- I texted her this week, but I have not
20 gotten a response about anything that's going to
21 take place in Court today from the Solicitor.

22 JUDGE GIBBONS: So, in other words, would you
23 agree with the statement nobody tipped you off to
24 today's the day to be here?

25 MS. TERRY: I was -- I was aware of the fact

JURY TRIAL

1 that the -- the Solicitor might rest today and that,
2 you know, testimony would end today for the
3 Solicitor's side, I was aware of that.

4 JUDGE GIBBONS: How did you become aware of
5 that?

6 MS. TERRY: From a family member.

7 JUDGE GIBBONS: From a family member of the
8 State?

9 MS. TERRY: Yes.

10 JUDGE GIBBONS: Okay. All right, thank you.
11 Thank you, ma'am. Y'all give me just a second.

12 MS. LIVELY: Your Honor, if I may interject,
13 just because I'm hearing from Ms. Jessica Shanks.
14 She said that she would prefer not to have the
15 camera on her during her testimony.

16 JUDGE GIBBONS: Okay. There you go, no camera
17 on the victim witness during her testimony. Okay,
18 you understand that Mr. Camerman? All right, thank
19 you. All right, hang on a second. That's per --
20 that's per -- that's per the victim's request, which
21 I will honor.

22 MS. TERRY: (Inaudible) no video, no audio?

23 JUDGE GIBBONS: Of her testifying, okay. But
24 hang on one second, I'm looking at the rule real
25 quick, 'cause I may make you move Mr. Camerman,

1 instead of being directly across the room in their
2 face, I may have you move behind the gentleman in
3 the aqua shirt. I can't -- that's a good shirt, I
4 like the shirt, is that what you call that an aqua
5 shirt?

6 UNIDENTIFIED MALE: Yes.

7 JUDGE GIBBONS: Okay. Just hang on one
8 second. All right, Mr. Cameraman, I am going to ask
9 pursuant to Rule 605, hang on, (F)(3), (4), and (5),
10 of the South Carolina Appellate Court Rules, that
11 you're free to have your camera here, but rather
12 than it be directly in the eye line of the jurors,
13 I'm going to ask that you move behind the gentleman
14 in the aqua shirt, if that's okay. I'll give you
15 time to make sure your tripod's high enough. Thank
16 you, appreciate it. All right, anything else for
17 that issue?

18 MR. FRICK: Yes, sir, just briefly. I did
19 have one witness who I've gotten here today
20 reluctantly, he'll be here this afternoon -- I mean,
21 this morning about 11:00. But they were concerned
22 about there being media coverage. I told them over
23 the last three days I'd only seen local print
24 coverage, they in fact came and observed court
25 yesterday afternoon, saw that. I was not aware that

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1 this was going to be here today, so when I spoke to
2 him this morning I couldn't advise him of that.

3 JUDGE GIBBONS: We'll address it before that
4 person testifies.

5 MR. FRICK: That's fine. That's fine.

6 JUDGE GIBBONS: Okay. And it may be that I
7 have that same limitation on that particular
8 witness's testimony.

9 MR. FRICK: I understand.

10 JUDGE GIBBONS: That's why we have good
11 reporters who can write about what happens. All
12 right, any other issue to be brought to the Court's
13 attention this morning?

14 MR. FRICK: Your Honor, it is my
15 understanding, as my client was leaving the
16 courthouse yesterday afternoon, after he had been
17 dressed back out to his jumpsuit and shackled going
18 to the transport van, and it was well after court
19 had adjourned, is my understanding, as they were
20 exiting my client noted a person to the left of the
21 van, kind of back towards that parking lot, past
22 where you park, there was a juror who was standing
23 there smoking. I -- I have spoken to Mr. McKenzie
24 this morning about what he observed, he tells me
25 that they quickly got him into the van. I don't

1 know whether we know whether he observed it. I met
2 with my client at the jail last night, he advised me
3 of that as well. So I -- Judge, I've been trying
4 the cases in Chester for a long time, and I know
5 that this issue comes up, but it just seems we have
6 reoccurring issues in this particular case and I --
7 I'm asking you to address it and let's see what we
8 need to do in this matter.

9 JUDGE GIBBONS: All right, the State's
10 response to that?

11 MS. LIVELY: Yes, Your Honor, and I actually
12 saw the same gentleman. And what is my
13 understanding from talking to even some of the other
14 bailiff's this gentleman has to wait on a ride,
15 that's the reason why he was still out there because
16 we did actually, you know, end early yesterday. And
17 my observation of him is whenever he's standing
18 there, and I don't know if some of the other
19 bailiffs may have seen this as well, is he actually
20 stands kind of behind where your office is and
21 almost up the hill and he's kind of looking around,
22 like he's trying to avoid making eye contact with
23 someone, 'cause I think you -- you're very clear
24 when you admonishing them do not discuss this, don't
25 talk to anybody involved in the case. So, I noticed

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1 that he was -- he was kind of, you know -- I
2 wouldn't have even noticed him, but for the fact he
3 was acting a little strange, and I was like what is
4 that, and it kind of caught my eye. So, whenever I
5 turned and I saw he was actually a juror I slowed
6 down, and I texted Freddy Stuart who is one of our
7 bailiff's and I said hey, Freddy, one of the jurors
8 is still here, and it looks like he might be waiting
9 for a ride. So, I texted him to let him know that
10 and I think from my text, I looked at it last night,
11 it was 4:43 p.m. So, I leave and like about I don't
12 know 30 minutes later or something like that, I had
13 a missed call from McKenzie, I was on the phone with
14 a witness, and that's transport McKenzie, and that's
15 whenever he told me he said we walked out there, I -
16 - he said, I made sure I looked both ways, which I
17 understand now the reason why he probably didn't see
18 him is because the juror kind of goes up in the
19 parking lot to smoke, so he's away from everybody.
20 He looked both ways to make sure that there is no
21 one there. He said then at that point in time, you
22 know, the van was pulled up, he -- because Mr.
23 Palmer was actually meeting with I think either his
24 defense team at that point, and then that's whenever
25 they had him dressed out and brought -- and they

1 brought him out to go into the transport van.

2 According to what McKenzie told me was he in -- if

3 I'm remembering right, he could clarify, it wasn't

4 even that McKenzie even saw the juror at that point,

5 because he was focused on hurrying and getting

6 Palmer in there, and it was Palmer who actually was

7 king of looking around and said hey, he may have

8 said it in the van or not, but he said hey, isn't

9 that one of the jurors to McKenzie as McKenzie put

10 him in the van. So, at that point that's whenever I

11 called the Solicitor and I said, you know, how do

12 you want me to approach this? I need to let the

13 Judge know. And that's whenever I sent the email

14 last night and that is -- I don't have an answer.

15 And in regards to whether or not it was Palmer that

16 saw the juror or the juror saw him or the juror --

17 you know, we just don't know, but I can tell you

18 from my personal experience, just from what I saw

19 yesterday before this happened, that I noticed that

20 the juror was making every effort to not make eye

21 contact and to try to stay out of everybody's way.

22 So, I don't know whether or not he would've seen

23 Palmer or not. Also, this is a courthouse, where

24 we're dealing with criminal matters. You know,

25 there's going to be people coming and going. Even

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1 if he saw Palmer he may not have recognized that
2 that's who he was seeing because he has been dressed
3 out normally all week. It could've been that we
4 were bringing someone up here for another matter.
5 So -- and I don't know. So my thing is is I look at
6 this, do we bring that juror in here and just ask
7 him what he saw without being specific, if he saw
8 anything, because several -- maybe several people
9 saw you, you know, smoking, not that you've done
10 anything wrong, or do we not even bring it up in
11 order to bring attention to the matter. So, that's
12 one of those things, Your Honor, that, you know, I'm
13 a little concerned. I don't think we should point
14 blank ask him did you see the transport van and an
15 individual being placed into it. I think that
16 that's -- I think that drawing attention to anything
17 at this point is the wrong thing to do. I mean,
18 we're down to no more alternates, and the jury has
19 been very attentive, and they have been -- they have
20 followed your, you know, your rules the whole week.
21 So, now, you know, what we need to decide is was
22 there a possibility that he saw something that is
23 problematic, and at this point I don't see that
24 there was. And even from just listening to what
25 everyone is saying in regard to this juror, is that

1 that's where he's been hanging out the whole week
2 waiting for a ride, and that he's tried to literally
3 avoid making contact or eye contact with anyone
4 that's involved in this case. So, I'll -- you know,
5 I'll leave it to your discretion and your, you know
6 -- you --

7 JUDGE GIBBONS: All right.

8 MS. LIVELY: -- you know we deal with this all
9 the time unfortunately with this old courthouse, so
10 I mean that doesn't excuse it, but it's just that I
11 would ask that the Court just very carefully address
12 that issue in the way you think is appropriate.

13 JUDGE GIBBONS: Thank you. Mr. McKenzie?

14 MR. MCKENZIE: Yes, sir.

15 JUDGE GIBBONS: Come on over here, please.
16 Stand right there, sir. Thank you. All right, do
17 you swear or affirm the testimony you give be the
18 truth, the whole truth, and nothing but the truth,
19 so help you God?

20 MR. MCKENZIE: Yes, sir.

21 JUDGE GIBBONS: All right, what happened
22 yesterday?

23 MR. MCKENZIE: You know, court was adjourned,
24 we were up here 15, 20 minutes after court was
25 adjourned. Mr. Palmer was dressed back out into his

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1 jumpsuit. He was handcuffed, he was not shackled.
2 He had his paperwork in his hand. I walked out. I
3 told him wait just a second. I walked to the
4 sidewalk, I looked up and down the street both ways,
5 and then I told him to come on. I put him in the
6 van the -- the side door where he's being
7 transported it has to be -- I opened the side door.
8 He walked (inaudible) he said I think that's a juror
9 right there. And I didn't -- I hadn't even --

10 JUDGE GIBBONS: So, it's a side door that he
11 gets in and out of the van, which is directly
12 adjacent to the sidewalk?

13 MR. MCKENZIE: To the sidewalk, yes, sir.

14 JUDGE GIBBONS: Okay. All right, I'm
15 listening.

16 MR. MCKENZIE: I mean he -- he -- I said,
17 okay, so he got in, I shut the door. Like I said,
18 when I first looked down the street --

19 JUDGE GIBBONS: From which way did you head
20 out after you -- he shut the door, which way?

21 MR. MCKENZIE: Going towards Wylie Street.

22 JUDGE GIBBONS: All right, so you went -- I'm
23 pointing left as I sit here, all right, you didn't
24 go back that way --

25 MR. MCKENZIE: No.

1 JUDGE GIBBONS: -- where the juror was hanging
2 out?

3 MR. MCKENZIE: Put him in the car, shut the
4 doors, and went down Wylie Street, and turned left
5 onto Wylie Street.

6 JUDGE GIBBONS: Did you see the juror?

7 MR. MCKENZIE: Not until Palmer told me.

8 JUDGE GIBBONS: All right.

9 MR. MCKENZIE: So, he must have come around
10 the corner of the building.

11 JUDGE GIBBONS: What did you see the juror do
12 when you saw the juror?

13 MR. MCKENZIE: I saw him looking up the other
14 street with a cigarette in his mouth.

15 JUDGE GIBBONS: But looking towards --

16 MR. MCKENZIE: Looking towards Center Street,
17 looking towards the --

18 JUDGE GIBBONS: Library.

19 MR. MCKENZIE: -- (inaudible).

20 JUDGE GIBBONS: The library, okay, Delleney's
21 office?

22 MR. MCKENZIE: Right.

23 JUDGE GIBBONS: Okay. Did you -- how long did
24 you get a look at that juror?

25 MR. MCKENZIE: Maybe seconds, maybe.

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1 JUDGE GIBBONS: During that few seconds that
2 you saw that juror, did you see him glance over your
3 way at all?

4 MR. MCKENZIE: I did not.

5 JUDGE GIBBONS: Okay. Any interactions
6 between you and that juror?

7 MR. MCKENZIE: No.

8 JUDGE GIBBONS: Any interactions between the
9 Defendant and that juror?

10 MR. MCKENZIE: No.

11 JUDGE GIBBONS: All right, thank you, sir.
12 All right, Mr. Frick?

13 MR. FRICK: Your Honor, can I ask him --

14 JUDGE GIBBONS: Oh, yeah, yeah, yeah.

15 MR. FRICK: -- one question.

16 JUDGE GIBBONS: McKenzie, go ahead.

17 MR. FRICK: I know you got a new vehicle, does
18 the one that you got -- is that the one you had
19 yesterday?

20 MR. MCKENZIE: The same van that I've had for
21 12 years.

22 MR. FRICK: So the black van?

23 MR. MCKENZIE: Yes.

24 MR. FRICK: The one that's out there right
25 now?

1 MR. MCKENZIE: Right now.

2 MR. FRICK: Doesn't it say on there prisoner
3 transport? I can't remember.

4 MR. MCKENZIE: I believe it does.

5 MR. FRICK: Okay. Okay. Thank you, that was
6 the question I had for him.

7 JUDGE GIBBONS: Sure, absolutely. All right,
8 Mr. Frick, what else? I can continue investigating
9 this by talking to the --

10 MR. FRICK: Judge, I know that there are
11 cameras that cover that area. I know -- I -- it's
12 my understanding they don't particularly cover back
13 towards that parking lot, or maybe up to it, just
14 security right there at your office area. But, I
15 think it might be worth checking the cameras to see
16 is there anything on there.

17 JUDGE GIBBONS: Okay. I think we need to do
18 that. I'll have -- where is my -- Mr. Coleman, can
19 you do that?

20 MS. LAWSON: (Inaudible).

21 JUDGE GIBBONS: All right, you can retrieve
22 that video?

23 MS. LAWSON: I'll have to record it with my
24 phone or our IT department can do it. So, I can --
25 I can locate it, please help me on what --

JURY TRIAL

1 JUDGE GIBBONS: It's gonna be between the
2 hours of when? 4:00 --

3 MS. LIVELY: I saw him -- 4:43 was when I
4 texted (inaudible).

5 JUDGE GIBBONS: All right, so let's -- why
6 don't we say between the hours of 4:40 and when did
7 you leave McKenzie? When did you call Ms. Lively?

8 MR. MCKENZIE: I didn't call her until
9 afterwards.

10 JUDGE GIBBONS: Okay.

11 MR. MCKENZIE: So, yeah, I had gotten him back
12 to the jail and then (inaudible) I called her --

13 JUDGE GIBBONS: And no telling what time his
14 ride came and picked him up.

15 MR. FRICK: I recall that we were back there
16 talking because McKenzie was trying to get back
17 'cause it -- it -- it was feeding time, I know that,
18 and I know that's why he was trying to get back.

19 JUDGE GIBBONS: Okay.

20 MR. FRICK: So, I would say around 4:15.

21 UNIDENTIFIED FEMALE: (Inaudible) 4:15.

22 MS. LIVELY: 5:04 was my missed call from
23 McKenzie --

24 MR. FRICK: We were back there at 4:00. I was
25 at the jail at 5:30.

1 JUDGE GIBBONS: Hang on one at a time. 5:04
2 was the missed called from McKenzie.

3 MS. LIVELY: From McKenzie, which is when he
4 was calling to tell me what had happened.

5 JUDGE GIBBONS: Okay, so somewhere between --
6 when did you text Freddy? Freddy wasn't working
7 yesterday. So when did you --

8 MS. LIVELY: No, he was here yesterday.

9 JUDGE GIBBONS: He was? Okay.

10 MS. LIVELY: Yes, sir.

11 JUDGE GIBBONS: When did you text him?

12 MS. LIVELY: 4:43.

13 JUDGE GIBBONS: Okay.

14 MS. LIVELY: And then I got the missed call at
15 5:04 p.m.

16 JUDGE GIBBONS: All right, so we need from
17 4:43, 'cause the defendant wasn't out there then
18 when you left, from 4:43 to like 5:05.

19 MR. FRICK: No, sir, no, sir.

20 JUDGE GIBBONS: Hang on. I'm listening.

21 MR. FRICK: I was at the jail visiting with
22 him at 5:30. He had been gone for about an hour.

23 JUDGE GIBBONS: Okay.

24 MR. FRICK: So, we need from somewhere around
25 4:00, 4:15 until that 4:45.

JURY TRIAL

1 JUDGE GIBBONS: Sounds good, 4:15 to 4:45, all
2 right. You can contact Mr. Shulkey or what is his
3 name, Shenky?

4 MS. LAWSON: Mr. Shulkey.

5 JUDGE GIBBONS: Shulkey.

6 MS. LAWSON: But I'll find it first and then
7 (inaudible).

8 JUDGE GIBBONS: All right, find it, but --
9 yes, can -- is there a way you can get it without
10 getting him involved?

11 MS. LAWSON: (Inaudible) on my phone.

12 JUDGE GIBBONS: Oh, you could like video it on
13 your phone and then show the -- what do you look at
14 it?

15 MS. LAWSON: I have to go to my old laptop.

16 JUDGE GIBBONS: Okay. Well --

17 MS. LAWSON: My computer, not laptop. I have
18 to go to my desktop to review it.

19 JUDGE GIBBONS: All right, well we can just
20 let the lawyers look at that, while you're looking
21 at it.

22 MS. LAWSON: Well let me find -- first find the
23 gentleman and then I'll (inaudible).

24 JUDGE GIBBONS: Okay. All right, while we're
25 still discussing this, Ms. Betty Jo is going to pull

1 it up on her computer in her office, okay. We can -
2 - y'all -- Ms. Lively, Mr. Frick, y'all could go
3 look at it in real time, rather than her taking the
4 video of it and bringing it up here, and you can
5 see, you know, what that angle is, if there is any.
6 I don't even know if there is any.

7 MR. FRICK: I understand.

8 JUDGE GIBBONS: And we'll see. The question
9 now is, do you want me to interview the juror? As I
10 said in my email last night, I'm concerned that if
11 we further investigate this matter, it puts more of
12 a spotlight on it, okay, where it may not even be an
13 issue. But certainly I want to make this record
14 clear and we'll see where we go from here.

15 MR. FRICK: I think we should see the video
16 first to see if there's anything we can observe on
17 that.

18 JUDGE GIBBONS: Okay.

19 MR. FRICK: If there is, then maybe that
20 answers the question, I don't know.

21 JUDGE GIBBONS: All right.

22 MR. FRICK: But I would say to this point --
23 I'm not saying we shouldn't question the juror, I'm
24 just saying at this point until we've investigated
25 that I don't think we should.

JURY TRIAL

1 JUDGE GIBBONS: Okay. All right, Madam
2 Solicitor?

3 MS. LIVELY: And I agree with that and then of
4 course you know we can go to the next (inaudible)
5 but my concern is that we've already had this jury
6 exposed to two people being dismissed and, you know,
7 it -- well, here's the thing, I'm not going to argue
8 something until we find out if it's something I need
9 to argue. So I'll just put a hold on to that in
10 regards to whether or not we should talk to the
11 juror. Let me see what is on that video as well.
12 As of right now my position is no, we should not
13 interview him, we do -- it looked to me like he was
14 trying to avoid making any kind of eye contact or
15 anything and that he's literally looking down the
16 street, that's why he was up in the parking lot, he
17 wasn't hanging out. He was up in that top parking
18 lot behind your office, 'cause it looked like he was
19 waiting, looking down the street, look at Center
20 Street to see when his car -- the car was coming
21 down the road.

22 JUDGE GIBBONS: Well, let's assume, you know,
23 everybody's dancing around the mistrial word, all
24 right. Let's assume the worst scenario, that this
25 juror glanced a couple of seconds, whatever it is,

1 and saw a man wearing -- fitting your client's
2 description, 'cause I don't know if there was eye
3 contact made, being -- wearing an orange jumpsuit,
4 handcuffed, not shackled, being put into a van
5 behind the courthouse, is that in and of itself
6 grounds for a mistrial.

7 MR. FRICK: Judge, I think the case law is
8 clear, when jurors see defendants that are in cases
9 -- I was going to say shackled, and I certainly
10 understand he was in handcuffs, he was not in
11 shackles, but dressed out in a jumpsuit, and
12 restrained in some way that that is prejudicial.
13 That's why we dress them out. That's why he's not
14 sitting here in an orange jumpsuit, and don't ask me
15 for a cite right now, 'cause I don't have it in my
16 hands.

17 JUDGE GIBBONS: Oh, I know.

18 MR. FRICK: I know --

19 JUDGE GIBBONS: I understand.

20 MR. FRICK: I know there is case law that
21 specifically says that that is prejudicial to my
22 client. So, yes, if that is the situation -- and,
23 Judge, I want to tell you, I talked with my client,
24 we don't necessarily want to do this, we -- we would
25 like a resolution in this matter. We all would.

JURY TRIAL

1 However, this is not about the fundamental fairness
2 of the trial, it's about the fundamental fairness of
3 the trial to my client. And if a juror has seen
4 him, and that's prejudicial, I have no choice but to
5 ask for it, and I would think that the Court would
6 likely be in a position to grant it as well.

7 JUDGE GIBBONS: All right, well I think you're
8 probably correct. In that vein then, you know, why
9 are we even continuing with this trial while we're
10 trying to get a resolution of this. 'Cause if this
11 juror did in fact see something, you know, who's to
12 say he hasn't already told the jury what he saw
13 while they're just talking or -- you know, tell them
14 during the break. So, that begs the question do I
15 discuss this with that particular juror or not.

16 MR. FRICK: I really think we should see the
17 video first.

18 JUDGE GIBBONS: Let's go look at the video.
19 All right, we'll continue to be in recess. I mean,
20 I don't know any other way to do it, and then we can
21 look at the video, and then we can tell the record
22 what the video shows. All right, so we're in
23 recess. I'll go tell the jury that we're handling
24 some technical issues or something right now, so
25 they won't be back there speculating what we're

1 talking about, okay.

2 (OFF RECORD)

3 JUDGE GIBBONS: For the record, both myself
4 and the attorneys went and reviewed the security
5 camera video, nothing of any significance on the
6 video. And of course you couldn't see the juror at
7 issue, just because of the way the cameras were
8 positioned; but you can see activity. And that
9 activity matched up with what McKenzie has already
10 testified and what we thought happened, okay.
11 Having said that since the video was not totally
12 definitive, 'cause you couldn't see the juror where
13 he was standing, out of an abundance of caution with
14 the consent of both parties, correct, Mr. Frick?

15 MR. FRICK: Yes, sir.

16 JUDGE GIBBONS: The Court interviewed the
17 juror just now back in chambers. I recorded that by
18 consent, since my court reporter doesn't have the
19 ability of a digital recorder, I recorded it on my
20 phone, which I'm going to play into the record and
21 he indicated he didn't see anything other than a
22 bike run -- a biker -- a guy riding a bike go down
23 the road and people leaving, and some court
24 personnel telling him to have a good day. Would you
25 agree with my assessment of what the juror said,

JURY TRIAL

1 Madam Solicitor?

2 MS. LIVELY: I do, Your Honor.

3 JUDGE GIBBONS: Would you agree with that, Mr.
4 Frick?

5 MR. FRICK: That is what he stated.

6 JUDGE GIBBONS: All right. And I -- of course
7 I didn't continue to press the issue. You didn't
8 see the Defendant in a jumpsuit getting into a
9 prison trans -- he didn't say anything like that,
10 didn't even indicate, he was very forthright, very
11 nice and then he -- I sent him right back to his
12 jury room. Anything else before I play this? Do
13 you want me to play it first before you make your
14 motion?

15 MR. FRICK: We can play it first.

16 JUDGE GIBBONS: All right, let me play this
17 and Jenny hopefully this will be able to pick up and
18 I'll turn my microphone on and here we go.

19 (PLAYS AUDIO)

20 JUDGE GIBBONS:

21 Q. What is your juror number, sir?

22 JUROR NO. 96:

23 A. 96.

24 JUDGE GIBBONS:

25 Q. All right, this week after Court you've been hanging

1 out right there, I guess to wait on somebody to pick
2 you up?

3 JUROR NO. 96:

4 A. Yes, sir.

5 JUDGE GIBBONS:

6 Q. You're not in any trouble, okay. What if anything
7 did you see yesterday after Court?

8 JUROR NO. 96:

9 A. Yesterday?

10 JUDGE GIBBONS:

11 Q. Yeah.

12 JUROR NO. 96:

13 A. You mean like of any importance?

14 JUDGE GIBBONS:

15 Q. Yeah, whatever while you were waiting before your
16 ride came and picked you up.

17 JUROR NO. 96:

18 A. I -- the only thing I saw was some employees leaving
19 the courtroom, two of them said hello, have a nice
20 day, be safe. I saw a man riding a bicycle up the
21 road, like five minutes later he went down the road.
22 Then I saw a woman leave in a white vehicle behind
23 me on her phone or -- that's really about it.

24 JUDGE GIBBONS:

25 Q. Did you see me?

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1 JUROR NO. 96:

2 A. Yes, sir, I did.

3 JUDGE GIBBONS:

4 Q. Why didn't you waive?

5 JUROR NO. 96:

6 A. Because I --

7 JUDGE GIBBONS:

8 Q. I'm just --

9 JUROR NO. 96:

10 A. -- you wouldn't look in my direction.

11 JUDGE GIBBONS:

12 Q. That's right. All right, good. So you haven't

13 talked to anybody about this case?

14 JUROR NO. 96:

15 A. No, sir.

16 JUDGE GIBBONS:

17 Q. And you didn't see anything else?

18 JUROR NO. 96:

19 A. I didn't.

20 JUDGE GIBBONS:

21 Q. All right, thank you very much. You're free to head

22 back to your room, appreciate it.

23 (AUDIO STOPS)

24 JUDGE GIBBONS: All right, that was the extent

25 of the conversation. Mr. Frick?

1 MR. FRICK: Your Honor, you stated what was on
2 the video. I do want to point out that on the video
3 it's about the 4:22 mark you see Mr. Palmer being
4 escorted into the van, it does seem to skip a little
5 bit. I don't know what's going on there, but -- so
6 it's not -- I don't know that it's necessary to
7 (inaudible) real time video, but it does show him
8 getting into the van. Then another view -- and you
9 cannot see anything as far as the juror on the
10 sidewalk. There is another view that shows that
11 parking lot a little bit up the hill, at about 4:25
12 mark you see a shadow kind of on the corner, you
13 cannot tell who it is, but there is a shadow on the
14 corner, who possibly could be the witn -- I mean,
15 the juror in this case. But that corner right
16 there, that's right at the driveway, right where
17 that drainpipe is, where he possibly would've been
18 standing, it is not recorded. So, that period of
19 time we don't know where he was standing. I
20 certainly understand we've interview him in
21 chambers, and certainly understand what he said his
22 observations were. He did say he saw people leaving
23 the courthouse, that would've been about the same
24 time that Mr. Palmer was leaving. I do think it's
25 entirely possibly he saw it and may recollect later.

JURY TRIAL

1 Your Honor, just given everything that has gone on
2 in this case from witnesses who have talked about my
3 client can't go back to jail, to jurors who have had
4 -- been excused because of their relationship with
5 witnesses and their relationship with each other,
6 just the culmination of the facts, Judge, I think at
7 this point my client's rights to a fair trial are in
8 extreme jeopardy and I think we -- we keep using the
9 word abundance of caution, but we have not used it
10 in terms of my client's funda -- right to
11 fundamental and fair trial. And I think out of
12 abundance of caution at this point, the
13 fundamentally fair thing to do is grant a mistrial.
14 And as I've stated -- and Your Honor, has known me a
15 long time, I don't say that lightly. I want
16 resolution, Mr. Palmer wants resolution, I know the
17 family wants resolution. But, Judge, I'm concerned
18 with what's gone on in this case that only -- that
19 we will be re-litigating this one day and I would
20 rather have a clean slate, and I would ask you to
21 grant my request for a mistrial, the third time that
22 I've asked for it in this case.

23 JUDGE GIBBONS: Thank you. Any brief response
24 from the State?

25 MS. LIVELY: Yes, Your Honor. You handled the

1 initial issue where the lay witness stated something
2 about going back to jail, you handled it perfectly
3 according to what the Rules say, according to what
4 the case law says, a curative instruction. The two
5 jurors that were excused, it was both myself, as
6 well as the defense, who chose these jurors, put
7 them on there, without noticing they lived at the
8 same address, and I believe that as soon as we
9 learned that there could be the possibility of some
10 type of a problem, when Mr. Dye told us about their
11 relationship, you immediately made that decision
12 asking us do you want me to excuse these jurors,
13 what do you want me to do, you interviewed them, we
14 both agreed probably in the interest of justice we
15 needed to do that. So, every step where we have
16 tried to continually -- or we have been fair and
17 impartial to everyone in this case, Your Honor, has
18 clearly addressed the issue. And you did give us a
19 warning, all of us, that this case is -- you know we
20 want to make sure there is no more issues in this
21 case. So, as soon as I saw the juror yesterday,
22 I've already told you (inaudible) what happened.
23 So, I'm just going to end with this, you at this
24 point have seen exactly what myself and Mr. Frick
25 saw, and that there is no indication from the video

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1 from the courthouse both camera angles, that this
2 defendant was standing -- or that the juror was
3 standing anywhere near where the transport van and
4 the defendant were. So, we couldn't see it for
5 ourselves. So, then the next request by defense is
6 we'll bring the juror in, we need to question him.
7 Myself and Mr. Frick stood in the background, we did
8 not -- I looked at the back of the juror, and let
9 you handle everything, and you were very candid with
10 him, told him there's nothing to worry -- just tell
11 me what you saw, open ended question. And the fact
12 that he did not even flinch and say I saw people
13 coming and going, employees, and he never said I saw
14 some big van with some guy getting in there with an
15 orange jumpsuit. If anyone is out there standing
16 that's going to draw your eye. So, at that point he
17 was being extremely open, honest with you, from what
18 we could tell. Even Mr. Frick said it seemed like
19 he was being very frank and forthcoming. You gave
20 him every opportunity by asking him did you see
21 anything else, and he very clearly said no. So,
22 Your Honor, I think you have covered every single
23 base in order for us to continue with this case.
24 There is no reason for a mistrial at all. There was
25 nothing intentional. There was no -- nothing

1 nefarious going on, and also very clearly you've
2 checked every box in regards to whether or not
3 there's any danger of any type of, you know,
4 unfairness to the Defendant. And there's absolutely
5 none because that juror saw nothing, so we don't
6 have to worry about him infecting the rest of the
7 jury. At this point we're right back to where we
8 were before -- when we got here this morning, thank
9 goodness, which is we have a jury ready to go.

10 JUDGE GIBBONS: All right, thank you. I agree
11 with the State. I'm denying your motion for
12 mistrial. I note again, Mr. Frick, for the purpose
13 of this record that a mistrial should only be
14 granted in cases of manifest necessity, and with the
15 greatest caution for very plain and obvious reasons.
16 All right, so the first issue where a mistrial was
17 requested was on Monday. We are two witnesses in,
18 maybe three witnesses in when the witness blurted
19 out an answer, which you immediately objected to,
20 and I immediately sustained. We then proffered that
21 testimony; I think I sent the jury out. You raised
22 it at that point in time. I gave the curative
23 instruction, and I specifically told the jury that
24 they could not give that statement any weight
25 whatsoever. So I -- I handled that the way it

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1 needed to be handled in my opinion. The second
2 issue happened the very -- the first thing, before
3 any testimony, the next -- the second day when one
4 of the State's witnesses who was introduced as
5 Cyteco Dye, who then we found out the correct
6 pronunciation is Cyteco Dye, and but his cousins
7 knew him at Teet, you know, the witness let the
8 Solicitor know immediately. We handled that first
9 thing that morning, and those jurors were removed
10 after thorough questioning and replaced with
11 alternates, and both of those jurors indicated as I
12 recall that they had not discussed this with -- that
13 they had -- they told me that hadn't discussed it
14 with each other, nor did they discuss it with the
15 other jurors. Yeah. And then this issue this
16 morning comes -- happened at the end of the third
17 day involving what was relayed as your client seeing
18 a juror out back waiting for a ride. Now, I find
19 that based upon the evidence that I looked at
20 concerning this issue, that the -- after my
21 interview with the juror back in chambers that was
22 recorded, that y'all were present at, I find the
23 juror to be credible. His statement to me, I didn't
24 pick up any evasiveness. He made eye contact with
25 me when he was telling me this. It was in a relaxed

1 setting in my office. I purposely didn't bring him
2 out here in front of everybody and a camera and
3 everything to make him more relaxed. And he stated
4 under -- you know, in that environment that he
5 didn't see anything other than a person riding a
6 bike, which confirms what we saw in the video;
7 people leaving, employees of the courthouse, which
8 we all saw on the video. So, you know, there was no
9 scripted answer it was just an open-ended answer and
10 he never said he saw a van. He never said he saw an
11 officer load up a prisoner. He never said he saw
12 the defendant, okay. And I find his statement to me
13 to be credible. I also find that the various camera
14 angles to back up what he said, I find that's
15 credible. I mean, I don't see the grounds for a
16 mistrial here, especially on the eve of this trial
17 concluding. So, having considered all of that, your
18 motion for mistrial is therefore denied. All right,
19 I did get a note that the jury wanted to take a
20 smoke break. So, the jurors who smoke are being
21 escorted downstairs to go smoke outside and then
22 they'll be brought back, when they're ready to go,
23 we'll be ready to go. Anything else before we --
24 let's wait until they're ready to go.

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

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1 JUDGE GIBBONS: What's that?

2 MS. LIVELY: I said I'm good.

3 JUDGE GIBBONS: Anything else?

4 MS. LIVELY: I thought you were asking if I
5 needed anything else.

6 MR. FRICK: Not at this time, no, sir.

7 JUDGE GIBBONS: Okay. All right, well, while
8 we're in a period of not doing anything let's do law
9 stuff. I know it's -- y'all -- I sent -- I know a
10 directed verdict motion hadn't been made yet, but
11 other than that charge -- other than that charge and
12 that specific offense, any issues with what my law
13 clerk emailed to y'all? And of course we'll have a
14 charge conference when everything's in.

15 MS. LIVELY: Right.

16 JUDGE GIBBONS: But I -- you know, while we're
17 in a dead space right now, you know what I mean.

18 MS. LIVELY: Yes, sir, Your Honor. And I did
19 review it, I'm fine with what your charges. One of
20 the things I did want to bring up, because I did a
21 little bit of research --

22 JUDGE GIBBONS: Not on the ABHAN charge
23 though. We're dealing with that separately.

24 MS. LIVELY: Right.

25 JUDGE GIBBONS: And we're gonna -- we're not

1 dealing with the underlying criminal charges and
2 all. I'm just talking all the general stuff.

3 MS. LIVELY: Oh, the general, okay. Nothing
4 in regards to the general stuff.

5 JUDGE GIBBONS: Okay. All the general stuff,
6 other than the criminal charges, 'cause I need to
7 hear from the Defense first after the State rests,
8 on all the extraneous stuff. Anything you want me
9 to add? Or further elaborate on, Mr. Frick?

10 MR. FRICK: Not at this time, no, sir.

11 JUDGE GIBBONS: All right, perfect. So, after
12 I rule on the directed verdict, and after the close
13 of the evidence we'll have the charge conference
14 before anything.

15 MS. LIVELY: Okay.

16 JUDGE GIBBONS: All right?

17 MS. LIVELY: I'm going to make a couple of
18 copies of some law, Your Honor.

19 JUDGE GIBBONS: Okay. All right, well we're
20 at ease until the jury -- until y'all let me know
21 that the jury is ready to go.

22 (OFF RECORD)

23 JUDGE GIBBONS: All right, bring the jury in.

24 (JURY ENTERS)

25 JUDGE GIBBONS: All right, thank you ladies

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1 and gentlemen, everybody's present. I sincerely
2 apologize for the delay in starting this morning.
3 Don't get mad at the lawyers, this is on me, okay.
4 So, if you're mad at anybody, get mad at me; I'm
5 used to people getting mad, okay. It was just a
6 technical issue we had and we had to get resolved,
7 and that was on my end, not on the State's end or
8 the Defense's end, okay. We're ready to go. Call
9 your next witness, Madam Solicitor.

10 MS. LIVELY: Yes, sir, Your Honor. The State
11 will call Jessica Shanks to the stand.

12 JUDGE GIBBONS: All right. You mind raising
13 your right hand, ma'am? Do you swear or affirm that
14 the testimony you give will be the truth, the whole
15 truth, and nothing but the truth, so help you God?

16 MS. SHANKS: Yes.

17 JUDGE GIBBONS: Thank you, ma'am. You can
18 come up here. Watch that microphone and have a seat
19 there and then you can pull the microphone up to
20 your face. Thank you.

21 JESSICA SHANKS
22 was called as a witness, and having been first duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. LIVELY:

1 Q. Good morning, Jessica.

2 A. Good morning.

3 Q. Jessica, how old are you?

4 A. 39.

5 Q. 39. And you're still married, correct?

6 A. Yes.

7 Q. Can you tell us your husband's name?

8 A. Corey Shanks.

9 Q. Corey Shanks. And I'm going to ask some obvious
10 questions, just so that we can kind of get you talking a
11 little bit this morning, okay.

12 A. Okay.

13 Q. All right. Do you have any children?

14 A. I do.

15 Q. And tell the jury who those children are.

16 A. Max Shanks and Griffin Shanks.

17 Q. And in July of 2022 what were their ages?

18 A. Max was seven and Griffin was four.

19 Q. And where did y'all live as a family?

20 A. We lived then and still currently live in Matthews,
21 North Carolina.

22 Q. And do you have family members who live in the state
23 of South Carolina?

24 A. I do.

25 Q. And who are they?

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1 A. My parents live in Lexington, South Carolina.

2 Q. What are their names?

3 A. Greg Blackman and Stephanie Blackman.

4 Q. And in Matthews, North Carolina, where you lived
5 with your family, did you have other family members that
6 are in North Carolina?

7 A. I do.

8 Q. You do? Okay.

9 A. Uh-huh (affirmative).

10 Q. Do you have a fairly large family?

11 A. I do. I have two sets of parents and a brother and
12 a sister and in-laws and -- yes.

13 Q. And how close are all of your family? Not in like
14 proximity, but close as in, you know, how often y'all get
15 together, and things like that.

16 A. Very supportive and honestly I think you'd probably
17 spend more time with family when they live further out of
18 town because you -- when you get together, but -- for
19 trips, but you know, the average weekend dinner,
20 birthdays, things like that.

21 Q. Now, Jessica, when -- and back in July of 2022, was
22 your husband Corey working somewhere where he had been
23 for a while?

24 A. Yes, he had been with Andrew Roby Commercial
25 Construction since 2015.

1 Q. All right. And what was his job there?

2 A. At the time of our accident he was the director of
3 pre-construction.

4 Q. Director of pre-construction?

5 A. Yes.

6 Q. Were you working at that time?

7 A. I was. I was working full-time as the senior
8 administrator at Avondale Presbyterian Church.

9 Q. And is your -- is that also the church that you and
10 your family attended?

11 A. It is.

12 Q. Well tell the jury in July -- the weekend of July
13 8th through the 10th, what was the plan for you, your
14 husband Corey, Max, and Griffin?

15 A. My step-mom and my dad work for the school system in
16 Lexington County, so they were out for the summer. So,
17 we would every summer do a long weekend where the boys
18 went to them and gave Corey -- Corey and I a chance just
19 to have a weekend together at home for projects and date
20 nights or whatnot. That weekend happened to be my
21 brother-in-law's birthday, so we were going out to dinner
22 and we were going to go see a movie, which we did, and
23 just do some home projects.

24 Q. And what were the plans for Max and Griffin at that
25 point -- that weekend? Did you know what they were going

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1 to be doing with the -- with your parents?

2 A. Things that grandparents do with their -- with their
3 grandkids. They went to the Columbia Zoo. They went to
4 Adventure in Columbia. I'm sure played games and went
5 down to the creek and stuff.

6 Q. What was the plan for when you were going to pick
7 the boys up?

8 A. My husband and I went to church Sunday morning. I
9 had a church meeting to attend afterwards, and he was
10 working on some projects there, 'cause he's on the
11 property team. And then we would be heading to Chester
12 to meet my family, my parents and the boys, it's the
13 halfway point between Lexington and Matthews, and meet at
14 The Front Porch for dinner and receive the boys and come
15 home.

16 Q. Okay. And just tell the jury for those who may not
17 know, what's The Front Porch?

18 A. The Front Porch is a restaurant right off the
19 Chester exit.

20 Q. And is that the big exit, exit 65 in Richburg?

21 A. Yes.

22 Q. Okay. So, have you stopped there before?

23 A. We met there Thursday night and had dinner when I
24 gave them the boys and then we met there again.

25 Q. That's what I was asking. It's like --

1 A. We went twice, yeah.

2 Q. You did go twice, all right. So, on that Sunday
3 then about what time was it whenever you headed towards
4 The Front Porch to meet with your -- meet the
5 grandparents?

6 A. We were meeting at I think 4:00 or 4:15, something
7 like that, so an early dinner.

8 Q. Okay.

9 A. So we left Charlotte around, I guess, 3:00.

10 Q. And what was the weather like at that point whenever
11 you were headed towards The Front Porch?

12 A. Saturday, at least in Matthews, there had been some
13 pretty severe thunderstorms and Sunday there was overcast
14 and drizzle. I don't know. I don't recall how heavy or
15 not the rain was, I just remember it was kind of cloudy
16 and like misty and not -- not a pretty day.

17 Q. And who drove to The Front Porch on the way from
18 Charlotte?

19 A. I did.

20 Q. You did, all right. So you drove there on Sunday,
21 July the 10th?

22 A. Yes.

23 Q. So, when you got there, tell the jury, you know, who
24 was there and what y'all did. Take your time.

25 A. When we got off the exit, we went and got gas

1 because we got there a little early. We went and sat in
2 The Front Porch parking lot facing the road, in a parking
3 spot facing the road, and we were laughing because I saw
4 my dad's truck approaching, and I could see their shadows
5 through the tinted windows in the back seat, and I could
6 tell that they were very excited. Their shadows were
7 moving -- moving a lot in the back seat and we kind of
8 joked like oh, boy, the weekend's over. They're coming
9 back and --

10 Q. Are they very rambunctious?

11 A. They are, just as you would expect from two boys.
12 So, they got out of the car, I remember they were really
13 excited because they had bright colorful Gatorades. My
14 dad always has to stop for a drink, so they were really
15 excited about that to have those.

16 Q. Did they get anything else from -- from their trip
17 that you saw?

18 A. Yeah. Max had a blue glider airplane and this
19 grabber claw that like you squeeze the handle, it's got
20 the long arm and it grabs stuff. And we had to take
21 those into -- into the restaurant, so that was -- I just
22 remember sitting in the restaurant and Max was on one
23 side of me and the Griffin was on the other side of me
24 and they wanted lemonade or soda and I wouldn't let them
25 because they had had the, you know, sugary Gatorades and

1 at The Front Porch they have these little dishes with
2 lemon juice packets and sugar packets, and so when I
3 wasn't looking Max was opening all the lemon juice
4 packets and putting them in the water and adding sugar
5 and making lemonade. And then he used his grabber claw
6 to pick up the Styrofoam cup and it went through the cup
7 and his lemonade went all over the table.

8 Q. Did y'all end up having your dinner?

9 A. We did.

10 Q. You did. By the time that you finished dinner, what
11 did y'all do?

12 A. We went back out to the cars to get the car seats
13 and --

14 Q. Did you have to retrieve those from your -- from the
15 parents -- your parents?

16 A. I want to say that my car seat for Griffin was
17 already in there, it was a five point harness, so I
18 believe his car seat from my car was already still in the
19 car, and we had given my parents the one out of Corey's
20 car, just 'cause those are -- take longer to install and
21 they're just kind of more of a pain. And Max had the
22 simple booster seat that you can easily transport back
23 and forth, so it was putting those in.

24 Q. And do you recall at that time, you already said
25 that he was seven and Griffin was four, you know, what

1 size boy was Max at that point whenever -- I mean, do you
2 remember like maybe the last well visit you did with the
3 doctor?

4 A. Yeah. Max's birthday is late April, so he had just
5 recently in May had a well visit. He was 75 pounds and
6 he was four foot, five.

7 Q. Four foot, five, okay. Now, whenever -- so you got
8 the seats together and everything is in there, you're
9 ready to go at this point and head home; is that right?

10 A. Yes.

11 Q. All right. So tell the jury where everybody was
12 seated in the vehicle and who was driving.

13 A. I was driving, Corey was sitting in the front
14 passenger seat, Griffin was just behind me, he's the
15 four-year-old, and Max was behind Corey in the passenger
16 side back seat.

17 Q. Okay. And at that point in time, did you do
18 anything at all before you got onto the interstate after
19 you left from The Front Porch, did you stop anywhere or
20 do anything before getting -- heading home?

21 A. No, we had gotten gas prior, so we just got on the
22 highway.

23 Q. So I'm going to, just for the purposes of showing
24 the jury, and it might just kind of help as well, now did
25 I -- we talked about where you were with the boys and

1 you've just confirmed that, okay. And Your Honor, this
2 is State's Exhibit Number 3, it's my understanding it's
3 entered without objection from the Defense.

4 MR. FRICK: There's no objection. And Your
5 Honor, if you don't mind I'm going to --

6 JUDGE GIBBONS: Yeah, come on over here. All
7 right, entered into evidence.

8 MS. LIVELY: Thank you, Your Honor.

9 (State's Exhibit 3
10 was introduced into evidence)

11 BY MS. LIVELY:

12 Q. Can you see that?

13 A. Yeah.

14 Q. You can, okay. So, in regards to where you were,
15 you said you were at the exit, which is that main exit
16 where The Front Porch restaurant is, correct?

17 A. Uh-huh (affirmative).

18 Q. Okay. And just when you answer, I know it's easier
19 to kind of nod, but you need to answer --

20 A. Yes.

21 Q. -- on that.

22 A. Yes.

23 Q. Okay. All right, so we got the vehicle, everybody's
24 strapped in, or are they? Was everybody's seat buckled
25 in?

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1 A. Yes.

2 Q. And you get onto that road to get -- which is Number
3 9, I don't know if you know that or --

4 A. Highway 9, okay.

5 Q. Yeah, Highway 9.

6 A. Uh-huh (affirmative).

7 Q. Good, okay. And then you're going to get to the
8 exit onramp for I-77; is that right?

9 A. Yes.

10 Q. Okay. Now, whenever you get onto I-77, tell the
11 jury at that point, was your path a straight path before
12 being hit by the Defendant?

13 A. Yes.

14 Q. And what I mean by that, did you stop anywhere, pull
15 over, or do anything from this point one until you go to
16 marker 67 where you were hit by the Defendant?

17 A. No.

18 Q. So this straight path is showing exactly the path
19 that you took?

20 A. Yes.

21 Q. Now, how -- so you went -- so we've talked about,
22 that's exit 65, that big exit off of Number 9, right?

23 A. Yes.

24 Q. And so highway marker -- mile marker 67, do the math
25 for us, how far had you been?

1 A. Two miles.

2 Q. A little more than two miles if we add in leaving
3 The Front Porch?

4 A. Yes.

5 Q. So, what speed were you going when you got on that
6 interstate and kind of started -- I mean, how -- how were
7 you even able at that point to kind of get going at just
8 a normal speed? I mean it had been two miles, tell the
9 jury.

10 A. Just merging onto the highway and --

11 Q. Okay.

12 A. -- accelerating. I was still in the -- in the slow
13 lane, which is -- it's only two lanes, so it's where I'm
14 supposed to be if I'm just cruising.

15 Q. You're just cruising okay.

16 A. Yeah.

17 Q. Your two boys in the back seat and your husband next
18 to you, all right. So, you're cruising in the slow lane,
19 would that be the right lane heading north?

20 A. Yes.

21 Q. At any time while you were driving this two mile
22 stretch, did you get into the fast lane, the left lane?

23 A. I did not.

24 Q. You did not. You stayed in the slow lane the whole
25 time, okay. So, you're driving along in the slow lane,

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1 do you recall what your speed was when you were driving
2 in that slow lane?

3 A. I don't recall my exact speed. I guesstimated that
4 I was going somewhere just because of the timeframe that
5 I had been on the highway going somewhere between 70 and
6 75, like, you know, with the stream of traffic because it
7 was a little congested.

8 Q. It was a little congested, okay. When you're in the
9 slow lane on I-77 on that day, were people passing you?
10 Passing you from the left.

11 A. I'm sure they were people passing me. I don't
12 recall.

13 Q. You don't remember? Okay. You just said it was
14 kind of congested, that's the reason why I asked that.

15 A. Yeah. Yeah, it was kind of congested. It was busy.

16 Q. Busy?

17 A. Uh-huh (affirmative).

18 Q. All right. And while you were in the slow lane,
19 tell us what you were doing before things dramatically
20 changed.

21 A. I was just driving. I mean, there's -- as the
22 driver there's nothing to do except focus on the road and
23 what's around you and -- and moving.

24 Q. What was your mood like at that point?

25 A. Happy, normal, yeah, average.

1 Q. Were you frustrated with the traffic?

2 A. Oh, no. No, I was not.

3 Q. Okay. So, when did it all change? What did you
4 see, if anything?

5 A. Out of my rearview mirror, in my periphery, I just
6 saw something approaching really, really fast. Almost it
7 -- I think what caught me is that it was like a -- like a
8 popover, like a -- it wasn't -- it was -- he was there
9 and then I could -- when I looked in my -- looked and
10 when I looked in my rearview mirror it -- he was very
11 close and did not appear to be slowing down. And I said
12 oh my God, he's going to hit us.

13 Q. And once again, you never moved out of the slow
14 lane?

15 A. I did not.

16 Q. Were there --

17 A. My -- I'm sorry.

18 Q. I'm sorry. No, I was just going to ask -- go ahead
19 and finish and I'll --

20 A. My first instinct was I need to get away -- away
21 from him, so to speed up and -- but there was also a car,
22 you know, a red car not too far in front of me. So --

23 Q. Do you know if there was anyone in the left lane
24 where you could've moved into the left lane or do you
25 remember?

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1 A. I don't recall.

2 Q. How quickly did all this happen and literally for
3 what -- I know we're breaking it down now, but just tell
4 us how quickly all this took place.

5 A. Within an instant. I mean, from the time period of
6 thinking oh my God he's going to hit us, to the thought
7 of I have to get away, it -- I mean, he hit. It wasn't a
8 --

9 Q. I understand.

10 A. There was really no great lapse in time for
11 anything.

12 Q. So, at that point what you're saying, and I'm
13 asking, 'cause you said -- you're thinking oh, I have to
14 get away, what you're looking at is the possibility of
15 speeding up and possibly -- if that red car had not been
16 in your way.

17 A. Yes.

18 Q. Is that correct? Okay. And then the next thing you
19 know what happens?

20 A. He hit us.

21 Q. He hit you.

22 A. And honestly after that the next thing I remember is
23 just seeing trees.

24 Q. So, you're seeing trees, and what happens next?

25 What's the next thing that you remember?

1 A. The next thing I remember is being -- like being
2 still. I don't -- after seeing the trees, I honestly
3 don't remember the feeling of hitting the trees or -- I
4 just remember seeing the trees, and then I remember being
5 like coming to a stop and opening my eyes.

6 Q. Did you ever lose consciousness?

7 A. I did not.

8 Q. Had your airbags deployed?

9 A. Yes.

10 Q. And who was the first person in the vehicle with you
11 that you saw?

12 A. Corey.

13 Q. And he's next to you? What did you see?

14 A. He was slumped over and he was making some faint
15 moaning noises, and there was a lot of blood and his
16 right arm was just folded on -- like in multiple pieces
17 folded onto him.

18 Q. Who did you see next?

19 A. Max.

20 Q. What did you -- what do you remember seeing about
21 Max?

22 A. That he looked -- he looked like he was sleeping.

23 Q. What about Griffin?

24 A. There was no noise coming from the back seat at all.

25 Q. Okay. And --

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1 A. And --

2 Q. -- at that point what did you do?

3 A. I just -- I knew -- I just knew that Max was not
4 okay. And I knew that Corey was not okay either, but
5 Corey was making noise, and there was no noise coming
6 from the back seat at all. I knew that I was hurt, but I
7 didn't know how badly, and I also have previously worked
8 in trauma, so I knew that there was -- like I -- I needed
9 to try to stay still, try to stay calm. But I was
10 terrified to turn and look at Griffin, and I just started
11 screaming no over and over and over again, and someone
12 came to my window. I don't recall what he was saying. I
13 think help is on the way or something like that I'm
14 assuming is what he was saying. And he ran away and I
15 started dumping my purse out, just dumping it, looking
16 for my phone to call my parents to tell them to turn
17 around. And then I found my phone in my lap and I
18 called, and just started screaming turn around, turn
19 around.

20 Q. Were you able to tell them where you were?

21 A. I don't remem -- I don't recall.

22 Q. That's fine. Did they actually make it to the
23 location where all of you were --

24 A. They did.

25 Q. -- at some point? They did, okay. Well before

1 that, as you're sitting there, someone does come and say
2 that help's coming, when at that point do you recall
3 actually being either removed from the vehicle or that
4 you were able to get out? Tell the jury which one of
5 those actually happened?

6 A. A man came to my door, and it wasn't the same man,
7 it was someone else, he came to my door, and opened it,
8 and I just jumped out and just started running. And then
9 he came back. He yelled for me.

10 Q. Okay.

11 A. And he handed me Griffin.

12 Q. And how was Griffin -- just visually at that point,
13 how was Griffin?

14 A. Let me go back for a second, when I was still in the
15 car and I was screaming, no, no, no, no, no, and I called
16 my parents and I hung up with them, Griffey asked all of
17 a sudden, I hear from the back seat, he say, "Are you
18 okay?" And I -- then any thought of staying still, or
19 you might be more hurt than you think you are, stay calm
20 and stay still left me, and I flipped around and he was
21 just sitting near untouched and just very flat affect.
22 So, then someone got me out of the car, and then handed
23 me Griffin and told us -- I was holding Griffin and he
24 said I want you to just walk that way. And I just
25 started walking.

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1 Q. And at that point you did not know anything more
2 than that; is that right, in regards to walk -- as in,
3 the others -- the condition, other than what you've
4 testified to right, a few minutes ago? I don't want to
5 put words in your mouth.

6 A. I knew that --

7 Q. Let me --

8 A. I know. I know.

9 Q. -- let me ask you this, what did you know? Or what
10 did you feel like you knew was going on.

11 A. I knew that Max was gone. But I just sat there on
12 the side of the road trying to stay really calm and quiet
13 so that they could help Corey, and that hopefully I would
14 be wrong about Max.

15 Q. How long, and I know it's really hard to put a time
16 stamp on anything, Jessica, but how long were you there
17 before you were actually treated? I believe Elena
18 Malzahn has already testified that she -- she saw you and
19 saw Griffin, tell us about that.

20 A. The timing of all this and the order that people
21 came up is a little -- a little wonky, but there were
22 some nurses that were going southbound, they came over,
23 they were talking, they ended up taking Griffin and
24 sitting next to me and they were playing I-spy with him.
25 People kept asking me are you okay, and I just kept

1 saying yes, 'cause I just -- I didn't -- I just wanted
2 them to go to Corey and Max.

3 Q. Do you remember meeting or talking to anyone like
4 Felicia and James Logan that day, who testified earlier
5 this week?

6 A. I have never met Felicia and James Logan, nor did I
7 ever know their names.

8 Q. How about Joseph Parker, do you remember talking to
9 him that day?

10 A. I do not remember talking to him that day, but I did
11 talk to him after.

12 Q. And that's fine -- and you -- what about Brittney
13 Dempsey, the other eye witness? No?

14 A. I did not even know her name --

15 Q. That's fine.

16 A. -- until this week.

17 Q. Were you there when Corey was removed from the
18 vehicle?

19 A. I was physically there, yes, but I was -- now I know
20 shielded from turning and looking or anything.

21 Q. At that point in time, did you know any more about
22 his condition?

23 A. No, but I knew from my own personal training that it
24 was bad.

25 Q. Did you ever see them, anyone, take Max out of the

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1 car?

2 A. I did not.

3 Q. Where did you go from when you left the scene of the
4 collision?

5 A. I know that Corey left before me, and that my step-
6 mom took Griffin and they were all in the same ambulance.
7 So, my parents had gotten back there before any of us
8 left, and I wanted her to go with Griffin, so that he
9 would not be alone and they were concerned about him
10 because he was so quiet.

11 Q. Now, Jessica, before you actually left the area of
12 the collision, did you ever see the Defendant, Mr.
13 Palmer?

14 A. I did.

15 Q. Tell the jury about that.

16 A. I saw him on the other side of the road. He seemed
17 in distress and upset. He seemed to be wanting to come
18 over, and I just screamed go away.

19 Q. Was that the only interaction that you had with him
20 after the collision?

21 A. Yes.

22 Q. So, after you see Corey's gone with the first
23 responders, Griffin is you said in the ambulance and he's
24 going as well, is that when you were taken to the
25 hospital too?

1 A. I was then taken in an ambulance to the same
2 hospital that Corey and Griffin were at.

3 Q. And tell the jury when you got there what happened
4 next.

5 A. I was put in a room to be checked and looked over.

6 Q. Did you have any injuries?

7 A. I had bitten through my lip, my jaw was dislocated,
8 and I had some pretty intense rib pain that lasted for
9 about six to eight weeks.

10 Q. While you were in the room, what happened next?

11 A. My dad had gotten in his truck and said I'm
12 following your ambulance, and I'll meet you there, and I
13 knew that my step-mom was with Griffin and Corey. But,
14 when we got there they put me in a room, and I think a
15 nurse talked to me and checked on me and made sure my IV
16 was hooked up and said we'll be in in a few minutes and
17 then left me, and I was in there by myself and that's
18 when I started just falling apart. I was screaming for
19 someone to bring me my dad because he was behind me, and
20 I didn't want to be alone.

21 Q. And did your dad come to the room?

22 A. Not yet because he had gotten stuck in the traffic
23 from our accident. So, they had my step-mom going back
24 and forth, and then they eventually brought Griffin's bed
25 in next to me to lay next to mine, so that she could be

1 in one room with both of us.

2 Q. At some point did your dad show up?

3 A. Yes.

4 Q. At some point did you learn more information
5 regarding Max?

6 A. Our family started showing up and everyone kept
7 coming in and say we're looking for Max, we're gonna find
8 him, we're calling around to the other hospitals. And in
9 my mind I just -- I knew what that meant. And -- but I
10 just kept praying that I was wrong, and I also just
11 didn't have -- I couldn't tell them. So, at another
12 point everyone in my family kind of left, and my pastor
13 was sitting with me, and I knew what was happening then.

14 Q. At some point did Coroner Tinker walk into the room?

15 A. My whole family came walking back into the room, and
16 following behind them was a State Trooper and Coroner
17 Terry Tinker, and I just looked at him and started
18 shaking my head no. I said I know, please don't say it.

19 Q. Where was Corey at that point?

20 A. Corey was in another bay at the hospital. They were
21 trying to get him -- they wanted to get him lift-flighted
22 from the scene, but because of the overcast and wind they
23 -- and whatever the weather they were not able to, so
24 they were trying to stabilize him at Piedmont, which is
25 where we were, to life-flight him to Carolinas Medical

1 Center -- or Atrium, but they couldn't. Again, they were
2 still -- it was still not working with the weather, and
3 so they were waiting on a trauma one -- the life-flight
4 van to come and pick him up. So, when we were -- I'm
5 sorry, go ahead.

6 Q. No. So, what if anything did you know about his
7 condition at that point?

8 A. Nothing that had told me, except that they were
9 trying to get him to a trauma one center.

10 Q. Was he conscious, did you talk to him?

11 A. No. No.

12 Q. Did you get to see him before he was taken to
13 another facility?

14 A. When they told me that Griffin and I would be
15 discharged soon, and then got prepared us for discharge,
16 once I was up walking out of my room -- of my bay, I
17 asked if I could see him before he left, because we had
18 already determined that I would go back to my family's
19 house with Griffin, and that Corey's mom would go to be
20 with him. So, I wanted to see him before he left. And
21 at first they told me no, and then I told them, you know,
22 I think I said a little something along the lines of I'm
23 gonna keep it together, just please let me see him or
24 something like that, and they let me -- he was prepared
25 and ready to get in the van and on a stretcher for the

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1 van, and I just went over and talked to him and -- I
2 mean, he was unconscious but.

3 Q. Okay. So, at that point in time were you able to
4 have a conversation with them about anybody else's
5 condition or Max?

6 A. I had gotten confirmation, according to the x-rays,
7 that I did not have broken ribs, and that my jaw was a
8 simple dislocation and not broken. So, I was being
9 discharged; that Griffin had checked out clear. All he
10 had was bruising from his five point harness, some minor
11 bruising from that. I did not -- I did not know Max's
12 cause of death, and I did not know the full extent, nor
13 did they at the hospital, know the full extent at that
14 point of Corey's injuries.

15 Q. I understand. After he left, what facility was he
16 taken to?

17 A. He was taken to Atrium Main in Charlotte.

18 Q. And when he was there did you learn what his
19 condition was?

20 A. I did.

21 Q. Okay.

22 A. Yeah.

23 Q. Please tell the jury what his condition was whenever
24 he was taken to that facility.

25 A. When I arrived at the hospital the next morning, he

1 was in surgery for his arm. He had multiple broken
2 fractures in his arm. He had also total degloving of his
3 entire shoulder blade, which degloving just means that
4 the entire muscle, all the ligaments and tendons were
5 ripped from the muscle. He had significant nerve damage,
6 they weren't sure of his -- if the surgery would work to
7 repair his arm, or if it did if he would ever have
8 mobility in that arm again, so that was -- I mean that's
9 a very long -- just his arm is a very long story of
10 progression and unknowns. He had multiple broken ribs.
11 He had a collapsed lung. He had three facial fractures
12 that required surgery later. And at that point, we only
13 knew that he had taken a major blow to the right side of
14 his head, but he was not showing on the scanning -- the
15 initial scanning that they did, it did not -- it doesn't
16 portray the type of brain injury that he has. So --

17 Q. And actually --

18 A. -- they were looking for swelling and bleeding,
19 which thankfully he did not have.

20 Q. Okay. And we've his doctor, Dr. Crawford, tell us
21 about --

22 A. Yeah.

23 Q. -- the severity of that. So, how long -- what I'm
24 trying to also ask is, when he -- when you saw him and
25 they had to have the surgery, at that point in time was

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1 he talking, able to move around, what was his state in
2 the hospital at that point?

3 A. He was in a coma.

4 Q. Okay, thank you. He was in a coma. How long was he
5 in a coma?

6 A. Multiple days.

7 Q. During that time, did you have to make decisions in
8 regards to Max?

9 A. I did.

10 Q. And was this without the assistance of your husband
11 Corey?

12 A. It was.

13 Q. Was Coroner Tinker helpful in that manner?

14 A. He was. He was in contact with Corey's parents
15 about the whereabouts, the location of Max.

16 Q. And let me ask you this question, okay, were you
17 able to see Max at the end (inaudible) from when you saw
18 him and you thought he was asleep in the backseat of that
19 car?

20 A. I was not.

21 Q. Was that -- so that was the last time you saw him?

22 A. I --

23 Q. Is that a yes?

24 A. Yes. That was the last time I saw him.

25 Q. Were you ever provided, and I know this is hard, I'm

1 not going to ask you any further than this, were you ever
2 provided any more information about his injuries, other
3 than what you've actually heard here today -- heard here
4 this week at the trial of this case?

5 A. I read his death certificate that said -- I hate the
6 description --

7 Q. You don't have to say it if you -- if it --

8 A. Basically it just -- head trauma. But this week is
9 the first time I've heard any details about what that
10 meant, what -- I know what that means, but the severity
11 of that.

12 Q. So let's go back to -- do you need a break or are
13 you okay?

14 A. I'm okay.

15 Q. So, in regards to Corey at this point, you said that
16 he was in a coma for multiple days. Was he actually able
17 to communicate with you at some point while he was still
18 at Atrium? At what point were you able to have a
19 conversation with him?

20 A. A conversation quite some time. I mean, I don't
21 know, a week, two weeks, and conversation is -- is
22 relative.

23 Q. I understand. What was his condition at the time
24 when he was actually released from Atrium?

25 A. When he was released from Atrium he was not walking.

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1 He was in a wheelchair. His arm was still fully -- I
2 mean, bandaged and dressing changes every day. He had a
3 big wound vac machine for some areas with no skin and
4 needing help with closure. His words were, you know,
5 limited to kind of yes and no, or one to five word
6 answers; a lot of confusion, and his memory was about at
7 a 30 second -- 30 second mark, where meaning anything we
8 told him 30 seconds prior he would forget within about 30
9 seconds later.

10 Q. And we had Dr. Crawford testify about how Corey had
11 no recollection of the actual collision. And as his
12 wife, is that also the same experience you had with him
13 in regards to his ability to remember what happened?

14 A. Yes, he has -- he had no memory, and in fact we
15 couldn't talk about anything related. We could -- if he
16 asked why am I here, we could tell him every day you were
17 in a bad car accident, but all we could say was, you were
18 in a bad car accident, everyone is okay, because your
19 body can -- if you tell someone something traumatic and
20 they have such a short memory like that, their body and
21 their nervous system remembers the shock and the pain,
22 but then their memory can't figure out why they're
23 feeling that way, so it could send him into a deep
24 depression and we needed to keep him stable emotionally.

25 Q. You did eventually tell him about Max, correct?

1 A. I did.

2 Q. And have the two of you, based on both his medical
3 conditions that we've heard from Dr. Crawford, as well as
4 what you're telling us, have you been in therapy in
5 regards to this treatment, as well as him adjusting to
6 his limitations and what's happened to your family?

7 A. Yes, myself, Corey, and Griffin are all three in
8 weekly counseling. And then Corey additional, you know,
9 therapies, physical therapy, occupational, vision.

10 Q. And just because I know Dr. Crawford wasn't able to
11 tell us the specifics, there was a -- she did say that he
12 was able to go back to his job, but is it in the same
13 position and doing the same thing that he did at the time
14 prior to the collision?

15 A. It is not.

16 Q. And how about just his ability to do normal things
17 around the house, I mean, does he still have some
18 permanent issues that you're noticing that you're dealing
19 with?

20 A. Yes. Yes, with regards to there's the physical
21 limitations, just because he is a brain injury patient of
22 -- and so he has dizziness and things like that. So, no
23 more ladders, a lot of -- Corey is a woodworker, and
24 active, and so a lot of the things that he enjoys or is
25 drawn to, he's had to figure out ways around or give up

1 some hobbies and develop new.

2 Q. How long had y'all been together before this
3 collision? Not just how long have you been married, but
4 how long have you been together for?

5 A. We met in 2010.

6 Q. 2010?

7 A. Uh-huh (affirmative).

8 Q. So y'all have been together -- so 12 years.

9 A. Yeah.

10 Q. So did he have those same kind of symptoms with his
11 ADHD?

12 A. I mean, ADHD is attention, so there were, you know,
13 the assistance of ADHD medication for work and focusing,
14 and honestly he -- he wasn't when he came off of ADHD
15 medication coming out of college, people typically do I
16 think when school is out just when they're done to see
17 how that -- and he was fine until, you know, once you
18 have kids and you -- there's no more -- there's no more
19 full rest in the evenings. You come home from work and
20 it's like round -- part two of your day with dinner and
21 playing outside and bath and bedtime and all the routine,
22 so it just helping to him to be able to focus and --

23 Q. And the reason why I ask you that is because -- is
24 what he is -- what you've witnessed that he's dealing
25 with now, in regards to the attention and what you're

1 talking about, is it anything like what it was whenever
2 it was just a normal ADHD diagnosis?

3 A. No, it's on the extreme end of being able to focus
4 and write things or process information and -- yeah.

5 Q. So, now, Jessica, it's been two and a half years,
6 who are the members of your family now?

7 A. It is myself and Corey and Griffin that live in our
8 home, and Max that watches over it.

9 Q. Thank you. No further questions.

10 JUDGE GIBBONS: All right. Mr. Frick?

11 MR. FRICK: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FRICK:

14 Q. Ms. Shanks, I'm just gonna get to the incident,
15 okay?

16 A. Okay.

17 Q. When you got on I-77 it was right there at exit 65,
18 correct?

19 A. Yes.

20 Q. It's the one where The Front Porch is?

21 A. Yes.

22 Q. Okay. And then traffic was, is it fair to say it
23 was heavy?

24 A. Yes.

25 Q. But you were able to merge into traffic, and you

1 were going with the flow of traffic is what I heard you
2 say?

3 A. I was, yeah.

4 Q. Before you saw the van immediately behind you, did
5 you see it at any point?

6 A. I did not.

7 Q. And when you saw it behind you, did you get a look
8 at who was driving the van?

9 A. I did not.

10 Q. So, when -- after everything happened, did somebody
11 identify the driver to you?

12 A. They didn't have to. I knew it was a white van just
13 from seeing it in my rearview mirror, and so seeing the
14 white van, and I want to say at the time that when I
15 noticed Jason, he was by himself and there may have been
16 a woman standing with him, that now at this point I think
17 was probably was Mrs. Logan. And I wasn't aware whether
18 -- I just saw the two of them, I assumed they were either
19 together or that was -- or it was her or him that was
20 driving. But when it was clear when he was -- seemed
21 distraught and she seemed to try to be helping him. But
22 it was -- that's what I deduced.

23 Q. So, you did observe that he was -- he appeared to be
24 upset about the situation?

25 A. Yes, at that moment, yes.

1 Q. And did appear to want to come over?

2 A. Yes.

3 Q. But I mean, you didn't want to see him over there?

4 A. No.

5 Q. So y'all never had any interaction?

6 A. No.

7 Q. When you were driving, did you ever put your foot on
8 the brake? Before the impact did you put your foot on
9 the brake?

10 A. No, I did not.

11 Q. Did you ever take your foot off the gas before the
12 impact?

13 A. No, I did not.

14 Q. So you would disagree with the findings of the
15 expert?

16 A. I'm sorry?

17 Q. You would disagree with the findings of the expert?

18 A. I'm not an expert, but from what I understand
19 yesterday with --

20 Q. I'm just asking if --

21 MS. LIVELY: Your Honor, may she please just
22 explain her answer?

23 JUDGE GIBBONS: Yes.

24 MS. LIVELY: Thank you.

25 BY THE WITNESS:

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1 A. My memory is that I tried to get away from him, but
2 then there was also a car in front of me. So, in
3 twirling that through my mind over the past two and a
4 half years, hearing my speed changed is actually
5 indicative of what my memory is telling me, where I was
6 going 76 and I got up to 78 trying to get away and then
7 right before came -- because I'm trying to not to --
8 there's the car in front of me too, so I had nowhere to
9 go. So I don't know with regards to like all the other
10 numbers, that's not something I understand, but just the
11 speed change.

12 Q. Sure, okay. After the car had come to a stop, and
13 of course you're in there trying to assess what's going
14 on, do you recall who came down to see you?

15 A. I do not.

16 Q. I believe you said at some point somebody did come
17 down to the car but you just -- with everything going on
18 you couldn't figure out --

19 A. At the time I did not know. Now listening to
20 everyone's testimonies, I -- I assume that it was Mr.
21 Parker.

22 Q. Okay.

23 A. There was also a Hispanic man, but -- that I
24 remembered, but I have never met this person and didn't
25 hear anyone ever mention that until Mr. Parker said that

1 the other day that there was a Hispanic man, but no one
2 knows who it was.

3 Q. And did anybody get you out of the car or did you
4 get yourself out of the car?

5 A. The Hispanic man opened my door.

6 Q. And that's when you got out, and I believe you were
7 just getting away.

8 A. Just getting away.

9 Q. Had EMS arrived on the scene when you had gotten out
10 of the car, were they already there?

11 A. I -- to be honest I don't -- I don't remember.

12 Q. And I know there's a lot going on.

13 A. Yeah.

14 Q. And I know that they were focusing on other folks,
15 but do you know about how long it took for them to get to
16 you? They treated you on the scene, correct?

17 A. They did. A lot of -- so, it -- there seemed to be
18 a lot of volunteers, which I think later I discovered
19 some of those were eyewitnesses, and some of them were
20 actual volunteer fire fighters that were in street
21 clothes and just were on call and came from the grocery
22 store or their home. The only specific person in a
23 uniform standing over me talking to me that I remember
24 was Chief Melton, the fire chief, and he was simply
25 asking me -- telling me that I needed to contact family.

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1 Q. So, when EMS did get to you -- and EMS did get to
2 you, correct?

3 A. Elena, who I met the other day, she was the -- I
4 guess the EMS person that attended to me initially, yes.

5 Q. And they put you in a neck collar?

6 A. They did.

7 Q. And they put you on a stretcher?

8 A. They did.

9 Q. And then they drove you to the hospital?

10 A. Yes.

11 Q. And I think you answered this, but I just want to
12 ask it to make sure I get an answer, you don't know who
13 got Max out of the car?

14 A. I do not.

15 Q. Did Highway Patrol talk to you at the scene?

16 A. Not at the scene. I don't recall seeing -- like I
17 said I think I'm fairly confident the only person I
18 talked to in a uniform on the scene was Chief Melton.

19 Q. And I know subsequent they called you and did a
20 phone interview, correct?

21 A. Yes, and there was a Highway Patrolman that came to
22 the hospital upon my discharge, he was with Terry Tinker,
23 it was Greene.

24 Q. But did they do any assessment of you while you're
25 at the hospital?

1 A. Yes.

2 Q. They did?

3 A. Uh-huh (affirmative).

4 Q. What did they do?

5 A. I guess the main thing was an IV, a catheter, and
6 then the neck collar, and putting me through --

7 Q. I'm sorry, I meant -- I know you got medically
8 treated, I meant, did any Highway Patrol perform any
9 tests on you?

10 A. I don't recall if Trooper Greene did testing on me.
11 I know that they took blood and things like that, so I --
12 I would assume that they did some similar testing.

13 Q. But that was the hospital that did that, correct?

14 A. Yes, a nurse, probably.

15 Q. Okay.

16 A. Yeah.

17 Q. Ms. Shanks, give me one second.

18 A. Okay.

19 Q. Ms. Shanks, that's all the questions I have.

20 A. Okay, thank you.

21 JUDGE GIBBONS: Any redirect?

22 MS. LIVELY: Just briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. LIVELY:

25 Q. In regards to Highway Patrol showing up at the

1 hospital and doing any kind of testing on you, did they
2 do any type of -- did they look into your eye and
3 conjunctiva of your eye?

4 A. I don't -- I don't recall.

5 Q. Okay, let me just ask you this, when you were at The
6 Front Porch to pick up Max and Griffin, were you
7 consuming alcohol?

8 A. No, we had sweet -- I had sweet tea.

9 Q. Had you consumed any alcohol that day?

10 A. No.

11 Q. Had you been smoking marijuana?

12 A. No.

13 Q. Had you been using crack cocaine?

14 A. No.

15 Q. Thank you.

16 JUDGE GIBBONS: All right, thank you, ma'am.
17 You may step down. The State may call its next
18 witness.

19 MS. LIVELY: Your Honor, at this time the
20 State rests its case.

21 JUDGE GIBBONS: The State rests. All right,
22 ladies and gentlemen, let's take a recess, there's
23 some matters of law I need to talk to the lawyers
24 about. We do have lunch coming for you, it's
25 supposed to be here right at noon, okay, so don't

1 worry about that, all right. Hopefully you'll like
2 it. Head on back to your jury room; don't talk
3 about the case.

4 (JURY EXITS)

5 JUDGE GIBBONS: All right. Mr. Frick?

6 MR. FRICK: Thank you, Your Honor. Your
7 Honor, at this time the Defense would move for a
8 directed verdict, taking the evidence in the light
9 most favorable to the State. I don't think there is
10 enough to send the charge of ABHAN to the jury. I
11 will concede that there is enough evidence based on
12 the testimony of the expert and the witnesses, there
13 would be at least the scintilla of evidence to send
14 that charge to the jury, the recklessness charge.
15 But -- and (inaudible) I don't think that they
16 proved that he had knowledge of the possession of
17 the controlled substances, so I would ask for a
18 directed verdict on those matters, because that is
19 required even under constructive possession did he
20 have knowledge as well as diminutive control. In
21 regard to the ABHAN, we touched on this a bit the
22 other day. I do believe that there should be a
23 standard of specific intent. I will pass forward, I
24 have not clocked it in, but I'll ask if we could --

25 JUDGE GIBBONS: This will be made part of the

1 record.

2 MR. FRICK: Yes, sir. I would ask that we
3 make it a Court exhibit.

4 JUDGE GIBBONS: All right, this will be Court
5 Exhibit Number 2.

6 (Court Exhibit Number 2
7 was introduced into evidence)

8 MR. FRICK: So, my memo regarding specific
9 intent. And I did go over it a good bit the other
10 day. But just want to point out that, obviously we
11 used to have common law assaults and then in 2010 we
12 overhauled the criminal code, codified all of the
13 assaults to include ABHAN, which is the lesser-
14 included of attempted murder, A&B first degree,
15 second degree, and third degree. Judge, I submit
16 that there are cases that suggest that -- well,
17 there's a case that we know says that attempted
18 murder requires specific intent. There are cases
19 that suggest that A&B first probably should require
20 specific intent. And perhaps even A&B second
21 degree. And Judge, I think it's nonsensical for the
22 higher offense and the lower offenses, in a statute
23 where everything is a lesser-included offense, to
24 have different degrees of intent. I would further
25 state that it was the legislative intent that there

1 be specific intent, because when they codified the
2 ABHAN they got rid of the common law. And the
3 reason why I believe that that is shown in the
4 legislative intent is in most specifically, and it
5 is in my memo, State versus Hernandez, which is the
6 428 S.C. 257, that is a case where the criminal
7 sexual conduct, and Defense requested that ABHAN be
8 a lesser-included offense. Well we all know when we
9 had common law ABHAN it was a lesser-included of
10 CSC, but not because it met the Blockburger test
11 because it had traditionally treated as such. Well,
12 in the Hernandez case they said no, when we codified
13 the new assault charges, we got rid of the
14 application of the old law, so new codified ABHAN is
15 not a lesser-included like old ABHAN was.
16 Furthermore, in State versus King, there's my cite,
17 that would be 422 S.C. 47, they held in there that
18 attempted murder is not a codification of our old
19 ABWIK. So, I think it conclusively says that the
20 legislator intended to get rid of all the old
21 standards that we used under the common law, and
22 that a new intent should apply. I suggest that that
23 is specific intent, that ABHAN requires some
24 specific conduct that cannot be done simply by
25 recklessness, and therefore that a specific intent

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1 should apply. Furthermore, I've got the case State
2 versus Guderyon, and I'll spell it, G-U-D-E-R-Y-O-N,
3 and I don't have a cite other than this opinion
4 number 5955 Court of Appeals 2002. There was a jury
5 charge where the jury was reinstructed, they came
6 back with a question about intent on ABHAN, and they
7 were reinstructed by the judge, State must prove
8 beyond a reasonable doubt that the Defendant
9 intended to unlawfully injure another person, and
10 the Court of Appeals upheld that jury charge
11 requiring the specific intent in that case.
12 Further, I would suggest just the nature of the
13 statute where it says unlawful conduct suggests that
14 there must be some specific conduct, that it's got
15 to rise higher than the level of simply
16 recklessness. So, with all that being said, Your
17 Honor, I suggest that the State has proven no
18 specific intent, that ABHAN is a specific intent
19 law, and I would ask that for that charge to be
20 dismissed as a matter of law for my directed verdict
21 motion.

22 JUDGE GIBBONS: Thank you, Mr. Frick. Madam
23 Solicitor, let's go in reverse order -- well, first
24 of all as to the drug offense, the Defense has moved
25 for a directed verdict saying that the State has

1 failed to prove actual knowledge of the drugs, what
2 do you say about that?

3 MS. LIVELY: Yes, sir, Your Honor. So, the
4 Defendant in his statement to Warlick at the
5 hospital, which is part of the evidence, is actually
6 sitting there talking about how he had just bought
7 that van, and whenever Warlick was asking him about
8 his address and where he lived and he was like well,
9 I live in the van. It's my van, it's got, you know,
10 my stuff in it. I think he even said that there was
11 like an air mattress in there, so he puts himself
12 living in the van. He doesn't --

13 JUDGE GIBBONS: Do you believe there's enough
14 evidence of constructive possession?

15 MS. LIVELY: Oh, absolutely, absolutely. I
16 mean, there's definitely enough evidence for
17 constructive possession. And when you look at the
18 burden at directed verdict, obviously there's more
19 than enough here, you know, substantial
20 circumstantial without him just plain out admitting
21 to it, that it should go to the jury.

22 JUDGE GIBBONS: All right, I agree with the
23 State on that. I respectfully deny your motion for
24 a mistrial on the drug offenses. The directed
25 verdict the Court must look is -- it's an any

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1 evidence standard. Is there any evidence which
2 would reasonably support a jury, you know,
3 supporting that charge, and I do find that there is
4 evidence for the jury to consider circumstantial
5 evidence of constructive possession. So, your
6 motion for mistrial on the drug offenses is
7 respectfully denied. Talk to me most importantly --
8 and the Defense concedes the reckless homicide
9 evidence at this stage. Talk to me about the
10 assault and battery high and aggravated nature.

11 MS. LIVELY: Yes, sir, Your Honor. I will
12 just defer to the fact that I actually have the
13 benefit of all the information that came down from
14 the State v. Clemons case, which is the one that I
15 mentioned at the very beginning of this trial, where
16 that case was decided by our Supreme Court very
17 recently in 2024, where the Supreme Court went
18 through all of the issues of the specific intent and
19 general intent, and what is actually supposed to be
20 applied in the assault and battery statute. So,
21 what I was able to determine from going back and
22 looking at that is okay, let's see how the Supreme
23 Court of South Carolina actually broke this down so
24 we can understand what we are looking at for each
25 individual layer of the -- of the assault and

1 battery, because it is different, and I will --
2 that's the only thing I will agree on in regards to
3 the Defense, is that it doesn't flow naturally
4 through each one of the types of assaults that we're
5 looking at. What it actually does is, you have to
6 spec -- and I'll explain, you have to specifically
7 look at the charge to determine whether or not
8 there's specific intent. So, what our Supreme Court
9 did was, this is a big issue that we need to look at
10 in Clemons. So, they actually asked for the
11 Attorney General's office to prepare a brief, an
12 Amicus brief, so that they could actually look at
13 what it was that they believed the legislative
14 intent -- or not the legislative intent necessarily,
15 what the language of those statutes actually mean,
16 based on each individual part of those statutes. So
17 remember when you were talking about assault and
18 battery first degree, which this is not the charge
19 here, it was offer or attempt. What they
20 specifically said, which is what the Supreme Court
21 is saying is, when you're looking at that language,
22 it would be nonsensical to say that that would be a
23 general intent, because if you're going to offer to
24 injury someone or attempt to injury someone, you
25 have to have some underlying specific intent for the

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1 individual who's going to be -- you know, who's
2 gonna actually be affected by that act. But then
3 we've got ABHAN, ABHAN specifically says --

4 JUDGE GIBBONS: A step above.

5 MS. LIVELY: -- a step above, it just says
6 that the act of -- and I'm adding a little bit of
7 language here, that the act of the perpetrator who
8 actually unlawfully injures, and that injury results
9 in or could have resulted in great bodily injury of
10 that victim. It does not require a specific intent
11 at that point.

12 JUDGE GIBBONS: Unlawfully is just --

13 MS. LIVELY: That's it.

14 JUDGE GIBBONS: -- out there.

15 MS. LIVELY: And the thing that's really --
16 really helpful to understand what that is, I
17 remember whenever I was deciding whether or not to
18 place this charge in front of the Grand Jury for
19 ABHAN, that I was actually shown a case State versus
20 Mouzon, which is a very old case, it's still good
21 law, and it's actually on page nine of the brief
22 that I provided to the Court, and it is of -- the
23 cite is 231 S.C. 655, and ironically it was Sarah
24 Drawdy with the Prosecution Commission who told me
25 about it, because I know that there have been cases

1 throughout our state of South Carolina where we have
2 this huge hold. And what is available for someone
3 like Corey Shanks, who is almost died as a result of
4 the recklessness of the Defendant, but there is no
5 remedy for this victim who suffers those types of
6 injuries. I asked her, what about ABHAN; and I did
7 my research and in that particular case it's really
8 interesting because it's actually where this
9 defendant was convicted of murder, all right, a
10 murder charge in this particular case. And so it --
11 it's one of those things where when you look at our
12 history here in South Carolina, which is one of the
13 things that the Attorney General's office did when
14 they did this brief, is they look at what is the
15 intent, what is the actual reason for our assault
16 and battery statute, it's to cover all -- all types
17 of assault and battery because just the standard
18 ABHAN we have in 4-20-10 was so generalized that it
19 was really one of those things that you could use it
20 for anything, almost like (inaudible) you can use
21 now. So, it's one of those things where let's
22 codify what each layer of an assault is in South
23 Carolina, so we can have it appropriately applied
24 and even though the legislator did not delegate this
25 is going to be a specific intent type of crime all

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1 the way through each one, I believe, and based on
2 what we're reading through what the Supreme Court
3 adopted, is it should be based on the facts, it
4 should be based on the charge as applied to those
5 facts, and that's the reason why A&B first, because
6 the way it's written with the offer and the intent
7 it's like attempted murder, which they also said in
8 2019 and I think it was State v. King, that because
9 you were offering or attempting there has to be some
10 type of mens rea where you were focusing on the
11 particular person that you were -- that you were
12 trying to put the act on to cause harm. But, when
13 it's ABHAN that's not the case, and we wanted to
14 make sure that someone who is reckless, wanton,
15 criminally negligent, who causes such severe injury
16 to a person that results in possibly great bodily
17 injury they don't die, they don't die, but that
18 person acted unlawfully, and then the next part is
19 and. That part, and we showed the great bodily
20 injury, we showed the unlawful act by the defendant,
21 then that's what Clemons is saying, that's what our
22 Supreme Court is asked. They asked for that
23 information, they asked for what is the history in
24 South Carolina, they've asked for what do we do with
25 the differing levels of ABHAN, of A&B and first, A&B

1 second, and when you look at how the language is
2 written specifically, it's very interesting, and I
3 didn't realize it when you were asking me at the
4 beginning of this case when you were asking about
5 A&B first, I was like he's making a good point, it
6 doesn't make sense. But when you break it down and
7 you look at the specific language that was put in
8 there by our legislature, then all of a sudden their
9 intent becomes very apparent. If it's an offer to
10 harm or if it's an attempt to harm, and we've got to
11 show that specific intent. That's the only way we
12 can get that person for what they did that could've
13 caused the great bodily injury to the victim. But
14 if we have ABHAN, which is why it's higher, and
15 there is that great bodily injury that did occur,
16 that did result as that act, then that is why we
17 have ABHAN and the requirement is the unlawfulness
18 of that act. That's the reason why there's no
19 specification as to intent in those cases. And
20 that's the reason why it's very clear when you look
21 at the breakdown of our history and how its written,
22 now it makes sense as to why our legislature did
23 that. It should be a higher crime when great bodily
24 injury results. And if it doesn't and they offer or
25 trying to, well then we should at least be able to

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1 point out who that person had in their target at
2 that point in time, because they're looking at a
3 very serious offense. So, I think it definitely
4 flows. It definitely makes sense. And clearly I
5 think that our Supreme Court wanted to make sure in
6 dealing with what they were -- a very important
7 issue, that they tried to clarify it for charging
8 purposes, as well as for the courts here in South
9 Carolina as to how it should be handled. And I
10 think that they've made the right decision in this
11 particular case.

12 JUDGE GIBBONS: All right, thank you, Ms.
13 Lively. Now, Mr. Frick, coming back to you, how --
14 let me phrase my question to you this way, and then
15 I'll let you close your argument, and then I'll
16 rule, but how is it not the legislative intent in
17 South Carolina and the public policy of South
18 Carolina, to not allow a victim of great bodily
19 injury? In other words, let me put it this way, the
20 victim of a reckless homicide our criminal justice
21 system allows the charge for that person's death of
22 reckless homicide, but somebody's who's injured
23 gravely has no retribution in our criminal
24 justice system in South Carolina, how does that --
25 that that's essentially what you're arguing. I

1 mean, certainly, you know, the family can sue and
2 find insurance coverage, there's civil justices, but
3 there's no criminal justice, you know, taking your
4 argument to the next step, 'cause if the statute
5 doesn't fit, you know, I'm not going to say that,
6 but you understand what I'm saying. Talk to me
7 about that.

8 MR. FRICK: Well, Judge, along those lines I
9 would suggest I don't think the legislature intended
10 for the injured person to cost the defendant more
11 time than the deceased person. Reckless homicide
12 carries a penalty of up to 10 years, ABHAN carries
13 up to 20 years at 85 percent. So, I don't think
14 that's what the legislator intended, that if your
15 recklessness resulted in a death that you should get
16 less time than simply injuring someone. So, if the
17 legislature had wanted to make recklessness in there
18 --

19 JUDGE GIBBONS: But hold on a second, don't --
20 that gets into the discretionary issue of a
21 sentencing judge. You know, it's not mandatory 20
22 years, it's up to 20, you know.

23 MR. FRICK: I agree, but that's the exposure
24 he's looking at.

25 JUDGE GIBBONS: I understood.

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1 MR. FRICK: But the legislature has every
2 ability to put recklessness in there if they wanted
3 to. We still have reckless homicide. We still have
4 reckless operation of a boat. We still have hazing,
5 which has recklessness in it. We still have
6 involuntary manslaughter. So, if they wanted
7 recklessness to be in there, they could have put it
8 in there because they're aware of these other
9 statutes. They chose not to. We didn't have that
10 before either, it was -- it was a common law
11 application of old ABHAN in some cases that I saw.
12 But that's been overruled because we're not using
13 that application anymore. So, because the statute
14 has to be strictly construed against the State, I
15 believe you have to use this -- the application of
16 what the legislature did, and clearly they didn't
17 intend to do that. Is it a hole in the law? Yes.
18 But we've got plenty of holes in the law. That
19 doesn't mean that we should apply something because
20 there's not a statute that fills that gap. That is,
21 with all due respect, the judicial branch becoming
22 the legislature; and that violates separation of
23 power as we all know. So, while I certainly
24 understand the situation that the Solicitor speaks
25 of, I don't think just simply trying to stretch a

1 statute to make it fill a gap is appropriate.

2 JUDGE GIBBONS: And I'm keenly aware of what
3 this Court has to do when trying to interpret the
4 meaning of a statute, you know, supposed to try to
5 employ its plain and ordinary meaning, and try to
6 ascertain the intent of the legislature. The
7 statute here that the Defendant is charged with, the
8 ABHAN is -- says that a Defendant can be convicted
9 of ABHAN if he unlawfully injures another person,
10 which results in great bodily injury, in the -- or
11 the act is accomplished by means likely to produce
12 great bodily injury or death. So, the statute
13 includes that language there, in fact let me pull up
14 the statute real quick. All right, 16-3-600(b)(1),
15 a person commits the offense of assault and battery
16 of a high and aggravated nature, if the person
17 unlawfully injures another person, and great bodily
18 injury to another person results; or the act is
19 accomplished by means likely to produce great -- to
20 produce death or great bodily injury. What this
21 means and, you know, I put that in there for what
22 does the word means mean, well that necessarily goes
23 to the state of mind of a defendant, which I mean I
24 -- the black letter law or the state of mind of the
25 defendant is intent, which has to be determined by

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1 the circumstances surrounding an alleged criminal
2 incident. And the State bears the burden to prove
3 beyond a reasonable doubt the unlawful -- an
4 unlawful injury. Well, what does unlawful mean.
5 The State bears the burden of proving that, and how
6 do you prove unlawfully injures but to get to the
7 state of mind of the defendant, which is
8 recklessness or criminal negligence. I -- I just --
9 I have a hard time reaching what I would call an
10 absurd conclusion that our legislature did not
11 intend, non-deceased victims of arguably reckless
12 driving to not have recourse through the criminal
13 justice process. I just -- I can't imagine that
14 hole in the law was their intent. I mean we have
15 involuntary manslaughter for example for a death
16 involving the reckless -- using that reckless
17 language, a reckless disregard of others, or the
18 unintentional killing of another. We have
19 specifically the charge of reckless homicide for a
20 death involving reck -- driving recklessly and
21 killing somebody. You know, we have of course
22 felony DUI, which is the original charge here,
23 involving great bodily injury. But we don't have
24 something which just covers great bodily injury for
25 reckless driving? I -- I just can't reach that

1 absurd conclusion in the eyes of the law,
2 respectfully. I'm not saying you're absurd, I'm
3 saying that that conclusion would be absurd by me
4 interpreting the law the way I interpret it. So,
5 your motion for a directed verdict is respectfully
6 denied as to the charge of ABHAN, okay. All right,
7 Madam Clerk, hand that to the Court Reporter.
8 That's Court Exhibit 2. I need to speak to your
9 client at this time, Mr. Frick, before we resume,
10 which we'll do after lunch. Yes, sir?

11 MR. FRICK: Can I do one more procedural
12 thing?

13 JUDGE GIBBONS: Oh, absolutely, go ahead.

14 MR. FRICK: I was recently advised at our most
15 recent conference that I need to renew my objections
16 and previous motions. I believe we discussed this
17 earlier today, but I would renew all my previous
18 motions for mistrial, and any other previous
19 objections that I've raised throughout this trial.

20 JUDGE GIBBONS: Yes, sir, those objections and
21 motions are noted and they are -- I'll rule on them
22 again, specifically the way I ruled on them then,
23 and you are protected in the record. All right, Mr.
24 Palmer, let me speak to you here, sir, and I'm going
25 to let you stay where you are, just talk loud, okay?

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1 MR. PALMER: Yes, sir.

2 JUDGE GIBBONS: All right. First of all, do
3 you swear or affirm that the testimony you give will
4 be the truth, the whole truth, and nothing but the
5 truth, so help you God?

6 MR. PALMER: Yes, sir.

7 JUDGE GIBBONS: All right, thank you. All
8 right, so now we -- we've reached the stage in the
9 trial, Mr. Palmer, where you get to present your
10 defense. Now, in deciding to present your defense,
11 or in presenting it, you have the right to claim the
12 protections given to you by the Fifth Amendment to
13 the United States Constitution, which says in
14 pertinent part, that no person shall be compelled in
15 any criminal case to be a witness against himself.
16 This means that you cannot be made or required to
17 testify in this case if you don't want to. You
18 certainly have the right to testify if you want to,
19 but nobody can make you do that. That's your
20 personal right, do you understand that?

21 MR. PALMER: Yes, sir.

22 JUDGE GIBBONS: And nobody can give up that
23 right to testify except for you, you understand
24 that?

25 MR. PALMER: Yes, sir.

1 JUDGE GIBBONS: All right. Now, if you do
2 decide to testify, you'll be subject to the same
3 rules that have governed other witnesses in this
4 case, and you can be examined or cross-examined on
5 any relevant issue in this case. In other words,
6 just like your lawyer has effectively to some of the
7 witnesses tried to trip them up or show that maybe
8 their memory isn't ironclad as they think it is, or
9 maybe they're not as credible as they think they
10 are. You know, the Solicitor could do the same to
11 you, try to paint you in a bad light, you understand
12 that?

13 MR. PALMER: Yes, sir.

14 JUDGE GIBBONS: That's a risk you run when you
15 testify. Now, Madam Solicitor, there was an issue
16 involving what the State believes is a previous
17 conviction that you were -- you would seek to bring
18 out to impeach the defendant's credibility if he
19 were to testify; is that correct?

20 MS. LIVELY: Yes, sir, Your Honor.

21 JUDGE GIBBONS: What is that conviction and
22 how long ago was it, and why do you think it's
23 relevant?

24 MS. LIVELY: Well, initially it was for a
25 larceny of vehicles, a North Carolina charge, in --

1 but when I went back and I looked at it, part of the
2 reason with this case it gets complicated is because
3 the actual pending charge that's in North Carolina
4 right now, so I went back and looked at it and it
5 was more than 10 years and the State did not provide
6 notice under 609 that we were going to attempt to
7 put that in. That was going to be just as a, you
8 know, moral turpitude that I was going to get into
9 if he got on the stand; of course, I know that Mr.
10 Frick had already raised that whenever I brought
11 that up. But, one of the things that I was going to
12 actually argue with you, Your Honor, that -- kind of
13 -- it's a -- it goes along the same line as that, is
14 with his current charge, the fact -- and I'm not
15 going to get into that, and I would not even ask for
16 it, what my concern is, and this is why I handed up
17 the accident case law, and I gave a copy to Mr.
18 Frick as well, is that with him getting on the stand
19 and testifying, this was just an accident in trying
20 to actually alleviate the issue of the recklessness.
21 And I know I don't have to show a mens rea here in
22 regards to specific intent, however, he was not
23 supposed to leave the State of North Carolina
24 without permission from pre-trial detention. And
25 I've confirmed that; we talked with the pre-trial

1 detention, it was a contract. The only way he got
2 out on bond for the charge he has in North Carolina
3 was because he signed this, it was something that
4 the judge agreed to, and in order for him to leave
5 the State of North Carolina he would have to get
6 permission from the pre-trial detention officer.

7 JUDGE GIBBONS: All right, and my question is
8 --

9 MS. LIVELY: I know.

10 JUDGE GIBBONS: -- do you intend to try to
11 impeach his credibility if he testifies, based upon
12 the prior conviction?

13 MS. LIVELY: No.

14 JUDGE GIBBONS: Okay.

15 MS. LIVELY: I'm sorry, I was just --

16 JUDGE GIBBONS: That resolves that issue.

17 MS. LIVELY: Okay, I'm sorry. No, at this
18 point --

19 JUDGE GIBBONS: All right so there -- let me
20 finish this.

21 MS. LIVELY: Okay.

22 JUDGE GIBBONS: And then we'll go from there
23 and I'll hear from y'all --

24 MS. LIVELY: Okay.

25 JUDGE GIBBONS: -- on the whole accident thing

1 here shortly.

2 MS. LIVELY: Yes, sir.

3 JUDGE GIBBONS: All right. So, there are no
4 previous convictions which she would try to trip you
5 up on or make you look bad in front of the jury, do
6 you understand that?

7 MR. PALMER: Yes, sir.

8 JUDGE GIBBONS: Okay. Now, so if you decide
9 to testify, Mr. Palmer, this decision must be made
10 freely, voluntarily, and intelligently by you
11 understanding the protections given to you by the
12 Fifth Amendment. Now, if you decide that you don't
13 want to testify, I will instruct the jurors that
14 they cannot give the fact that you didn't testify
15 any weight whatsoever, they can't even bring that up
16 in the courtroom. I will specifically instruct them
17 on the law because you don't have to prove anything,
18 do you understand that?

19 MR. PALMER: Yes, sir.

20 JUDGE GIBBONS: You understand everything I've
21 gone over with you?

22 MR. PALMER: Yes, sir.

23 JUDGE GIBBONS: Have you discussed with your
24 lawyer whether you should or should not testify?

25 MR. PALMER: A little bit.

1 JUDGE GIBBONS: All right. Do you want to
2 talk with him more about it?

3 MR. PALMER: Yes, sir.

4 JUDGE GIBBONS: All right, thank you. I'll
5 come back to that, and then ask you if wish to
6 testify after you've had more of an opportunity to
7 discuss it with your lawyer, okay. Now, based upon
8 that let's pause that real quick. We're going to
9 put what people say -- whatever, we'll put -- we'll
10 hold onto that for a second, 'cause you brought up
11 something about an accident. What are you talking
12 about, Madam Solicitor?

13 MS. LIVELY: Oh, I'm sorry.

14 JUDGE GIBBONS: So, he was on bond for a
15 charge in Charlotte or whatever.

16 MS. LIVELY: Right.

17 JUDGE GIBBONS: I've heard this at the bond
18 hearing.

19 MS. LIVELY: Yes, sir.

20 JUDGE GIBBONS: And he was technically
21 violating that bond, he shouldn't have been outside
22 of -- he shouldn't have been on Interstate 77 in the
23 first place outside of North Carolina.

24 MS. LIVELY: Well, correct.

25 JUDGE GIBBONS: And if he gets up on the

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1 witness stand and starts testifying about how it was
2 an accident, you want to be able to say no, it
3 wasn't because you were violating your bond?

4 MS. LIVELY: What I want to say is that he was
5 acting unlawfully, which is exactly what -- other
6 than his speed, okay, because that's -- you know --
7 I've heard some of the stuff that Defense is asking
8 the witnesses in regards to, well how fast you were
9 going, was it -- you know, how fast was everybody
10 going on the road, and that type of thing. I need
11 to show that there was a level of unlawfulness in
12 regards to the Defendant, and that is what the
13 statute says. It doesn't say what kind of
14 unlawfulness that he -- an unlawful act. The
15 unlawful acts here are he was -- he was driving 98
16 miles an hour, probably also driving erratically and
17 recklessly from our eyewitness testimony, and then
18 also he was not even supposed to be in the state of
19 South Carolina.

20 JUDGE GIBBONS: Don't you think you have
21 enough of -- of alleged unlawful behavior to even
22 open that door, create another issue on appeal? You
23 know, sometimes -- you know, I'm asking -- I'm
24 asking a rhetorical question.

25 MS. LIVELY: I understand that, Your Honor.

1 JUDGE GIBBONS: I mean, there's evidence in
2 the record, of course I'm not the fact finder, but
3 there's evidence in the record argument here, that
4 he was weaving in and out of traffic, he was driving
5 close to 100 miles an hour, he just hits them
6 without applying the brakes whatsoever, I mean, you
7 run the risk a conviction up the road some -- some
8 place in the Appellate' s Court because you want to
9 cross-examine him about being on a bond and
10 violating the terms of his -- of that bond, which is
11 highly, highly, highly, highly prejudicial?

12 MS. LIVELY: One moment, Your Honor.

13 JUDGE GIBBONS: Thank you.

14 MS. LIVELY: I'll withdraw my argument.

15 JUDGE GIBBONS: Thank you. All right, so that
16 won't come up. All right, let's take a break.
17 We'll go ahead and take our -- is lunch here?

18 BAILIFF: Not yet. Not yet, Your Honor. He's
19 gone to pick it up, it's not here yet.

20 JUDGE GIBBONS: Huh?

21 BAILIFF: He's gone to pick it up, it's not
22 here yet.

23 JUDGE GIBBONS: All right, let's go ahead and
24 take our -- we'll go ahead and take the lunch recess
25 then. It's en route, I see -- but it won't be a

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1 long one. As soon as the jury is finished eating
2 we'll come back in here and start the Defense case.
3 So, nobody leave. Let's say 12:30-ish, maybe 12:45
4 at the latest, okay? All right, we're down.

5 (OFF RECORD)

6 JUDGE GIBBONS: Let me resume my questioning
7 of your client, Mr. Frick, before we handle anything
8 else. Mr. Palmer, did you have further opportunity
9 to discuss whether or not to testify with your
10 attorney?

11 MR. PALMER: Yes.

12 JUDGE GIBBONS: And are you testifying?

13 MR. PALMER: Yes, sir.

14 JUDGE GIBBONS: All right. Thank you very
15 much. All right, anything else from you, Mr. Frick?

16 MR. FRICK: No, sir. Yes, sir, I think we've
17 addressed it about the camera filming my first
18 witness?

19 JUDGE GIBBONS: Yes, the first witness, the
20 camera -- I've already talked to the cameraman.
21 I've asked that he refrain from videoing the first
22 witness testimony. All right, anything before we
23 bring the jury out?

24 MS. LIVELY: No, Your Honor.

25 JUDGE GIBBONS: All right, thank you. Let's

1 bring the jury out.

2 (JURY ENTERS)

3 JUDGE GIBBONS: All right, thank you ladies
4 and gentlemen. The State has rested and we now --
5 the Defense will now present its case. Mr. Frick?

6 MR. FRICK: Thank you, Your Honor. The
7 Defense would call Jacinta Parris.

8 JUDGE GIBBONS: All right. Ma'am? Ma'am,
9 just come on around here and I'll swear you in. If
10 you will please raise your right hand. Do you swear
11 or affirm that the testimony you give will be the
12 truth, the whole truth, and nothing but the truth,
13 so help you God?

14 MS. PARRIS: Yes.

15 JUDGE GIBBONS: Thank you, ma'am. Have a seat
16 there. Watch the microphone while you're being
17 seated and then -- there you go, just make sure you
18 talk loud.

19 MS. PARRIS: Okay.

20 JUDGE GIBBONS: All right, Mr. Frick, your
21 witness.

22 JACINTA PARRIS
23 was called as a witness, and having been first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

JURY TRIAL

1 BY MR. FRICK:

2 Q. Could I get you to spell your first name for the
3 record, please, ma'am?

4 A. J-A-C-I-N-T-A.

5 Q. And your last name?

6 A. Parris, P-A-R-R-I-S.

7 Q. Thank you, Ms. Parris. Ms. Parris, what community
8 do you currently live in?

9 A. Lugoff, South Carolina.

10 Q. Back in 2022, did you live in a different place?

11 A. I did.

12 Q. Where did you live then?

13 A. Gastonia, South Carolina -- Gastonia, North
14 Carolina.

15 Q. Thank you very much. And you moved at some point in
16 2022?

17 A. I did.

18 Q. When did you move?

19 A. It was around July 2022.

20 Q. Okay. And did you have some assistance when you
21 were making this move?

22 A. I did.

23 Q. Who assisted you?

24 A. Mr. Palmer.

25 Q. And is that Mr. Palmer over there?

1 A. Yes, it is.

2 Q. Okay. How did he assist you? Tell me about that.

3 A. He helped with just packing up, moving the things
4 out of the apartment to make the move to South Carolina.

5 Q. Okay. What kind of vehicle did he use?

6 A. It was a like a cargo van.

7 Q. Okay. Was that the only vehicle that was used to
8 transport y'all's stuff from Gastonia to Lugoff?

9 A. That he was driving.

10 Q. That he was driving.

11 A. There was also a -- also a car that I was driving
12 and my father was driving.

13 Q. Okay. And do you recall about what day this move
14 took place?

15 A. I don't.

16 Q. Okay. But it was in July?

17 A. It was, uh-huh (affirmative).

18 Q. Do you recall if it went smoothly that day?

19 A. It did.

20 Q. Okay.

21 A. Yeah.

22 Q. Okay.

23 A. From start to finish everything was fine.

24 Q. All right. Do you know when you left Gastonia?

25 A. So, the plan was to make two trips. So, when we

1 left initially it was pretty early in the morning. I
2 can't really recall the time, but we wanted to start
3 pretty early in the day, because we knew we were going to
4 have to make two trips.

5 Q. Gotcha.

6 A. Uh-huh (affirmative).

7 Q. And about how long does it take from Gastonia to
8 Lugoff?

9 A. It's about two hours.

10 Q. Okay.

11 A. Yeah.

12 Q. All right. Did y'all make the second trip?

13 A. We did not make the second trip.

14 Q. Why?

15 A. Because we -- he went his separate way.

16 Q. Okay.

17 A. So --

18 Q. All right.

19 A. -- parted ways on the way to go pick up the things
20 to make the second trip.

21 Q. Coming back for the second trip. So, y'all --

22 A. Correct.

23 Q. -- y'all had left Lugoff.

24 A. Uh-huh (affirmative).

25 Q. Headed back towards Gastonia?

1 A. Exactly, to make the second trip.

2 Q. Okay.

3 A. So, the plan was to go to Gastonia for the second
4 time, pick the things up, and drop them back off --

5 Q. Okay.

6 A. -- in Lugoff.

7 Q. And that just -- the second trip never occurred?

8 A. Exactly.

9 Q. Beg the Court's indulgence.

10 JUDGE GIBBONS: Yes, sir.

11 BY MR. FRICK:

12 Q. So, y'all started about 9:00 that morning you said?

13 A. I can't really remember the exact time.

14 Q. Let's phrase that a -- was the plan to start at 9:00
15 in the morning?

16 A. I want to say maybe even a little earlier than that,
17 but I would say maybe 9:00.

18 Q. And did it get off to no hitch? I know you said it
19 was smooth --

20 A. Uh-huh (affirmative).

21 Q. -- but was it smooth?

22 A. From my understanding it was. I mean, from my
23 perspective there was no issue, yeah.

24 Q. Thank you, ma'am. Please answer any questions the
25 Solicitor may have.

1 A. Okay.

2 JUDGE GIBBONS: All right, Madam Solicitor?

3 MS. LIVELY: Yes, thank you.

4 CROSS-EXAMINATION

5 BY MS. LIVELY:

6 Q. Hi, Ms. Parris.

7 A. Hi.

8 Q. I just have a couple of questions, and I'll kind of
9 give you a little bit of a heads up about what I'm going
10 to ask you in regards to the stuff that was being moved
11 from -- was this your home or apartment?

12 A. Correct, it was an apartment.

13 Q. Okay, an apartment. And who all -- you don't have
14 to give me names, but how many other people lived in the
15 apartment with you?

16 A. It was just myself and a roommate at the time.

17 Q. Okay.

18 A. Uh-huh (affirmative).

19 Q. Was your roommate's stuff being moved --

20 A. No, just --

21 Q. -- from there too --

22 A. -- my stuff.

23 Q. Just your stuff?

24 A. Uh-huh (affirmative).

25 Q. Okay. So, just in that first trip that you're

1 talking about, what kind of things were actually put into
2 the van?

3 A. I want to say it was my bed, there were a few boxes,
4 and there was a small like coffee table, and maybe even
5 like a small couch.

6 Q. Okay.

7 A. Like a very small couch, if I remember correctly.

8 Q. And was this all your stuff?

9 A. Yes, it was.

10 Q. It was. I'm going to have to ask you this question,
11 please don't take offense to it.

12 A. No.

13 Q. But, would there be any reason for crack cocaine or
14 marijuana to have fallen out of the seats of the couch or
15 anything that was in -- in those items you just mentioned
16 that would've gone into his van?

17 A. Absolutely not.

18 Q. Okay. I have to ask that question, okay.

19 A. I understand.

20 Q. Any type of drug paraphernalia whatsoever?

21 A. No, none at all.

22 Q. Okay, all right. That's just one of those questions
23 I have to ask. And whenever the van was -- had your
24 stuff in it.

25 A. Uh-huh (affirmative).

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1 Q. And was traveling back to Lugoff to be unloaded,
2 okay.

3 A. Uh-huh (affirmative).

4 Q. Were you in the van with Mr. Palmer or were you
5 following him?

6 A. Following him.

7 Q. You were following him.

8 A. Or he was -- he was actually following us, because
9 he wouldn't have known where to go.

10 Q. Got it.

11 A. Yeah.

12 Q. Okay, so he was actually following y'all.

13 A. Uh-huh (affirmative).

14 Q. Thank you.

15 A. You're welcome.

16 JUDGE GIBBONS: All right, any redirect?

17 MR. FRICK: No redirect.

18 JUDGE GIBBONS: Thank you, ma'am, you may step
19 down. You're free to leave. Defense can call its
20 next witness.

21 MR. FRICK: Defense would call Pastor Jermaine
22 Nichols.

23 JUDGE GIBBONS: All right, sir. Sir, if
24 you'll please raise your right hand. Do you swear
25 or affirm, or promise to tell the truth, the whole

1 truth, and nothing but the truth?

2 MR. NICHOLS: I do.

3 JUDGE GIBBONS: Thank you, sir. Have a seat
4 there.

5 JERMAINE NICHOLS

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

8 DIRECT EXAMINATION

9 BY MR. FRICK:

10 Q. Pastor Nichols, can you spell your first name
11 correct?

12 A. J-E-R-M-A-I-N-E.

13 Q. And your last name?

14 A. Nichols, N-I-C-H-O-L-S.

15 Q. Thank you, sir. I've called you Pastor, so that
16 kind of buried the lead on that one. What do you do?

17 A. I'm a pastor.

18 Q. Are you?

19 A. Yes, Greater Works Center in Fort Mill.

20 Q. Tell us a little bit about your educational
21 background.

22 A. I have an undergraduate degree in business, master's
23 degree in education, certified life coach, and a couple
24 of years of seminary.

25 Q. Okay. Do you know the young man sitting over at the

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1 table with the sweater on?

2 A. I do.

3 Q. Who is that?

4 A. It's Jason Palmer. I met him in about 2007.

5 Q. 2007.

6 A. Uh-huh (affirmative).

7 Q. So you've known him for a while?

8 A. Yes, I have.

9 Q. How'd you get to know him?

10 A. He came in, he was part of a program that I was a
11 program counselor for, it was called the Urban Youth
12 Development Program.

13 Q. Okay. How long was he in that program?

14 A. About two years.

15 Q. And did you stay in contact with him after that
16 program?

17 A. Yeah. The program had to do with developing a
18 career, maybe entrepreneurship, and I had taught
19 entrepreneurship before, and so Jason was very interested
20 in starting a business. So, I helped him start his
21 business, and then he joined the church that I pastured.

22 Q. So he did start a business?

23 A. He did.

24 Q. What kind of business did he start?

25 A. Car detailing. We -- we rented vans at the Urban

1 League and he -- he mentioned that he could clean them up
2 well, so I talked to the owner of the enterprise, and
3 they let him do the detailing.

4 Q. Good deal. And that was about when?

5 A. That would've been, he was out of the program, so
6 2009, '10, yeah.

7 Q. Okay. And you've maintained contact with him after
8 that?

9 A. Yeah. Periodically I just tried to -- tried to
10 encourage him. Keep him -- keep him going. He dealt
11 with a lot, and so I just -- you know, just trying to be
12 a good pastor.

13 Q. Is it fair to say you've been a mentor for him?

14 A. I think that would be fair, yeah.

15 Q. And you've known him for a long time?

16 A. Yeah, yeah. Like I said, went through -- been there
17 for him through a lot of ups and downs.

18 Q. He has been through a lot.

19 A. Yeah, Jason has lost a lot of people who are close
20 to him. His father rejected him. His -- once his mother
21 passed that was very -- very difficult for him because
22 she was also abusive but she's all he had in the world.

23 Q. You've been here some this week and seen some
24 testimony; is that right?

25 A. I have.

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1 Q. And you've seen some testimony where some of Jason's
2 behavior has been deemed erratic or he's aggressive.

3 A. Uh-huh (affirmative).

4 Q. Can you tell us about your views of his demeanor or
5 his --

6 A. I would say Jason is -- he's very passionate. I say
7 that to say that he gets upset at unfairness. And so,
8 typically he's very easy-going, he's always got a joke,
9 he's something -- something of an intellectual, he's a
10 smart guy. But, when he was in the program he was always
11 defending people. He was always trying to stand up for
12 folks and -- and so at times like that when he thinks
13 either him or somebody else is being treated unfairly he
14 just, you know, would get passionate.

15 Q. In your experience does that -- does it make him
16 upset?

17 A. Yeah.

18 Q. And when he gets upset how does he react?

19 A. He -- he -- he's gonna let it fly. He -- he mixes
20 big words with expletives.

21 Q. Fair enough. Hang tight for one second, Pastor.
22 Pastor Nichols, that's all I have. Please answer any
23 questions the Solicitor has for you.

24 MS. LIVELY: No questions, thank you.

25 JUDGE GIBBONS: Thank you, sir. You may step

1 down. You are free to leave. Defense can call its
2 next witness.

3 MR. FRICK: Defense calls Jason Palmer.

4 JUDGE GIBBONS: All right, sir. I'll swear
5 you in, sir, if you'll come up here.

6 MR. PALMER: Yes, sir.

7 JUDGE GIBBONS: If you'll please raise your
8 right hand, sir. Do you swear or affirm that the
9 testimony you give will be the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 MR. PALMER: Yes, sir.

12 JUDGE GIBBONS: Thank you, sir. Have a seat
13 there and watch -- watch out for that microphone and
14 just pull it close to your mouth. Thank you. Mr.
15 Frick?

16 JASON PALMER

17 was called as a witness, and having been first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FRICK:

21 Q. Mr. Palmer, I'm going to ask you the same question I
22 asked everybody, go ahead and spell your first name for
23 us.

24 A. Jason, J-A-S-O-N.

25 Q. Palmer?

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1 A. Palmer, P-A-L-M-E-R.

2 Q. Thank you, Jason. All right, you've heard some
3 discussion that you had started up a busin -- well, let
4 me ask you about this van, was that a business?

5 A. Yes.

6 Q. Tell me about that business.

7 A. Transportation business, Progressive Transports,
8 LLC, just got my DOT number for it, just got my
9 commercial insurance for it, just a transportation
10 business. I was doing tractor-trailers; I got CDL's.
11 And my friend over there, he put me onto vans. It's like
12 -- it's like driving a truck, but you don't have to like
13 deal with the weigh stations and you don't have to deal
14 with DOT hours.

15 Q. So, you had gotten the van and starting up this
16 business, what kind of -- what kind of operations were
17 you running?

18 A. Nothing at the time. Just kind of like personal
19 stuff.

20 Q. Right.

21 A. I tried to do a couple -- I met a couple dispatch
22 broker people, and they kind of gypped me using their
23 authority. 'Cause when you get a DOT number you get
24 what's called new authority, and you can't take loads
25 with a bill of lading from one state to another. So, I

1 was just kind of doing some stuff around, helping --
2 helping them move, whatever I could do, 'cause I had to
3 wait before I could get any loads with bill of ladings,
4 so, yes. It's already tough with a cargo van instead of
5 like a tall shuttle van, so.

6 Q. How long had you had this van before this incident
7 occurred?

8 A. Three weeks.

9 Q. Three weeks, okay. Let's talk about that day. Tell
10 me about the day that you were helping Jacinta move.

11 A. I wouldn't call it necessarily smooth, but it wasn't
12 like rough neither. But, some things went wrong. We
13 were supposed to start at 6:00. We were supposed to
14 start at 6:00. We had talked about it, we were going to
15 start at 6:00 in the morning, and she had hit me up,
16 'cause at the time she was pregnant. So, that's Sissy,
17 she's got my niecy. So, she was like I'm sleeping, let's
18 start at 9:30, so I was like all right. So, I get there
19 at 9:30, but she went and go and get her dad and get some
20 Dunkin Donuts. So, she hit me, she brought a turkey
21 bacon, egg and cheese bagel. Her dad got out of the car,
22 I went to try to greet him, I guess, you know, being the
23 brother of the father of her child maybe he ain't -- you
24 know, he's trying -- I don't know, you know, the in-law
25 thing or whatever, I guess, I don't -- but, he walked to

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1 the back of my van, I was like, hey, what's up. He
2 didn't shake my hand, it's all good. He's a cool dude
3 though, I get what he was trying to. But I shut my door
4 behind me and left my keys in the car. And so then --

5 Q. About what time is this when you shut your keys in
6 the door?

7 A. About 10:30.

8 Q. Okay.

9 A. So, then we called AAA to try to get the -- what do
10 they call it, a locksmith, tried to get a locksmith and
11 he was supposed to show up. It was supposed to be free,
12 but our AAA he leaves his keys in the stuff a lot, so no
13 more free ones. And so we waited, it was like \$75, they
14 got out there about 11:30. Yeah, so --

15 Q. Had y'all left Gastonia at this point?

16 A. No, we haven't even started packing.

17 Q. Okay.

18 A. So, he gets there, does the little thing, pops the
19 door, we get to packing everything up, couch, I think in
20 that one picture you see the legs to the -- to the table
21 thing.

22 Q. Yeah.

23 A. Some other stuff.

24 Q. Keep going, I'm gonna try to find the picture.

25 A. I remember -- I remember a blanket being there

1 specifically because like the -- something wooden, I
2 don't know if it was one of the frames or whatever, it
3 was hitting like the glass, so I wanted to like absorb
4 the impact from it hitting my glass, put the blanket on
5 top of that. But we packed it pretty good.

6 Q. I'm going to show you what's been introduced as
7 Defense Exhibit Number 11.

8 A. Yeah, that look like -- that's it.

9 Q. That's it right there, the stuff at the front?

10 A. Yeah.

11 Q. Those are the table legs?

12 A. Yeah, something like that, I don't know. I don't
13 remember exactly. I know it's not mine.

14 Q. All right. So, where are y'all at this point?

15 A. Packed up, got done about 1:00, go to the gas
16 station, get some gas, and head down to Lugoff.

17 Q. Did you know where you were going?

18 A. No.

19 Q. You've never been to Lugoff before?

20 A. No.

21 Q. You didn't know how to say it, did you?

22 A. Lugoff, Lugoff, it might -- yeah, whatever. I've
23 never honestly been past 77 past Carowinds Boulevard. I
24 think one time when my cousin Linda moved down to
25 Columbia I was maybe 12. I ain't -- if I go to Myrtle

1 Beach I take 52, I know that much.

2 Q. So you're not familiar with I-77?

3 A. Not at all.

4 Q. Okay.

5 A. Well, not the south.

6 Q. Gotcha.

7 A. North to 81 and then like to Maryland and stuff,
8 yeah.

9 Q. So where were you staying back there in July of
10 2022?

11 A. In my van.

12 Q. Okay.

13 A. My van. It had a air mattress, it's kind of living
14 the same way that you live in a truck. In a truck you
15 got your sleeper berth. In the van just live with the
16 air mattress. It helps me save money. My mom passed
17 away, I let the house go into foreclosure in like 2013,
18 so I've technically been homeless since, but I got my
19 CDL's in 2014, and so I just kind of live on the road,
20 yeah.

21 Q. Okay. Well let's get back to -- when did y'all get
22 to Lugoff?

23 A. 4:00.

24 Q. 4:00?

25 A. 4:00.

1 Q. What delayed y'all so much?

2 A. Some bathroom breaks, stop to eat Subway.

3 Q. So, 4:00 you're in Lugoff?

4 A. Yeah.

5 Q. Now what do you do?

6 A. Back up, the house they got is on a hill, and so
7 when I'm backing up to get the van I'm thinking it's
8 gonna go and (inaudible) to go in the garage. Instead
9 the back of my van hits the top of the garage, pop, and
10 the little black part on my van falls off.

11 Q. I'm going to show you what's been introduced as
12 Defense Number 13.

13 A. Yeah, that part right there.

14 Q. That's it?

15 A. Yup.

16 Q. Did it cause any other damage to your car?

17 A. Not that I know of.

18 Q. Okay. So, it's damaged your van, your brand new
19 van, what'd y'all do after that?

20 A. Went ahead and unloaded everything. They kind of
21 take off. I'm kind of a little -- thinking about my van,
22 I'm like ugh, so they come back and they're like come on,
23 man. So we drive. I tell her hey, look, I need some
24 cigarettes, and so we passed like two, three stores, and
25 I'm like, yeah, I need some cigarettes. So, I just go

1 ahead and pull off at the next store we pull off on, some
2 gravel place white -- I don't think we're on 77 just yet.
3 And she comes back, she's like are you good, da, da, da,
4 I was like, yeah, go ahead Sissy, I know y'all address.
5 I see you in a second. So, she goes on and then get my
6 cigarettes and get back on the road.

7 Q. Is that the part where she says y'all got separated
8 that day?

9 A. Yeah.

10 Q. You get back on the road, do you know what time it
11 is at that point?

12 A. Not exactly but it's prob -- 20/20 hindsight
13 probably 4:00 something.

14 Q. Okay.

15 A. Maybe 5:00, I don't know.

16 Q. That's fine. So, did you make any other stops after
17 that?

18 A. A few. So the black thing on my van is messed up.
19 I had pushed it back in when I was there, and so when I'm
20 going up the road I'm hearing a rattling. So, I was like
21 what the heck is going on. So, like I slowed down, back
22 up, and give myself some space, hit the gas, 'cause I'm
23 thinking like maybe something is rattling and you know
24 how you like -- I had a issue with a wheel before, it had
25 a bubble in it, and that actually like popped on me -- or

1 bad balance in the tires, so I'm not sure what it really
2 is, so I back up, speed up to get some -- I noticed that
3 whatever the sound was stops. So, I was like, well what
4 the heck was that. So, I pull over. So I look and I see
5 that black came out some more.

6 Q. Okay.

7 A. So, I pushed that back in.

8 Q. Where were you driving when this happened?

9 A. 77.

10 Q. Okay. All right. Do you know about where you were
11 on 77?

12 A. No idea.

13 Q. That's fine. How was traffic when you were there?

14 A. Heavy, not like stop and go. It was actually worse
15 coming -- it was actually worse going down to Lugoff than
16 it was coming back up.

17 Q. Okay. So you -- let's explain what you're talking
18 about. You would fall back a little bit, then you would
19 speed up?

20 A. Yeah.

21 Q. What were you doing?

22 A. Just trying to see if it's like -- you know how
23 sometimes your steering wheel shakes or something, so I
24 was just trying to see like well what could it be. I was
25 trying to figure it out, like give myself room, maybe if

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1 I speed up the sound will stop. If I slow down -- I try
2 slowing down, the sound didn't stop. So, I tried
3 speeding up to see if the sound would stop. I mean I
4 just got the van, so I'm worried might've bought me a
5 lemon and I don't -- I mean, I know I just hit my thing
6 too so, I'm just trying to figure out what's really going
7 on.

8 Q. Right, okay. And ultimately you did figure out that
9 --

10 A. Yeah.

11 Q. -- it's this? Okay. Do you recall making that
12 phone call to somebody or sending a text at that point?

13 A. Yeah, at that point I called bruh and I let him
14 know, hey, man.

15 Q. Who's bruh?

16 A. Sissy's --

17 Q. Husband?

18 A. -- husband.

19 Q. Okay. All right.

20 A. Yeah, husband.

21 Q. Go ahead.

22 A. So, call him and I'm just like hey, bruh, I can't go
23 that fast 'cause my thing gonna keep popping out, and I'm
24 -- I'm worried, I don't -- I'm not a car person, so I
25 don't know if it's like attached just by the wire, you

1 know the light -- I don't know if the light is even
2 coming on to be real, 'cause I don't got nobody else to
3 press the brake while I look. So I pull out --

4 Q. Which light are you talking about right now?

5 A. Huh?

6 Q. Which light are you talking about?

7 A. The brake light.

8 Q. All of them or which one?

9 A. Well, I don't know if the top one come on. I don't
10 know if the -- I mean, I would figure this out and it
11 would still work, I haven't gotten a ticket for it yet,
12 so I guess they working.

13 Q. All right. So you're trying to figure that out.

14 A. Yeah. And so I pull over to text him, 'cause I
15 don't really text and drive -- or I don't text and drive
16 at all. I usually use my OK Google to text so and so,
17 and say what I got to say, and then it'll say do you want
18 to send, and I'll say yes. But I don't think my -- I
19 don't know was my Bluetooth thing in there or not? I
20 don't know. I was texting him 'cause I ended up pulling
21 over to really call him. Sorry, Sissy. I -- I was
22 trying to get some more help, you know what I'm saying.
23 'Cause her dad's a little older, so I was like I was
24 calling bruh, hey, man, you need to get somebody else to
25 like come help, 'cause I -- I was helping somebody else

1 the day before. I was helping some other people move,
2 and they're calling me to help them come move again. So,
3 I'm like, yeah, I don't no -- at this time I'm still
4 reconsidering this second trip for the day. So, I'm like
5 yeah, bro, you might want to get somebody to help this
6 'cause either -- if I'm gonna do this we gotta make it
7 quick, which I mean an hour and a half down -- it took
8 three hours, but I see Google map say hour and a half
9 back, so it got to be a hour and a half down, so an hour
10 and half there, hour and a half back, that's still gonna
11 be three hours. You know, but it's summertime so you
12 know, it's nothing before 5:00 you'll still have a little
13 daytime maybe I can still help them. So, I'm like -- but
14 I hit bruh, and I'm like yo, bro, we got to talk 'cause
15 I'm gonna need some more help. So, he was like I'll call
16 some people. So he called some people.

17 Q. Did you ultimately decide whether or not you were
18 going to do that second trip?

19 A. I kind of figured I probably wasn't gonna do it.
20 Sissy was gonna be mad. She was gonna be mad, but yeah,
21 I had -- I really need to go help this other person too
22 'cause --

23 Q. You had a long day too.

24 A. Yeah, it's -- it's been a long day. It was a long
25 day, and then like she -- she had talked about paying me

1 but I mean that's my niece mom. I -- I got -- my whole
2 side is tatted with my nieces and nephews names. I'm not
3 charging my niece's mom to move. I know -- I know bruh
4 since I was four years old. Why would I charge them to
5 move?

6 Q. Gotcha. But you did ultimately decide I'm not doing
7 this other trip?

8 A. Yeah, for the most part.

9 Q. When did you do that?

10 A. Well, I decided a little bit before the wreck. I
11 pulled over -- I was getting over to pull over, 'cause I
12 seen the sign, it said Charlotte 30 some odd miles away
13 or something like that. I was like, yeah, I might as
14 well give a little pre-warning, let them know, you know,
15 it's not good. I don't want just pop them, like hey man
16 I ain't helping, hold my stuff down, I'll be back
17 tomorrow. I could at least let them know, so whoever he
18 calling can have time to cancel, might catch them before
19 they leave the house or something.

20 Q. Do you know where you are on I-77 at this point?

21 A. No, just saw that sign that said like Charlotte
22 about 30 minutes -- 30 -- pretty much 30 minutes away.

23 Q. Okay. Go ahead.

24 A. I get over. What I find out later is I get over in
25 front of Felicia Logan. So, I get over in front of

1 Felicia Logan, and I guess behind the SUV. When I get
2 over the phone -- I don't have one of those things which
3 I should've, I guess. I got my phone right here on my
4 lap. So, when I get over, my phone drops and I got this
5 cage behind me. And so there's not much room. I got
6 about as much room as I have in this right here. So, my
7 phone's reaching and I'm like this, and I'm like, hey,
8 (inaudible) is it. So, I look down for one second and
9 bow, smack into it -- ran -- yeah. Airbag hit me in the
10 face. I think --

11 Q. So --

12 A. I think I honestly spun once in -- in the middle
13 of the street, and off I went, and I was into the median,
14 and I ain't know -- I know about the wire now, but I
15 ain't know there was no wires then. So, I'm seeing
16 myself going into oncoming traffic and I'm like well,
17 this is how I'm finna go; just hope it don't hurt. So, I
18 just relaxed my back and the next thing I know I'm
19 starting to go this way. And I'm shocked, so I was just
20 like okay. So, then my van comes to a stop. Started
21 smoking on the inside. So, I tried to open my door, door
22 doesn't open. I tried to open the other door, that
23 doesn't open. So, I'm just kind of looking and I see
24 those wires now on this side, but I still don't see the
25 wire on this side. So, I just know my door won't open.

1 So, I turn the key back and see If my windows work. My
2 windows work, so I climb out. And I climb out, I run
3 across the street, check on whoever else may be hurt. I
4 get across the street, there's a guy there. I'm not -- I
5 don't -- I don't know if it's the other dude, what was
6 his name, the Joseph Parker guy. I don't know if it was
7 him. I know he had dark hair, so it could've been him,
8 just I know in his interview -- in the interview in the
9 thing he has a hat on, I don't remember the hat. But
10 there's another guy there, and he helped Ms. Shanks out
11 the car. And the kid gets out the car. We opened the
12 door, he -- he jumps out. We sit them together like hey,
13 calm down, you know what I'm saying, they -- 'cause she
14 got out and she was hysterical, which I understood. So,
15 you know, we just making sure -- 'cause traffic never
16 stopped. People just kept going. People kept on going
17 around the wreck. So, we're just making sure she's with
18 her son and he doesn't get up and run out into the road.
19 So, then dude goes around the other side of the van and -
20 - so dude -- dude goes around the other side of the van,
21 and so I walk around to see what he looking, 'cause he
22 kind of jumps back. And that's when I see the kid, yeah.
23 So --

24 Q. What'd you do after that?

25 A. I ran back across the street, ran back to my van.

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1 I'm looking for my phone, try to call -- try to call

2 Sissy tell her hey, something bad just happened, there's
3 a wreck. And --

4 Q. Did you find it at all?

5 A. No, I never found it. And I also see my beer in
6 there and so I take that out and put it in my book bag
7 and I throw that out of my van, 'cause my first thing is
8 honestly -- maybe not first, but it -- it runs across my
9 mind, I know what I just saw, and I know what they're
10 gonna assume. It's a reasonable assumption.

11 Q. Had you been drinking?

12 A. No. What, that doesn't matter?

13 Q. Well why you got a -- why you got a 12-pack of beer
14 in your car?

15 A. 'Cause I lived there and it's cheaper to buy a 12-
16 pack. It's cheaper to buy a 12-pack. I mean, get it and
17 just hold on to it, it's not illegal to carry closed beer
18 in your vehicle, and I'm not in the 18-wheeler. So like
19 -- if you're in the 18-wheeler you don't even keep
20 alcoholic mouthwash in there, like that's a no-go, all of
21 that stuff is a no-go. So, I mean, I'm -- I'm -- I live
22 there. So --

23 Q. So you throw it out?

24 A. Yeah.

25 Q. What'd you do next?

1 A. Climb back out. Climb back out and go back across
2 the street. The Ms. Logan lady, she's like hey, you
3 okay. So, like -- 'cause like it was the only other guy,
4 so I come back, she's pulled over on the left shoulder.
5 And she's like, you all right. I was like yeah, I think
6 I'm straight, my arm just some skin came off. She's like
7 -- she -- no, she did say, she was like were you asleep
8 or something and I was like no. Like, she was like
9 (inaudible) I don't know, we were talking. I used her
10 phone. I asked her to use her phone. She was actually
11 pretty calm. She let me use her phone. I called my
12 brother Keith and I told him. I tried to call Mr.
13 Nichols. They didn't pick up at first. Keith called
14 back. When I talked to Keith, Keith said man, just --
15 just sit down and stay calm.

16 Q. Which side of the interstate are you on at this
17 point?

18 A. The left side.

19 Q. Okay. Over there on the side where your van is?

20 A. Yeah, but the van's in the median.

21 Q. Got it.

22 A. I think the Logans got a white car, yeah. But, yeah
23 --

24 Q. So you sat down?

25 A. Yeah.

1 Q. Was Ms. Logan still over there with you?

2 A. Yeah, she was over there. I told her I -- I don't
3 know -- I don't know what's over there. Like I --
4 basically I'm asking her like -- I'm on the phone with my
5 brother, and I'm -- and I'm talking to him really, and
6 I'm like bruh, I think a little kid is dead, man. And he
7 was like, you know, so.

8 Q. So, how long had you been out there when you're
9 having your conversation with your brother, any idea?

10 A. Probably the first 10, 15 minutes maybe, I don't
11 know.

12 Q. Okay. Had any police shown up or fire trucks or
13 ambulances by this point?

14 A. No, not yet. Matter of fact, 'cause when I was
15 running back across -- when I was running back across --
16 well, when I rolled down my window they -- they keep
17 saying there was a wreck, 'cause I was coming on to the
18 oncoming traffic, and there wasn't a wreck until like --
19 people being nosey. My momma call it stop and look
20 traffic, just a bunch of people just being nosey. So,
21 when like I -- right before I climbed out the window I
22 heard (screeching and crash noise). I was like, well I
23 ain't got time to worry -- worry about that, that didn't
24 even look that bad, you know what I'm saying. So I -- I
25 can see the -- their SUV over here, and I'm looking at

1 them like, they'll be all right. So, I run over there.

2 But when I come back, I think it's those nurses and they
3 were like, is everything okay over there, and I was like
4 nah, I think a kid is hurt. And so they just hopped out
5 and they pulled over, came to help.

6 Q. Did you ever go back up to the SUV?

7 A. I tried to. She -- she was like just no, I mean, I
8 got it. I under -- I mean I -- I get it. I get it.

9 Q. So where'd you go?

10 A. The Logan guy was with her, and the nurses and stuff
11 were with her, and so I just went and sat back with the
12 wife, the Felicia Logan, with her. And I was trying to
13 call as many numbers as I could possibly remember using
14 her phone. I was really trying to find -- figure out the
15 number for somebody who might be able to call Sissy and
16 get her to be able to turn back around.

17 Q. Gotcha. Did you ever get in touch with Sissy?

18 A. No.

19 Q. Okay. Did you just stay there with Mrs. Logan or
20 what happened next?

21 A. I stayed there with her. Fire -- the fire
22 department guy, he came and told us hey, we want y'all on
23 the other side of the road, I guess 'cause like the
24 shoulder's bigger and stuff. And he's like, just for
25 y'all's safety we want you on the side of the road, so I

1 got up and I came on the other side of the road, and she
2 came on the other side of the road.

3 Q. Had EMS come talk to you at this point?

4 A. No.

5 Q. Did EMS ever come talk to you?

6 A. That one lady, I don't know her name, but she did --
7 and she did. I guess the inter -- I guess we did the
8 interviews or whatever. I'm trying to think. Yeah, we -
9 - so we've done the interviews and stuff.

10 Q. When you say interviews are you talking about --

11 A. Cyteco Dye.

12 Q. Okay.

13 A. In his car. Yeah.

14 Q. Did you ever have any more interaction with the
15 other people at the scene?

16 A. Nah, really just -- the EMS y'all call it EMS, came,
17 bandaged up my arm. One dude came over there while I was
18 over there, and he was like -- I kept asking is the kid
19 dead, because I wasn't -- I wasn't sure, 'cause I didn't
20 want to touch nobody. Like, I didn't even know the dad
21 was in the car to be honest with you. Like the whole
22 front seat I -- I -- I thought it was just her and two
23 kids. So like I didn't want to touch the kid, injury
24 stuff, you leave that to the professionals. So, I was
25 like I'm -- people kept coming over and -- and like hey,

1 man, you okay and then I'm like yeah, and I'm like well
2 the kid, and they're like they can't talk about it.
3 They're telling me they can't talk about it. But, the
4 Logan lady she's like, see that red truck over there with
5 the red sirens, that's the Coroner, so the kid is dead.
6 And I was like, nah. I was like that's -- so -- yeah, so
7 nobody would really tell me. Nobody really told me until
8 the EMS lady I think.

9 Q. Did anybody -- I mean, other than Ms. Logan, talking
10 to her and then EMS talked to you, and I know you talked
11 to Dye at some point, did anybody else talk to you?

12 A. Mr. Logan came back and got his wife phone, and the
13 EMS lady let me use her phone. She said do you want to
14 call your brother and have him pick you up here or pick
15 you up at the hospital. I was like -- I called him, I
16 said bro, what do you want to do, do you want to pick me
17 up here or the hospital? He said man, you better take
18 your butt to the hospital. He didn't say butt, but you
19 know what I mean. So he said, you better take your butt
20 to the hospital, so I was like all right. So I went to
21 the hospital.

22 Q. Let's stay on the scene for a second. You've heard
23 the testimony that says you were driving 98 miles per
24 hour. Do you believe that that's true?

25 A. Nah. Not at all.

1 Q. Okay. Why not?

2 A. Simple, I mean, I'm maneuvering through traffic. I
3 -- one lady said I was riding her butt, probably. We was
4 in the fast lane, and she's evidentially going slower
5 than the slow lane. So, I probably rode her butt, but if
6 -- I mean, if I'm going 98 I can't ride your butt.

7 Q. You said maneuvering through traffic, they said you
8 were -- you was swerving, weaving in and out, what were
9 you doing?

10 A. Maneuvering in and out.

11 Q. Okay, well let's go through it. I mean, you heard
12 Ms. Dempsey said you flew up behind her.

13 A. Nah.

14 Q. Well, tell me what happened. Take me through --

15 A. I mean, I can't even remember who's Ms. Dempsey's
16 car so I mean I -- I mean, the whole time through traffic
17 on the way back was pretty much just trying to get
18 through it. Like I'm sitting higher than everybody else
19 so I can see, okay, this lane is moving faster than this
20 one, this person moving faster than this one. I can --
21 you move up, she say I cut in between, I mean, my van is
22 longer than any one of these tables. I'm trying to see
23 how long my van -- my van's super long. I mean, I can
24 lay down there and it -- and there's still room at the
25 end and then you still have the cage and all the driving

1 area and then you have the engine.

2 Q. So when you cut behind the Shanks SUV, as you said.

3 A. Yeah.

4 Q. Was there space there?

5 A. Had to be.

6 Q. Okay.

7 A. Or I would've -- the Logans, I would've took their
8 front fender off.

9 Q. Okay, all right. Before you hit them, did you touch
10 the brakes?

11 A. No, but I didn't have my foot on the gas.

12 Q. Okay.

13 A. I mean, I looked down for a second, so like I tapped
14 the gas, switched lanes, my phone fell, I'm looking, take
15 my foot off and hit.

16 Q. You just didn't see it coming?

17 A. Nah. I ain't -- I mean, everybody's moving, it
18 wasn't no stop and go traffic. I didn't expect nobody
19 hit no brakes. We're all pretty much moving.

20 Q. Okay. All right, let's get back to the hospital.
21 How long were you at the hospital?

22 A. Maybe -- maybe three or four hours.

23 Q. Were you alone at the hospital?

24 A. No, the EMS lady loaded me up in her ambulance.

25 We're about to leave and then some guy runs up and says

1 hey, he needs an escort. So, they -- they send that guy
2 -- he was in the video, he had like the little hat on or
3 whatever. He had like a blue uniform, I don't think he
4 was a State Trooper, so he escorted -- he escorted me
5 there (inaudible) ambulance there.

6 Q. Did he stay with you at the hospital?

7 A. I talked with him a little bit.

8 Q. Did any other law enforcement come and talk to you
9 at the hospital?

10 A. Yeah.

11 Q. Let's go through that. Who started?

12 A. I'm -- Warlick, I guess. Watching the video I can -
13 - I can see now Warlick, but I would've said Cyteco. If
14 I wouldn't have saw the video, I would've thought Cyteco
15 Dye was there first.

16 Q. You just knew it was a Trooper?

17 A. Yeah.

18 Q. Okay.

19 A. And they kept -- both him and Warlick kind of came
20 around the same time.

21 Q. Okay. Well what's going on? What's y'all's
22 interaction at that point?

23 A. I'm kind of chilling now, 'cause when I first got
24 there the people -- people were really -- I don't
25 remember exactly what they said, but they were talking

1 crap about me, and then they were also like saying stuff
2 about the wreck that wasn't true. It -- just gossip.
3 And so I'm sitting there like, there's a dead kid and
4 y'all in here gossiping like hens, and like -- but the
5 end this lady she was like just chill out. I was like
6 but you see that, and she was like just chill out, 'cause
7 they're gonna take it the wrong way. So I --

8 Q. You recall she testified earlier and said that you
9 had said some things at that point?

10 A. Yeah.

11 Q. Is that what you're talking about?

12 A. Yeah.

13 Q. That's why you said those things?

14 A. Yeah.

15 Q. Okay, all right. Then what happened after that?
16 You're still in the hospital.

17 A. Still in the hospital. I'm sitting there, I'm with
18 Dye. I'm sitting there with Dye. We're just really
19 sitting there waiting. Darby hasn't come in. He does
20 the eye thing test, doing this way, that way, he says
21 follow my finger, and so I'm like which one. And they're
22 like huh? And I'm like, well, like you know, like when
23 you don't focus, you know you got like two of them, you
24 know what I mean, like -- the eye negotiate -- whatever
25 thing. So, I'm like which one 'cause I'm -- I don't

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1 know, so they're like just focus on the finger, and I was
2 like okay, and so I followed the finger. I do that with
3 Dye, I do that with Warlick.

4 Q. Okay.

5 A. Yeah.

6 Q. Have they told you you were in any trouble at this
7 point?

8 A. Nah, everybody keeps coming up and saying it's a
9 accident man, and I'm -- I'm -- I'm -- it's a accident
10 but the result sucks, you know, what I mean. Like that -
11 - that -- that's -- that sucks. And --

12 Q. Now you heard some testimony it was at some point
13 you just -- you got agitated and you said some angry
14 things, do you recall that?

15 A. Yeah.

16 Q. Do you recall what happened that led to that?

17 A. So, they keep talking about a drug recognition
18 expert. So, they sat there -- so they're saying like we
19 got to get this drug recognition, I was like so y'all
20 think what D -- like, I don't really know, 'cause they're
21 asking about getting blood and everything. And so this
22 dude Darby comes in, and he's like -- saying man, saying
23 everything's okay, I'm crying. We're talking about the
24 kid so I'm crying. And then he goes, oh, man, it's all
25 good, it's all good, it's all good, man, da, da -- it's a

1 accident, da, da, da. He turns around. Then he turns
2 back around, real quick for me though, can you -- can you
3 do like this? So I'm -- yeah. He's like yeah, your
4 conjunctiva's are red, I'm going to charge you with DUI.
5 I'm going, what? You're going to charge me with DUI for
6 crying for the kid? He was like, yeah -- no, he was
7 like, your eyes aren't red from crying, your eyes are red
8 from you must have been smoking some weed. I got my
9 locks or whatever, I know what people -- but he's like,
10 your eyes smoke -- smoking weed. I'm like smoking weed,
11 man I'm sitting -- (inaudible) tried to smoke nothing,
12 like 'cause I've already admitted to him, I tried to
13 smoke a joint the night before. I roll papers, I smoke
14 tiny little joints. I have no tolerance. But I -- I --
15 I tried to roll it, it collapsed on me. I was like I'll
16 just put this out. Ended up helping move, wasn't no
17 point in smoking no more. Like, I'm -- I'm working. I'm
18 doing stuff I need to do. So, I told him that so I'm
19 thinking that's why he's like the way he is with the DUI
20 thing. And I'm like -- I don't know. So --

21 Q. So you've heard --

22 A. So when he -- when he does that I'm -- he's say --
23 he say -- he's like I'm gonna charge you with DUI. And
24 so I asked, you know, you gonna charge me with DUI for
25 crying. He was like, your eyes ain't red from crying, it

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1 got to be weed. Like that's some shit. That is messed
2 up. Y'all gonna charge me with DUI for crying. So what.
3 If I say F the little kid, y'all gonna not charge me with
4 DUI? And so he goes, hmmm, hmmm, shoot I -- it was done
5 but I took my shot. Well, F the little dude then. And
6 he says nah, we're still gonna charge you. And I was
7 like, well fuck y'all. My fault. I start cussing them
8 out. I start cussing them out. I ain't even gonna lie.
9 I -- I go off on them 'cause it's like, y'all know I'm
10 not under the influence. I'm having conversations. I'm
11 -- I know I'm not under the influence. I know I haven't
12 done nothing. I was just helping somebody move.

13 Q. Let me stop you there for a second. There's been
14 some testimony that at various points your -- your speech
15 sounds slurred, you were dozing off. Did you doze off?

16 A. I mean, I'm sitting at the hospital for two hours
17 doing nothing, why -- yeah.

18 Q. Okay.

19 A. I mean there's -- they're not checking out my head
20 or nothing, so evidentially they don't believe I have a
21 concussion so why can't I go to sleep. I'm tired. I've
22 been up since 6:00. And she changed the time to 9:00 and
23 I ain't just go to sleep. I went and did laundry.

24 Q. All right. So, they told you that they were going
25 to charge you, and that made you angry?

1 A. Yeah.

2 Q. And you said angry things?

3 A. Yeah. Stupid, stupid, angry things.

4 Q. Okay.

5 A. Naïve.

6 Q. Right. You've seen the testimony today that there
7 were -- of this week that there were drugs in your car,
8 did you know that there were drugs in your van?

9 A. No. If I knew there was drugs in my van I would've
10 thrown them out with the beer.

11 Q. Okay. How much longer were you at the hospital, do
12 you know?

13 A. Not too much longer. So, they do that -- I'm -- I'm
14 honestly not sure which came first the blood or -- or the
15 situation with Darby. I know I was volunteering my
16 blood, I was like, yeah, y'all can come get this. 'Cause
17 I asked Dye, I said how long until my blood's
18 inadmissible? Like do y'all have a window to where y'all
19 can like test, so it must've been after. So yeah, I'm
20 like do y'all got a window where y'all can test my blood
21 to where like you -- like if you test it after three
22 hours, what you can't use it no more if it's bad? 'Cause
23 I know it's good. I know my blood going to come good. I
24 know my blood gonna come good. They haven't asked for
25 urine yet. So, I'm like whatever that window is he said

1 three hours. I think at that time it was like seven and
2 change. I was like, well y'all can come get this man,
3 'cause I don't want to hear nothing. I don't want to
4 hear when my blood come back clean that oh, well we can't
5 submit that into evidence. What? No, nah, nah, come get
6 it now. So the Darby dude was like nah, we -- we got to
7 have the warrant. We got to have the warrant. So, I was
8 like, well y'all need to hurry up and get the warrant.
9 So they get it I think in time. I mean, it's been
10 submitted, so, yeah they got it in time.

11 Q. They got it. And of course there's nothing in
12 there, like you told them?

13 A. Yeah.

14 Q. Jason, do you think you were driving recklessly?

15 A. No. I -- aggressive, I use the word aggressive. I
16 don't reckless at all. I don't really think recklessly.
17 I mean, why would I try to mess up a van I just got? I
18 was spending the last eight months getting my credit
19 together. I bought that van off credit. I paid \$200 for
20 personal car insurance and drove that off the lot. No
21 money down. I was being -- I took my credit from a 526
22 to a 735. I was being responsible financially,
23 disciplining myself. I mean, I just took a drug test
24 Friday, 'cause I was doing this -- I was gonna do this
25 lease purchase program for a 18-wheeler. Some place up

1 in Chicago there was going to be a Mac truck, but didn't
2 really like Chicago, but they did my MVR, they did my
3 background, and I took the drug test, and I got approved.
4 They sent a bus ticket, so I -- even though I don't like
5 Chicago I tried it with another place with Kansas City, I
6 like Kansas City a little better. And plus I don't know
7 nothing about a Mac truck, and I like Freightliners so.
8 I was trying to lease purchase my own joint.

9 Q. Jason, do you feel this was an accident?

10 A. Yeah, a horrible one, but it's still a accident.
11 Yeah.

12 Q. I'm going to ask you one more question. Is there
13 anything important about this case that you feel I have
14 not asked you?

15 A. Say again?

16 Q. Do you feel that there is any question, that is
17 important about this case, that I have not yet asked you?

18 A. Oh, the thing with Warlick and that catheter thing,
19 where they said I was like threatening to kill people.

20 Q. Okay. Tell us about that.

21 A. So -- so after I give the blood Warlick is like,
22 well need you to pee. And I'm like, man, y'all ain't
23 gave me no water, no nothing. Like, if y'all would've
24 said something I would've started drinking I would've
25 gave you pee. I'm volunteering the blood, like I'll pee,

1 no problem. And he was all man, if you don't give me pee
2 in 15 minutes you're in -- 15 minutes I'm going to stick
3 a catheter in you. So I'm like dude, if you stick a
4 catheter in me, I'm gonna stick in a catheter in your
5 daddy, your uncle, your brother, your nephew. I just
6 named off every male family member he could possibly
7 exist. You're not gonna stick no catheter in me dog, I'm
8 volunteering everything. You're not gonna threaten to
9 stick a catheter in me.

10 Q. Why'd you say that?

11 A. 'Cause he trying to -- threatening to stick
12 something up my urethra bro. Like, that's -- that's my
13 pee hole, bro, you don't want to do that. Like if I'm --
14 I'm volunteering, like I -- I -- I dig I'm kind of being
15 a butthole now. But, I feel y'all know why I'm being a
16 butthole, so --

17 Q. Did they take your blood when you volunteered it?

18 A. No, they say I had to wait for a warrant. I said
19 I'll sign a waiver, I don't got no problem doing that,
20 like if it's just a waiver of rights, I ain't got no
21 problem doing that, here, get my blood in that window. I
22 want my blood taken in that window. I don't want to hear
23 nothing about this later. Yeah, and that's pretty much
24 it at the hospital.

25 Q. Is there anything else that we haven't covered

1 (inaudible)?

2 A. I think I'm not supposed to say the other stuff, so,
3 yeah.

4 Q. All right. That's all the questions I have. Please
5 answer any the Solicitor has for you.

6 A. Gotcha.

7 JUDGE GIBBONS: Thank you. Madam Solicitor?

8 MS. LIVELY: Thank you.

9 CROSS-EXAMINATION

10 BY MS. LIVELY:

11 Q. So you were living in your van?

12 A. Yeah.

13 Q. Was anybody living with you?

14 A. Nah.

15 Q. Said the stuff that was in your van after everything
16 had been moved out at Jacinta's place in Lugoff, was that
17 your stuff?

18 A. Most of it.

19 Q. You mean she left some of her stuff in your van?

20 A. No, not her. Like I said, I was helping other
21 people out.

22 Q. Okay. No, I mean that day.

23 A. I mean not -- I literally got done helping somebody
24 else the night before, and where I did the laundry at was
25 the hotel where she stays at. I -- I ain't stay with her

1 though, I stayed in my van, but I used -- what was the
2 place?

3 Q. You can't ask somebody else questions. You need to
4 rely on your own memory, sir, okay.

5 A. Apologies. It's -- it's the hotel near Park Road,
6 it's like right up the street from the Cookout, Carolina
7 Place Mall, the Shell gas station.

8 Q. Okay, did those people use crack cocaine?

9 A. The other girl she does heroin, I'm not even gonna
10 lie. She does heroin.

11 Q. But not crack cocaine?

12 A. Nah, I don't -- I don't judge her though.

13 Q. Okay.

14 A. People got their own vices.

15 Q. Okay, I'm not asking about judging. I'm just asking
16 whether or not it's possible that that person had left
17 the crack cocaine -- that tested positive for crack
18 cocaine, in your van. You just don't know? Okay. Well
19 you did just testify that you had started to roll a joint
20 that collapsed the night before.

21 A. Yes.

22 Q. Okay. So, you do admit to using marijuana?

23 A. Yeah, here and there.

24 Q. Okay, that's fine. I'm just asking. And so was
25 that marijuana, marijuana that was found in your van?

1 A. No.

2 Q. No?

3 A. No.

4 Q. Well, there was marijuana found in your van,
5 correct?

6 A. Y'all say so.

7 Q. No, no, no, no, no, did you see the pictures and the
8 eyeglass case where there was marijuana, you seem to be
9 very familiar with everything that was found in the
10 pictures, okay, so I can find it if you need it. But,
11 the marijuana, simple possession weight of marijuana that
12 was found in your van, is different than the marijuana
13 you tried to roll a cigarette -- a marijuana joint the
14 night before?

15 A. Yes.

16 Q. Okay, that's fine. Did you smoke all of that
17 marijuana from the night before then, the one that was
18 your marijuana not the random marijuana?

19 A. I didn't smoke all of it. I still had a joint in my
20 cigarette pack.

21 Q. Okay.

22 A. Like, 'cause I had put it out, and then I ended up
23 just go ahead and going to sleep, woke up at 6:00.

24 Q. Gotcha.

25 A. Started the day, yeah.

1 Q. So, you would've had two different separate areas of
2 marijuana in your van? The cigarette pack with the
3 leftover joint in it, and then the one that had the loose
4 marijuana in the eyeglass case?

5 A. I -- I know I had the joint still in the cigarettes.

6 Q. Okay.

7 A. 'Cause when I was told later I was charged with
8 marijuana, I was like oh, so they got the joint in the --
9 they're really gonna charge me with a joint in a
10 cigarette packet? That's what I thought so --

11 Q. Yeah, because you had just killed a child in a
12 wreck, so probably the idea is the marijuana would seem
13 not that important, is that what you're saying?

14 A. No.

15 Q. Okay. All right, then we'll move on. Whenever you
16 left the garage, and you said that you -- you hit
17 something that little piece off of the back of the van,
18 you said that you were driving down the road, and you
19 could hear it going do, do, do, do, do, and then you kind
20 of figured out, okay, that must be what's going on,
21 there's something loose from earlier; is that what I
22 understand?

23 A. Yeah, it kind of came loose.

24 Q. It kind of came loose, all right.

25 A. So when it came loose, and then it stopped making

1 the sound.

2 Q. Okay. And then do you remember telling Trooper
3 Lindsay, whenever he came to see you, that you may have
4 been going like between 80 and 90 miles an hour and
5 that's whenever it would stop making that noise? If you
6 don't remember I can actually pull that part off of your
7 audio and let you hear it.

8 A. Yeah, I mean -- what speed did I tell him again?

9 Q. Between 80 and 90 miles an hour, maybe 92 --

10 A. Yeah.

11 Q. Okay.

12 A. Yeah. But like I said I braked and gave space so I
13 could accelerate up to that, 'cause it takes a while.

14 Q. It takes a while?

15 A. Yeah, that --

16 Q. What to get --

17 A. -- that -- that -- that Express van it doesn't have
18 a lot of get up and go. There's only 100 on the dash.

19 Q. Yeah. Okay, so -- so probably the best way to keep
20 it going fast is you just gotta -- you gotta keep pushing
21 on that accelerator, right, to kind of keep it where it
22 is?

23 A. I'm confused. 'Cause there's not --

24 Q. Were you -- I mean --

25 A. Don't -- I mean, you keep your foot on the

1 accelerator pedal to drive, right?

2 Q. That's okay. Well, in order to maintain your speed
3 though, and that's what --

4 A. Whatever speed that is.

5 Q. Right.

6 A. Yeah, to maintain whatever speed, yeah --

7 Q. Okay.

8 A. -- you keep your foot on --

9 Q. Right, and so --

10 A. You can kind of float too.

11 Q. Sure.

12 A. 'Cause I'm trying to save gas.

13 Q. I understand, absolutely. So, you're doing that,
14 but whenever you get between what you said was 80 to 90,
15 maybe 92 was where it would stop making that noise, you
16 remember telling Trooper Lindsay that when he came and
17 talked to you?

18 A. Yeah, 'cause that's when I pulled over to see what
19 it was.

20 Q. Okay. All right, so you admit that you yourself
21 said that you were going at some point 80 to 90 miles an
22 hour, maybe 92 miles an hour.

23 A. At one point, yes.

24 Q. Well, that's fine, if that's what you remember.

25 Now, you did say that you're familiar with 77, but more

1 so on the side of Charlotte and going north than you are
2 south side, right?

3 A. Yeah, going towards 81.

4 Q. Going towards 81, okay. So, if you're familiar with
5 it you're familiar with the speed limit I'm assuming?

6 A. The speed limit on 77 to Charlotte is 55 miles per
7 hour.

8 Q. Oh, so 55. Well what about in the area -- 55, so
9 then were you thinking that it was 55 when you got into
10 the state of South Carolina?

11 A. No.

12 Q. What was it?

13 A. It was 70.

14 Q. 70, okay.

15 A. Yes.

16 Q. All right. So, because if it had been 55 and you
17 were going around 98 miles an hour you would've been 40
18 something miles over the speed limit, right?

19 A. That's a lot.

20 Q. That's high.

21 A. Yeah.

22 Q. That's a lot. Okay. So, you were living in your
23 van, and this was a big deal for you because it was also
24 your business, right?

25 A. Yes.

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1 Q. Okay. So, this is your business, you said you
2 worked so hard to get your credit back in line, and you
3 did all of these things, you were making all the right
4 decisions, and you're going to tell this jury that you
5 allowed somebody who does heroin to stay in your vehicle
6 and then leave some type of illegal drug in your van?

7 A. No, I was moving her stuff.

8 Q. Okay. So, that crack cocaine was not your crack
9 cocaine?

10 A. I don't do crack cocaine, nor do I sell --

11 Q. I didn't ask you that. I just asked maybe you --
12 you possibly were going to sell it?

13 A. I was about to say it too, I don't sell crack
14 cocaine.

15 Q. Okay. You are driving down the road, and you said
16 that you get in front of who you now know is the family -
17 - the Logan family, correct?

18 A. Yes.

19 Q. So, you said you pulled in front of them, but you
20 disagree with what Ms. Logan and them said by saying, I
21 didn't get that close to them because I would've knocked
22 off their front bumper, is that what your testimony was?

23 A. Well, I mean, I pulled in between them.

24 Q. I understand. I'm just --

25 A. I changed lanes and got in front of Mrs. Logan --

1 Q. Okay.

2 A. -- and I -- what we find out later is the Shanks.

3 Q. Okay. And so if you got in between them you're --

4 at that point you're saying -- and it's your testimony

5 that you would have been still going the same speed as

6 you were whenever you passed the Logans?

7 A. Nah, I would've matched.

8 Q. You would've what?

9 A. Matched speed.

10 Q. Matched speed?

11 A. Yeah.

12 Q. Okay. So, are you in disagreement then with the

13 expert witnesses in this case that documented through

14 your event data recorder, that you were going 98, 97, 98

15 miles per hour when you hit the back of the Shanks

16 vehicle?

17 A. Absolutely.

18 Q. You absolutely disagree with that?

19 A. Absolutely.

20 Q. Okay. Well how about this, I'm just gonna give you

21 a chance to throw this out there, I probably shouldn't

22 ask this, but how fast do you think you were going?

23 A. With the flow of traffic, that's -- that's why I

24 kept giving that answer when everybody kept asking is

25 because it's simp -- like, I'm not really looking at my

1 speedometer, I'm just going with the flow of traffic.

2 Q. Okay.

3 A. Like if -- if everybody around me is pretty much
4 moving at the same, if I'm passing people, I mean, I
5 can't -- I can't drive through anybody so --

6 Q. All right, so you get behind the Shanks then, Ms.
7 Jessica Shanks, and if you're saying you're going with
8 the flow of the traffic, and we're gonna just totally
9 throw science out the window, the event data recorder of
10 both the Explorer and your van, okay.

11 A. Uh-huh (affirmative).

12 Q. Because according to the Explorer data recorder, she
13 was going between maybe 77, 78 and you're gonna disagree
14 with that too? Because you have to, right, because if
15 you're going -- if you're going with the flow of traffic
16 she's got to be going either 98 miles an hour like you
17 are, or you've got to be going 78 miles an hour like she
18 is?

19 A. Maybe around it, yeah.

20 Q. Maybe around it? Okay.

21 A. I mean she could've been going 80, I could've been
22 going 80.

23 Q. Okay. All right, but you're going to just totally
24 just disregard what the science says?

25 A. I know I wasn't going 98 miles per hour.

1 Q. All right.

2 A. My -- my van, I actually called my brother and asked
3 him, I was like, hey, bruh -- 'cause he's -- I'm not a
4 car guy, he's a car guy, and I was like bruh, how -- how
5 fast can my van even go? Is there like a governor on it?
6 'Cause like in 18-wheelers there's a lot of trucks you
7 get in you have a governor for 65. So, I asked him, hey,
8 bruh, how -- how fast can my van go, and at first he said
9 83 I was like oh, thank -- okay, whew, hey print -- mail
10 that to me. And he was like uh -- and he was like hold
11 on, hold on, you said 2017, right and I was like yeah.
12 He said it's -- he said 93 and then saw that -- then he's
13 like no, it's 98 bro. I was like uh, shoot.

14 Q. Okay, I think you've answered my question, thank you
15 so much.

16 A. Yeah.

17 Q. I really appreciate that. That's very helpful.
18 Okay, so now when you actually were out of the van after
19 you hit the back of Shanks' vehicle, you are absolutely
20 not denying the fact that you ran into the back of them,
21 correct?

22 A. No, we definitely had a car accident.

23 Q. That's a -- no, you're re -- okay, do you agree with
24 me that it was the front of your van that hit the back of
25 her SUV?

1 A. I agree that -- yeah, I -- I agree the back of her
2 SUV and the front of my van had a collision, yes.

3 Q. And you were behind her?

4 A. Yes.

5 Q. Okay. All right. She didn't back up into you, did
6 she?

7 A. No.

8 Q. Exactly. So you were going forward and bumped into
9 her? Yes or no? It's not that hard, just yes or no.
10 You were behind her --

11 A. And -- finish it?

12 Q. You were behind her and hit her in the back?

13 A. I -- I honestly think she pressed the brake to be
14 honest.

15 Q. Oh, okay.

16 A. But --

17 Q. And then reversed into you?

18 A. No, not reversed.

19 Q. Okay.

20 A. She just decelerated fast.

21 Q. Okay.

22 A. Maybe brake checking.

23 Q. Brake checking.

24 A. But --

25 Q. Okay. So you're once again, just to make sure I

1 understand, you are disagreeing with the scientific
2 evidence from the event data recorder that say she did
3 not put on the brake, and that you never put on your
4 brake, okay? We're gonna talk about the brakes.

5 A. Yeah, 'cause I -- I didn't -- I didn't --

6 Q. You disagree?

7 A. -- expect it -- yeah, I didn't expect --

8 Q. Okay.

9 A. -- so I didn't my brake, I know that.

10 Q. All right. Well then let's just go to -- let's just
11 go to the hospital, let's see if we can agree on
12 something that happened at the hospital. You agree --
13 oh, well, one thing I do want to -- you do agree, 'cause
14 you did say this, you do agree, you call it maneuvering
15 in and out when you were on the road, but actually
16 maneuvering in and out, you know, maybe switching lanes,
17 you said that you were -- you were driving, I think you
18 said aggressively --

19 A. You could say that.

20 Q. -- do you agree with those things?

21 A. You could say I drove -- I drive aggressive.

22 Q. Well, no, I -- I -- I -- I typed out what you said.

23 A. No, I got you.

24 Q. Do you remember that? Okay. So you did say that.

25 And then you said oh, yeah, I was riding her butt, yeah.

1 You were talking about Ms. Dempsey when she testified and
2 she said that you were riding her butt, do you agree with
3 that?

4 A. I mean I'm not sure what's Ms. Dempsey's car, but if
5 she's --

6 Q. Okay I -- I do want us to have her replay what it
7 was you said, 'cause I literally typed everything you
8 said just now with your attorney.

9 A. No, I mean, because she said I did, and I'm not
10 gonna disagree with it.

11 Q. Okay.

12 A. I mean, I probably rode some people's butts and so,
13 yeah.

14 Q. Okay. Maneuvering in and out, yeah; riding her
15 butt, yeah; trying to get through it.

16 A. Yeah, just trying to get through traffic.

17 Q. Okay, just trying to get through traffic. Just
18 wanted to make sure I typed it out right, thank you. All
19 right, so you were at the hospital for three or four
20 hours, and Ms. Bonner was the EMS individual who took you
21 to the hospital, and she said at first that you were
22 somewhat weepy and then you became aggressive?

23 A. Yeah.

24 Q. Okay. So now you've explained to us why you became
25 aggressive and what I wrote down here, and I'll just give

1 you a chance to respond, you -- you're dealing with Dye
2 and Darby, and they're kind of looking at you, they ask
3 you something about you pulling your eyelid down,
4 correct, you showed that to us and you -- and to the
5 jury, right? And I just want to make sure, 'cause I
6 typed this out, you did say that you admitted to him that
7 you had been smoking weed or tried to smoke weed the
8 night before, right?

9 A. Yes.

10 Q. Okay, I just want to make sure.

11 A. Yeah, I just wanted to be honest.

12 Q. No, and I -- you wanted to be honest, and you told
13 him that, and also you remember saying that whenever you
14 had that beer in the car that you put it in your backpack
15 and threw it out because you knew how it would look.

16 A. Yeah.

17 Q. Yeah. Okay, so you then understand why these
18 troopers, these officers, are asking you these questions
19 about drugs, and then you admit to smoking marijuana the
20 night before, correct?

21 A. Trying to, yeah.

22 Q. Okay, you tried to, but you didn't inhale; is that
23 what you're telling us?

24 A. Nah, I'm not -- I'm not Bill Clinton, but like it
25 went -- when I tried to light it it was collapsing.

JURY TRIAL

1 Q. I understand.

2 A. So I -- I never really got to smoke.

3 Q. Thank you, you answered my question. So, then you
4 had already thought, well it's gonna look bad to have
5 this beer in the car too, so you're throwing the beer out
6 of the car, 'cause it looks bad. Then you're at the
7 hospital and they're asking you about marijuana, and they
8 want to see the redness of your eye, and you're like
9 well, that's, you know, I tried to smoke marijuana last
10 night. So you told them that too, correct?

11 A. Before, yeah.

12 Q. So, don't you think by that time that they knew
13 about the beer that was in the car, and then you admit to
14 the marijuana, do you understand why these officers at
15 that point in time are going to have concerns about your
16 possible impairment? And if you still don't, then that's
17 fine, you can say nope.

18 A. At the time no.

19 Q. Okay. So you didn't understand it. Then you said
20 well, Darby says I'm gonna charge you with DUI, and then
21 what -- do you remember that? You said that in your
22 testimony.

23 A. Yeah.

24 Q. Okay. Then you said oh, you're gonna charge me with
25 DUI, and I want to make sure I understand this right, you

1 then said, "What if I say F that little kid; will you not
2 charge me now?"

3 A. What it is, I said so you gonna charge me for
4 crying? He's like nah. He was like your eyes don't get
5 red from -- your conjunctiva's don't get red from crying,
6 that has to be weed. And I'm arguing with him about that
7 and I'm like that's -- I think that's messed up, 'cause I
8 mean I know your eyes get red from crying.

9 Q. Right, I understand.

10 A. I don't know what conjunctiva's was, I actually
11 learned that word when we got the report.

12 Q. Okay. And I understand that, and I'm past that now.
13 Now, I'm at the point where he said -- you actually said
14 so you gonna charge me with DUI, you've already talked
15 about the red eyes and all that, and then you say to him,
16 "Well what if I say F that little kid; will you not
17 charge me now?" And you said he said okay.

18 A. No, that's not what I said. And this might be
19 semantics, I apologize. But, I was like so if you're
20 gonna charge me with DUI for crying for this kid, then
21 what you gonna not charge me if I don't like it's --
22 'cause I mean I guess it's the opposite, like if -- if
23 you're charging me for this, then what, if I do the
24 opposite you won't charge me. So that's kinda what I'm
25 asking him and he goes (makes sound "I don't know").

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1 Q. So what do you say?

2 A. F the little dude. I don't -- I don't say little
3 kid. I actually say F the little dude then.

4 Q. F the little dude then.

5 A. And then he --

6 Q. No further questions.

7 JUDGE GIBBONS: All right, any redirect?

8 MR. FRICK: No, Your Honor.

9 JUDGE GIBBONS: All right, thank you, sir.
10 You may step down. Defense can call its next
11 witness.

12 MR. FRICK: Defense rests, Your Honor.

13 JUDGE GIBBONS: The Defense rests. Anything
14 reply from the State?

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

16 JUDGE GIBBONS: All right, thank you very
17 much. Ladies and gentlemen of the jury, we're going
18 to go ahead and call it a day. I was going to go
19 ahead and instruct you on the law this afternoon
20 before you left, but I've got another hearing
21 starting at 2:45, not this case, virtually on
22 another matter, okay. So, I need to go ahead and
23 recess for the day. Y'all asked to recess early
24 'cause of Halloween this evening, so I will
25 accommodate you on that. I want you back in the

1 jury room tomorrow at 9:00 a.m. What will happen?
2 Okay, we are finished with the testimony and
3 evidence phase of the trial tomorrow, okay. So
4 tomorrow will be about closing arguments for both
5 the State and the Defense, and then I will instruct
6 you on the law of South Carolina as it pertains to
7 the issues which have arisen in this case. After
8 that, that's when you'll be able to finally discuss
9 it with your fellow jurors and reach a verdict,
10 okay. All that will start tomorrow. Go ahead and
11 let you know, closing arguments usually take, you
12 know, an hour and a half total, not per side, okay
13 typically. And then my part instructing you on the
14 law takes anywhere from 15 to 20 minutes, so to kind
15 of figure out what's going on, all right. So see
16 you tomorrow. Do not do any independent research.
17 Do not reach out to anybody about this case. Do not
18 watch any or listen to any media reports about this
19 case, either on television media, print media, or
20 especially social media. Your job is to judge this
21 case from the facts and evidence presented in this
22 courtroom and only this courtroom. Everybody
23 understand? Thank you. Have a great evening, and
24 we'll see you tomorrow morning 9:00 a.m.

25 (JURY EXITS)

JURY TRIAL

1 JUDGE GIBBONS: All right, anything else
2 before we recess from the State?

3 MS. LIVELY: No, Your Honor.

4 JUDGE GIBBONS: From the Defense?

5 MR. FRICK: Nothing from Defense.

6 JUDGE GIBBONS: Okay. Thank you. All right
7 we're in recess until tomorrow morning at 9:00 a.m.
8 See you then.

9 (The proceedings were adjourned
10 until 9:00 a.m., November 1, 2024)

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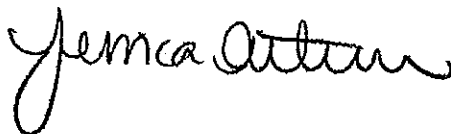
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CERTIFICATE OF TRANSCRIBER

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 31, 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

A handwritten signature in black ink, appearing to read "Jessica Antonucci", written in a cursive style.

Jessica N. Antonucci

Transcriber

1 November 1, 2024

2 JUDGE GIBBONS: Let's do the -- go through the
3 jury charges. And we've already gone over
4 everything, all the extraneous stuff. Of course,
5 I've taken out the Defendant not testifying, cause
6 he did testify. Does prior inconsistent statements,
7 does that need to be in there?

8 MR. FRICK: I don't recall --

9 MS. LIVELY: I didn't -- I was gonna actually
10 -- that's one of the things I was gonna bring up. I
11 don't really see that as being an issue.

12 JUDGE GIBBONS: I put it in there when the
13 witness was testifying and stated what he said which
14 caught you by surprise and caused a motion -- the
15 first motion for mistrial. While we're on that, I
16 mean, I think since the record is complete now,
17 before we do closing arguments, I mean, I -- I
18 further think that solidifies my decision to deny
19 the motion for mistrial, when your client when he
20 testified yesterday admitted to, you know, rolling
21 joints and smoking marijuana, which is illegal, so
22 for, you know, her to blurt out what she blurted out
23 I don't see how that was grounds for a mistrial, so.
24 All right, what about prior inconsistent statements,
25 Mr. Frick?

1 MR. FRICK: I don't think it needs to be in
2 there.

3 JUDGE GIBBONS: Okay, I just had it in there
4 just in case. All right, statement by Defendant, I
5 think that needs to be in there, y'all agree with
6 it?

7 MR. FRICK: How about the one that says prior
8 record of a witness, did we have --

9 JUDGE GIBBONS: Yeah, I got rid of that. That
10 didn't come up. I had that in there in anticipate.
11 The statement of Defendant, y'all okay with that?

12 MR. FRICK: Yes, sir.

13 MS. LIVELY: Yes, sir.

14 JUDGE GIBBONS: Presumption of innocence,
15 right out the book, I give the Logan charge on
16 circumstantial. Reasonable doubt, the long one,
17 like y'all are used to. Intent, any issue with the
18 intent?

19 MS. LIVELY: No, Your Honor, the intent is the
20 one that I've already seen that Ally actually sent
21 me, that one's fine.

22 JUDGE GIBBONS: Okay. From the Defense?

23 MR. FRICK: I mean, I think that's the
24 standard charge, Judge.

25 JUDGE GIBBONS: Okay. All right, let's talk

JURY TRIAL

1 about reckless homicide. Y'all have it in front of
2 you.

3 MS. LIVELY: Judge, the State's fine with it.
4 Actually I read through all of them again last night
5 as I was doing my closing and I -- and as I was
6 looking at each one I was -- also had the law
7 printed out next to me. So, it very much is in line
8 with the -- with what the statutory law is, as well
9 as it coincides with the intent issue that is going
10 to be a part of your jury charge. So, I don't have
11 an objection to that.

12 JUDGE GIBBONS: All right, Mr. Frick?

13 MR. FRICK: Judge, I think it includes the
14 language that I was looking for about more than mere
15 negligence, so -- or carelessness, and proximate
16 cause, so I -- I think it covers -- I'm looking at
17 the Anderson charge book and I think it covers what
18 Anderson --

19 JUDGE GIBBONS: All right.

20 MR. FRICK: -- standard charge would be.

21 JUDGE GIBBONS: All right, ABHAN?

22 MS. LIVELY: Same, Your Honor, I read through
23 it, and once again it's in line with the actual
24 statutory law, as well as it has the correct intent
25 in there, which is just the general intent, which is

1 in the statute based on State v. Clemons as well.
2 And so I think it's in line with your criminal
3 intent jury charge.

4 JUDGE GIBBONS: All right, Mr. Frick?

5 MR. FRICK: And I would just -- I mean, I -- I
6 understand that's what the charge currently is. I
7 just disagree that it is --

8 JUDGE GIBBONS: Applicable in this case?

9 MR. FRICK: Correct.

10 JUDGE GIBBONS: Okay. Then certainly I
11 understand your legal argument, and that's something
12 that in the event your client's convicted that the
13 South Carolina Court of Appeals and/or the South
14 Carolina Supreme Court will have to decide. I mean,
15 I -- I think the law is clear, and I think my
16 decisions about that will be -- are supported by the
17 law. But certainly, that's why we have lawyers,
18 'cause reasonable minds can disagree on the meaning
19 of a single word like what does means mean. So,
20 understood. All right, accident?

21 MS. LIVELY: Your Honor, you know my position
22 in regards to the accident, however --

23 JUDGE GIBBONS: Say it.

24 MS. LIVELY: My position is that is there's no
25 -- none of the evidence actually shows accident in

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1 this particular case. I mean, based on the
2 overwhelming scientific, as well as lay eyewitnesses
3 who saw the driving before the actual, you know,
4 collision. However, the Defendant did get on the
5 stand and of course he held to the original
6 statement that, you know, it was an accident. So,
7 at this point I just don't think that there's
8 evidence in the record that would support that
9 charge. However, you know, I understand that with
10 this case there's a lot of firsts, and there's a lot
11 of things that are going to be addressed possibly if
12 there's a conviction. I would just object to it for
13 the record, but I also understand that the Court is
14 trying to make sure that in ultimate fairness to
15 everyone that all of these issues are addressed.
16 But I -- I do want to put my objection on the
17 record.

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

20 MR. FRICK: I do believe that there is
21 evidence in the record that the jury could surmise
22 that this is not a reckless or even a negligent act,
23 it's just simply an accident. Furthermore, I asked
24 my client on the stand directly, do you believe this
25 is an accident, and he said yes. So, I believe that

1 would be scintilla of evidence that would allow this
2 charge to be appropriately sent to the jury.

3 JUDGE GIBBONS: I agree with the Defense. I
4 mean, I -- you know, I think there's enough issues -
5 - legal issues in this trial already, that if I were
6 not to charge or give the jury that option it would
7 be fundamentally unfair to the Defense, especially
8 given everything that's happened this week during
9 this trial. So, in -- on the accident charge, I've
10 got rid of the middle paragraph which is not
11 applicable.

12 MS. LIVELY: Oh, yes, sir, thank you.

13 JUDGE GIBBONS: Where it says, for example. I
14 got rid of that. And the last paragraph I have
15 written in on mine, I did that back in chambers when
16 we were talking about it, but I have written in on
17 mine the following, the burden is on the State to
18 prove beyond a reasonable doubt that the act was not
19 an accident, but it was caused by the recklessness
20 on the part of the defendant by his unlawful
21 activity. Defense agrees with that language?

22 MR. FRICK: Defense is fine with it.

23 JUDGE GIBBONS: State?

24 MS. LIVELY: Yes, sir, that's fine. Yes, sir.

25 JUDGE GIBBONS: Okay, thank you. Even though

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1 -- you're protected in the record. All right,
2 possession of cocaine base, again that's right out
3 of the book, they have to prove -- the State has the
4 burden to prove an actual and/or constructive
5 possession, and I include the mere presence.

6 MR. FRICK: Fine.

7 MS. LIVELY: That's fine, Your Honor.

8 JUDGE GIBBONS: Same thing with marijuana, and
9 then of course then we close out. All right,
10 anything else that I -- that's not included in my
11 jury instructions that y'all think needs to be in my
12 jury instructions from the State?

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

14 JUDGE GIBBONS: From the Defense?

15 MR. FRICK: No, sir, nothing additional.

16 JUDGE GIBBONS: All right, perfect. All
17 right, let's go to the verdict form. Y'all have
18 seen the proposed verdict form. They have four
19 choices.

20 MS. LIVELY: No objection to the verdict form,
21 Your Honor.

22 JUDGE GIBBONS: From the Defense?

23 MR. FRICK: And I think you've got it in your
24 charge, that they're to consider each one
25 separately, if I recall?

1 JUDGE GIBBONS: Correct, I do have that.

2 MR. FRICK: I think that's fine, Judge.

3 JUDGE GIBBONS: All right, thank you. I just
4 got to re-date it November, so just make that
5 November and print out another copy. All right,
6 anything else before we bring the jury out for
7 closings? Y'all need to run to the restroom to go
8 refresh?

9 MR. FRICK: I would like that, but I do want
10 to put one thing quickly on the record.

11 JUDGE GIBBONS: Absolutely.

12 MR. FRICK: Judge, at this time the Defense
13 has rested, I would renew all previous objections
14 and motions, and the motions for mistrial that
15 you've even spoken about this morning before I
16 mentioned that.

17 JUDGE GIBBONS: Absolutely.

18 MR. FRICK: Just renewing all those issues.

19 JUDGE GIBBONS: All right, thank you. Those
20 motions are renewed. This trial judge considers
21 that you are protected in the record, and my rulings
22 are all the same as previously made. All right,
23 anything else?

24 MS. LIVELY: No, Your Honor.

25 JUDGE GIBBONS: All right, thank you. Let's

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1 take a quick five then, go run to the restroom, do
2 what you got to do.

3 (OFF THE RECORD)

4 (JURY ENTERS)

5 JUDGE GIBBONS: All right, thank you ladies
6 and gentlemen; and everybody is ready. It took us a
7 while to get everything ready to go, and so we're
8 going to move right in -- we have finished the
9 testimony and the evidence phase of the trial. We
10 will now proceed to closing arguments. Let me talk
11 to you just briefly before we start that. Again,
12 just like I told you at the outset of the trial,
13 what lawyers say to you in the opening statements
14 and in closing arguments are not evidence, okay.
15 It's a lawyer's attempt to argue to you or to -- the
16 opening is just to tell you kind of an outline of
17 what the evidence they believe will show. An
18 argument they are arguing to you what your verdict
19 should be, what they believe the facts show, okay.
20 So, remember the evidence that's come from this
21 witness stand and whatever else has come in into
22 evidence, and you will have that back in your jury
23 room later this morning to consider, okay. So, just
24 like you've paid great attention this week to the
25 witnesses as they've testified, I ask that you pay

1 that same attention to the lawyers as they address
2 you this morning. The way it happens, since the
3 State has the burden of proof, they go first, okay.
4 And then the Defense gets to go, okay. And then
5 after the Defense, since the State has the burden of
6 proof, the State gets to come back up briefly, if
7 they want to, and rebut what the Defense argues to
8 you, okay. So, that's kind of what the flow of the
9 morning is. After all that, we'll take a brief
10 recess after that's over with, and I'll get you back
11 out here, and here is where I will read you the law
12 and you see it's not that much 'cause it's really
13 big type, okay. I'll read you the law and tell you
14 what the law is, okay. So, please give the lawyers
15 your utmost attention. Thank you very much. Madam
16 Solicitor?

17 MS. LIVELY: Thank you, Your Honor. Ladies
18 and gentlemen, when I started this case and talked
19 to you for the first time on Monday of this week, I
20 told you that what you were going to be hearing was
21 going to be something that was like an impending
22 storm, and you don't have notice or you don't really
23 know that it's coming. You're in a situation where
24 you know you're doing your normal daily activities,
25 and there's danger around you, but you're not aware

1 of it. And that's what happened that day with the
2 Shanks family. It was actually the perfect storm
3 unfortunately; because it was a holiday week. July
4 4th, I went back and looked at it, it was that
5 Monday before the weekend when Max died. And so,
6 that entire week is typically a holiday week.
7 Families are traveling I-77, I-95, I-26, all over
8 the country. And in the middle of the day when you
9 would least expect something to come at you so fast,
10 that the last thing you can do is say, oh, my God.
11 And then in a flash that storm hits you. Hits that
12 Shank family of four; which is now a family of
13 three. So, ladies and gentlemen, let's talk about
14 the charges, because what I'm going to do is, I'm
15 going to present to you the charges that includes
16 the law that Judge Gibbons, he's going to read to
17 you after you've heard from me and from the Defense
18 this morning, okay. And what I want to make sure is
19 that I am able to look at all of you with the
20 evidence that you've heard, with the evidence in
21 this case, so when you think about the reckless,
22 negligent actions of Jason Palmer on that day, you
23 will have no doubt of his guilt. No doubt that what
24 he did was anything less than reckless. So,
25 reckless homicide, when the death of a person ensues

1 as a proximate result of injury received by the
2 driving of a vehicle in reckless disregard to the
3 safety of others. What does that mean? You're in a
4 vehicle at 5:00 in the afternoon, busy, holiday
5 weekend, driving 98 miles per hour, weaving in and
6 out of traffic. That's about as good as an example
7 as I can give you right now. Ramming into the back
8 of a family of four without ever putting on your
9 brakes. There it is. ABHAN, a person commits the
10 offense of assault and battery of a high and
11 aggravated nature if the person unlawfully injures
12 another person and great bodily injury results. Was
13 Corey Shanks injured? He had to be cut out of the
14 car. Was Corey Shanks injured? He was in a coma
15 for days. Was Corey Shanks injured? He had a
16 severe traumatic brain injury. Check that box too.
17 He didn't die. But, you know, great bodily injury,
18 there you go. Possession of crack and marijuana.
19 Was that found in the vehicle? The vehicle that the
20 defendant lived in, he told you that himself, it's
21 his stuff. And I appreciate the fact that he
22 actually admitted to you that he had smoked
23 marijuana the night before, because then it was very
24 interesting to hear how the marijuana he had smoked
25 the night before was different than the marijuana

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1 that was found in his van, which he's conveniently
2 telling all of us now was not his marijuana. Use
3 your common sense, okay. I mean, that's all I'm
4 asking you to do. And the marijuana that was found
5 in the same case as the crack cocaine; guilty. So,
6 we have the Shanks family, they are at very
7 innocently enough The Front Porch. And remember
8 whenever I started as well, I hit right here because
9 I mean that is not even a -- a 10,000th of the
10 impact of what that van had felt. When that huge
11 van -- remember when the defendant was talking about
12 oh, yeah, it's this big huge, you know, van, it's
13 got this other compartment, it's huge. Yeah, maybe
14 that's why you shouldn't be driving 98 miles per
15 hour down a busy highway with families coming home
16 from the holidays. Maybe you shouldn't be looking
17 for your phone and take your eyes off the road.
18 But, no, we all know it's too late. So, at The
19 Front Porch, and you remember hearing Jessica talk
20 about Max was acting up a little bit, as seven-year-
21 old's do. And I put this -- we've already been six
22 minutes now, six minutes from The Front Porch, which
23 means Max would already be dead, because of the
24 reckless, negligent driving of the Defendant. He's
25 already gone. Three miles. Three miles. That is

1 what's left of that storm. The carnage,
2 destruction, devastation, all of it, you see it
3 right there. That's not a little accident.
4 Accidents are if you hit a deer, you hydroplane,
5 yeah, it might be something terrible, but it's out
6 of your control. He was in total control of that
7 vehicle, and the decisions that were made that day.
8 We have the minimum of four eyewitnesses who told us
9 -- and you know that's really unusual whenever you
10 look at car accidents on the road and I, you know,
11 we've all been guilty of just driving by a car
12 accident and, you know, you were like gosh, you
13 know, the traffic, I really got to get somewhere and
14 you get right at it, so I know that's rubbernecking,
15 I get it. But you know it's human nature you're
16 like gosh, I hope nobody was really hurt. You know
17 but in the meantime we're thinking of our
18 inconvenience, kind of like the Defendant told you
19 on the stand yesterday. I was -- I didn't want to
20 go for a second round of moving, you know, I was
21 ready to get back to North Carolina. I mean we
22 couldn't get in the way of Mr. Palmer, we've got to
23 let him get his big, huge cargo van at 98 miles an
24 hour so he can get back to Gastonia. He had more
25 important things to do. But he rammed into the

1 Shanks and Max is gone. So, eyewitnesses, and I
2 know this is a little bit small, but the reason I
3 put that on there is because think about we have 23
4 witnesses this week, and it's not so much the number
5 matters, as much as if you take away the SLED people
6 who are not actually physically involved in this
7 case, they're just testing things, these are people
8 who saw what was left of that storm and the carnage
9 that we saw from Mr. Palmer. So, look at this,
10 Brittney Dempsey, she doesn't know the Shanks, she
11 has no idea. She was on the road, he's tailing me,
12 riding my ass, I was going 75 to 80, he was all over
13 the road, passed me and then tailing a black truck.
14 Had his phone in his hand, then the crash happened.
15 He was scary. These are people who witnessed it,
16 it's very unusual that you have people two and a
17 half years later who will come back and will tell
18 you with the kind of passion that you saw, and you
19 get to judge the credibility of every single one of
20 these witnesses, that's up to you. These people get
21 up in front of you and they tell you what they saw.
22 Two and a half years later has affected those
23 people, they have never forgotten, and they have
24 come back to tell all of you what they saw. Then
25 we've got Joseph Parker, cruise set on 79, van

1 coming at a high rate of speed, he passed me, he
2 said to his wife, he's going to cause an accident,
3 right before it happens. He drove into the SUV, my
4 wife called 911, no brakes. He ran into the them
5 driving erratically. Then James and Felicia Logan,
6 I don't remember if y'all were -- if y'all saw, and
7 it's hard to pick up sometimes when we're watching
8 the Holland video that was put in by the Defense,
9 where you see Mr. Logan, who came and testified he's
10 on the side of the road after he, you know, saw what
11 happened to Max. He was -- and you can watch any of
12 these videos, all of this evidence is for all of you
13 now, if you have any doubts in your mind, you can
14 watch. Mr. Logan was crying on the side of the
15 interstate. Felicia Logan was frantic, he's going
16 to hit them, oh, my God he is not slowing down, he
17 is going to hit them. She was as frantic on that
18 stand this week as you can imagine having seen it
19 unfold in front of her on that day. He never slowed
20 down. What is wrong with you, when she was talking
21 to him, why didn't you slow down, that baby is dead.
22 These are opinions of normal people, not experts.
23 We've got experts too, but these are people who saw
24 it. They knew he was going to cause a wreck, they
25 saw it coming, you don't need expertise for that. It

1 was a foreseeable obvious danger. Now, were they
2 credible, that's your decision. You got to see
3 their demeanor. Did they have a reason to come in
4 here and have a bias or a prejudice in a way to lie?
5 Were they in here, were they going to gain something
6 from this? They were here to tell you what they
7 saw. Was there testimony corroborated by the
8 evidence? They didn't know what the MAIT team was
9 going to find out the next day when they pulled off
10 those event data recorders. They didn't know.
11 They're just like I think I was going 75 or 80, I
12 don't know, I just know he blew past me. He was
13 riding me, he was acting -- running all over the
14 road, but guess what, their testimony matches the
15 scientific evidence. So, we have the first
16 responders who show up too, Elena Malzahn
17 unfortunately and fortunately with her -- the heart
18 she has in this particular job that she's still
19 doing, she was the one who had to make that decision
20 and tag Max as being gone, which in the field is
21 black. Corey was trauma code red. Then she
22 attended to Griffin, little Griffin was four, and
23 Jessica. Then you heard from David Dutton, he
24 assisted with extricating Corey from the SUV, they
25 couldn't get him out. He left, he said he went to

1 the station and turned in his keys. I can't do this
2 (inaudible). This case has been such an affect and
3 such a storm in so many people's lives. Danielle
4 Bonner, she checked on Palmer, minor injuries. She
5 did note whenever they were going to the hospital,
6 he was upset, then he was falling asleep, then he
7 was aggravated when he heard people talking about
8 the wreck. So, she documents that, because that's
9 what -- that's what they do. People who respond and
10 know that these things could end up in a courtroom,
11 that's why they document what they see. And then
12 Coroner Terry Tinker, he had to tell Jessica, Max is
13 gone, severe blunt force trauma to his head. That
14 was the end (inaudible). That was the end of their
15 (inaudible). So Highway Patrol, we have Holland, we
16 have Dye, you see we have Warlick there, we also had
17 Captain Darby and we had Hughes. So, Darby and
18 Hughes are kind of in the background because Hughes
19 is the one that did all the search warrants. Darby
20 was at the time kind of making sure that all the
21 parts were moving in the right direction. The one
22 thing that I want you to remember, because I know
23 one of the things that is going to come up is the
24 fact Cyteco Dye was terminated from Highway Patrol,
25 you know, he got on the stand, didn't want to have

1 to get up there and admit that anybody -- 'cause his
2 lifelong dream as a kid was to be a Highway
3 Patrolman, he made mistakes. But here's the thing
4 ladies and gentlemen, they can harp on it as much as
5 they want, we put it out there for you as soon as he
6 got on the stand, so you know exactly what was going
7 on, and whenever he was working that day he was
8 still a rookie, so everything he was doing was being
9 either seen or supervised by another officer that
10 was on the scene. And if it wasn't another officer,
11 it was Coroner Tinker that was with him whenever he
12 was at the van, when he did the inventory. He was
13 never alone. He was never in a position to where
14 anything that happened with the evidence, and it was
15 on body worn camera, nothing in regards to the drugs
16 is a concern because we have witnesses that were
17 there the whole time and saw what was happening.
18 And we also now have the Defendant admitting that he
19 had smoked marijuana the night before. All right,
20 so, here's what Dye tells us. He interviewed
21 witnesses on the scene, interviewed the Defendant,
22 inventoried the van, sorry I misspelled that, and as
23 he inventoried the van, like I said, Coroner Tinker
24 was there. The drug was seized. Then he went to
25 the ER, Palmer was still there. Darby was also

1 present and Warlick, and this is the time whenever
2 we have the situation of the search warrant, is
3 there possible impairment. Ladies and gentlemen,
4 what is common sense whenever you're actually --
5 let's say Highway Patrol -- and your job is to make
6 sure that you know if someone is on the road and
7 there's a possibility of impairment and a child dies
8 in a wreck, a horrific wreck, are you supposed to
9 say, you know what, I see there's beer that was
10 found in the van, and I know y'all found some weed
11 and some crack, well you know what that's fine, I'm
12 sure he's -- I'm sure he's perfectly fine. We're
13 not going to test him, nah. We're not going to get
14 a search warrant and try to test his blood. I'm
15 sure the mom of Max will understand why we didn't do
16 anything further to see whether or not this
17 individual could have been impaired. Give me a
18 break. So now Highway Patrol is supposed to
19 apologize for doing their job? For a family who
20 lost their child? That is what they're supposed to
21 do, ladies and gentlemen, I'm sorry he had to pull
22 down his eyelid to show his conjunctiva, which I
23 didn't even know what that was. I'm sorry. No, I'm
24 not. Max and the Shanks need the truth. That's
25 all. And hey, we got the truth, toxicology came

1 back, y'all heard it, he didn't have drugs in his
2 system. Okay. He still killed someone. He still
3 almost killed Corey Shanks, so what do we do with
4 that? Do we just say, I'm sorry, here are the keys
5 to your van, go get it fixed. We're sorry we
6 bothered you. No. That's not justice. That's not
7 the law, ladies and gentlemen. So, yeah, and Palmer
8 tells you he's like, so what I killed a kid. I mean
9 that's what it -- Dye told you, you heard him say
10 it. Darby said it. I mean, we have -- and Warlick
11 said it. I'm not making this up. He's like yeah,
12 so what I killed a kid. I guess we're supposed to
13 just unhook him and let him walk out of the ER.
14 Thank you for your remorse and concern about the
15 possibility you may have actually caused this to
16 happen. He also threatened the nursing staff.
17 Yeah, Dye was later terminated, it had to do with
18 drugs that were found and seized in another
19 situation, shouldn't have happened. But here, in
20 order for you to believe that there was something
21 nefarious or sketchy going on, you would have to
22 believe that he knew when he showed up on the scene
23 that he needed to have an eyeglass case with crack
24 cocaine and marijuana and rolling papers available,
25 so he could sneak away from everybody and throw them

1 in the van real quick and then get pictures. You
2 would have to think that he thought that far ahead,
3 okay. It doesn't make sense. Now, the Defendant at
4 the ER, they're asking him, this is one of the big
5 areas I showed -- how fast were you going? I don't
6 know. Do you know what happened? Well, I reached
7 down to get my phone and then boom, that's it. So,
8 as Warlick is there, that's when he's receiving
9 updates, 'cause we're sharing information he's not
10 the scene, he doesn't know about the drugs. And if
11 you remember at the very beginning they were saying,
12 you know, I'm not sure about impairment because I
13 didn't smell alcohol. You know they're thinking out
14 -- they're thinking through the investigation as
15 they go. And there wasn't evidence then, but then
16 as they're calling in, oh, we've had some interviews
17 now, now the eyewitnesses have told us how he was
18 driving, it wasn't just horribly fast, he was
19 reckless. He was aggressive. Then after that the
20 drugs and beer are found. So, like I said they did
21 their jobs. There was no picking on the Defendant
22 as he'll have you believe. There's no they were
23 trying to test him in a way that they were trying to
24 be unfair. No, none of that. The search warrant
25 was served on the Defendant, he was combative and

1 threatening, but they were able to get the sample
2 done. So Trooper Holland, he gets on the scene
3 quickly, you remember him he was on the stand for a
4 long time and had to sit there while his video was
5 playing. He learned that there is a death and
6 learns there's a child. So he goes through, he is
7 there for almost three hours, maybe four, I can't
8 remember exactly what he said. He was present when
9 the eyeglass case with the drugs were found and
10 opened and yeah, you know what, these guys are not
11 ones who typically are dealing with a lot of drug
12 paraphernalia, and a lot of times when they do there
13 might be a situation where they might bring in
14 someone from the local agency like the Sheriff's
15 office or whatever. But in this particular case,
16 their number one concern was that family. So, as
17 they were getting the drugs and they put them up
18 there on the tailgate, I'm sure you're going to hear
19 the Defense say, I don't know they were -- even the
20 Coroner said it was gonna blow off of the tailgate.
21 You know at that point if it had blown off, okay, I
22 won't charge him with possession of marijuana, it
23 blew in the wind, sorry. That's fine. Let's focus
24 on the fact that we have a child who died here,
25 okay. And so, that is what you have to remember

1 here, and that's what these guys were doing. So, he
2 paints the point of impact he could find while
3 trying to dodge traffic. And you heard from the
4 MAIT team, they'll tell you why what he did was
5 still in a way consistent with and lined up with the
6 evidence that they were able to determine from their
7 investigation. Then he documents where the impact
8 of the trees. So, we have the MAIT team, and what
9 they do is so cool, and so nerdy at the same time,
10 but it is so amazing because they come in after the
11 fact, they can't change the data. They can't change
12 the facts of what is in that black box. I call it
13 the black box, whatever it's a EDR, the event data
14 recorder. What it is, is what it is. So, you can
15 try and argue with it all you want, but the computer
16 knows what it knows. Expert opinion, Rivett, he was
17 there. He did the general vehicle examination on
18 both vehicles, no concerns, no defects, remember
19 he's the one that did kind of a checklist, was their
20 air in the tire, was the tread good, all that stuff.
21 All good. Airbags deployed. Lindsay he's the one
22 that came in, he was actually qualified as an expert
23 collision reconstruction, he took photos of
24 everything. He went back to the scene the day
25 after, of course the vehicles were gone, and then he

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1 also did a mechanical examination of the van,
2 because based on all of the evidence at that time
3 the concerns were this person we know is the one who
4 was at fault in this particular situation. Was
5 there a reason why he could not either avoid the
6 wreck, was there something wrong with his brakes,
7 was there something wrong with his tires. What in
8 the world was wrong, because if nothing was wrong,
9 then the only thing that was wrong was what he was
10 doing. And that's what the evidence shows. And
11 then we have Gilbert who actually comes in, he does
12 the drone, and he's the one who actually plotted so
13 you could see exactly what happened with the
14 vehicles at the time of impact. So, we had Cooke
15 come in, and this is what he tells you in regards to
16 the Shanks Ford SUV. You have the MAIT report, it's
17 in evidence, you can look at it yourself. So, the
18 SUV 77 miles per hour, remember the EDR will
19 actually go at the time of impact or on the time
20 whenever there's an event, which is the airbag
21 saying oh, my gosh, get ready there might be
22 something bad happening here, it backs up five
23 seconds. We've got 77 miles per hour. Then she's
24 at 78 miles per hour, and then 76 miles per hour.
25 And that's whenever we know impact. And then if you

1 remember there was evidence too that at the time of
2 impact, he hit her so hard that it pushed her up to
3 86 miles per hour when he ran her off the road.
4 Then the Chevy van also same thing, look at the
5 event data, oh my goodness something's going on is
6 what the computer is saying, so it starts recording
7 98 miles per hour at five seconds, 97 2.5 seconds,
8 98 miles per hour at .5 seconds, and I made a point
9 to ask Cooke, the expert, did he ever hit the
10 brakes? What if his brakes lights were busted?
11 Doesn't matter. It's not whether or not the brake
12 lights come on or off, it's whether or not it was
13 activated with the pressure of his foot, and we know
14 he never even tried to stop. So, general vehicle
15 examination no defects. Mechanical examination of
16 the van, the primary focus making sure that
17 everything -- are we missing anything, okay. They
18 never even met Palmer. They didn't meet -- they
19 didn't know the Shanks at this point. Everything's
20 been -- but the beauty of it is so technical, so
21 they don't have their emotions involved. They
22 weren't there, so what they're doing is they're just
23 looking at what the data tells them, they're
24 applying it to what the pictures show, they're
25 applying it to what the evidence is, they're

JURY TRIAL

1 applying it to the totality of the circumstances,
2 nothing would've contributed to this, except for
3 this recklessness and his negligence, that's what
4 caused the wreck. Here it is, you see it. And
5 remember Jessica told you, I was in the slow lane.
6 There was nowhere to go, someone was in front of me.
7 I'm driving and I -- oh, my God, he's gonna hit us,
8 and that's it. And when someone, Palmer, runs into
9 the back of you, going 98 miles an hour you don't
10 stop immediately, and there was wet -- I mean, it
11 was wet on the road too, you're spinning and yeah,
12 some people said oh, it looked like it flipped,
13 you're seeing things especially with lay witnesses
14 who are, you know, normal eyewitnesses are, they
15 said they were going through trees until it stopped.
16 I mean, you saw that vehicle, it looked like it
17 could've possibly flipped several times, the top of
18 it and the windshield and everything. But it
19 doesn't matter because when it comes down to it,
20 what the data tells us is it never rolled, it spun
21 so fast, and then wrapped itself around that tree.
22 The final conclusion from our MAIT is they take
23 everything into consideration, expert Cooke, the
24 excessive speed, I asked him this question before I
25 was finished, and reckless driving of Palmer was the

1 approximate cause of the crash resulting in Max's
2 death. So, this is the devastation left behind.
3 You have a storm coming, and by the time you see it
4 there's nothing you can do. You have Palmer in the
5 hospital, calm before he realizes wow, they're
6 really not happy with the way I was driving on I-77,
7 they might try to pin something on me. Then he gets
8 angry. Then he gets belligerent. Then it becomes
9 about him. Not about the family. Not about Max.
10 Oh, and he reminded all of us that yesterday as well
11 as what it did on the day within hours, not even
12 long hours, two hours maybe from the incident, yeah
13 as a matter of fact here's the stamp, 19:25 here.
14 So we're talking Max has been gone now for a couple
15 hours, this happened around 5:00 p.m.. By the time
16 you saw that video when Warlick gets back there, and
17 that's what that's from, and then whenever you hear
18 from Darby and all them, they get back there and
19 they start asking him about whether or not he's
20 possibly impaired, it all became about him. And,
21 yeah, okay, I guess that can be pretty scary. But,
22 then he gets up here, two and a half years later,
23 and he gets up there and it's still all about him.
24 No remorse. Wasn't my fault. Let's talk about
25 that. 98 miles per hour, let me just hold that up

JURY TRIAL

1 where the storm is, let's think about it, is that a
2 storm, a wet road, no braking, you're swerving in
3 and out, you're tailgating, you're aggressive,
4 you're erratic, you're reckless. I didn't put these
5 words in these vic -- I mean, the witnesses mouths.
6 I didn't put these words in any of the witnesses
7 mouths. Those are their words. So, here's the
8 thing, when we had to make a charging decision on
9 the defendant, just because I know there's something
10 about oh, well he was charged with felony DUI and
11 then now they're charging him with assault and
12 battery of a high and aggravated nature, and they're
13 charging him with reckless homicide. You're going
14 to hear the Judge tell you what the law is, okay.
15 And the law clearly fits this case like a glove. I
16 mean, there's no question. So, if anyone is going
17 to be angry with the fact that we sent off his blood
18 sample to a couple of different places, because we
19 were seeking the truth, and making sure we were
20 doing what was fair, not only for the defendant but
21 also for the Shanks family, then be mad at the
22 State. Don't be mad at anybody else. Because the
23 job of what we do is justice, for either side, and
24 to seek the truth. So, yeah, we sent it off, darn
25 right, because there are synthetics out there and

1 there's stuff out there I don't even know what's out
2 there anymore. None of us do. And yeah, we did.
3 So, that is the reason is the why it was sent off.
4 I don't think that's -- if that's problematic, I
5 think that's -- that's our job. So, assault and
6 battery of a high and aggravated nature, and it's
7 going to back to the beginning, unlawfully injures
8 another person with great bodily injury results. He
9 committed the offense against Corey Shanks. Was he
10 acting unlawfully that day? That's what I have to
11 prove to you beyond a reasonable doubt. Is it
12 unlawful for someone to drive 98 miles an hour down
13 the road on I-77? Yes. Is it unlawful to drive too
14 close to a vehicle and ram into the back of them
15 without putting on your brakes? Yes. All of that.
16 Great bodily injury, you've heard from the doctors,
17 you are already know, permanent damage brain injury,
18 Elena Malzahn, Dr. Kelly Crawford, all right. No
19 question. So, it proves the unlawful act by the
20 Defendant and great bodily injury results. Check.
21 Drugs found inside the van, he lives in the van, no
22 one else is in his van that day, he admitted smoking
23 weed the night before, and -- but the weed inside
24 the van was not his weed. I have to prove beyond a
25 reasonable doubt constructive possession. Did he

1 have control of the place where the drugs were
2 found? Yes. He may not have had them in his pocket
3 whenever he ran out of the van. He may not have
4 them in, you know, somewhere hidden on his body, but
5 that's also called constructive possession. Now,
6 they saw -- we have witnesses that saw him with the
7 drugs. So there's your constructive possession, and
8 the judge is going to give you that law too.
9 Guilty. Defendant's testimony, you can decide, I
10 can have an opinion, everyone in here I'm sure that
11 heard his testimony has an opinion. But the only
12 opinion that matters is your opinions. What did it
13 tell you. Maybe no remorse, no accountability, was
14 it all about him. Even his pastor told you, he gets
15 upset when things don't go his way. Do you think
16 things were going his way on July the 10th?
17 Absolutely not. But guess what, it's way worse for
18 the Shanks based off his decisions that day. Way
19 worse. It could have been worse for the Logans.
20 They told you the same thing, they thought it
21 could've been them. He has criminal intent and the
22 judge is gonna read this to you, so I'm not going to
23 belabor it, but I just want to show you this, 'cause
24 I want it -- when you hear the judge read this, I
25 want it to check a box in your mind that we have

1 proven this beyond a reasonable doubt, the
2 recklessness, indifference to duty. Reckless
3 homicide I've already talked to you about that.
4 Proximate cause, the judge is going to tell you, it
5 doesn't necessarily mean that it occurred
6 immediately prior to death. It doesn't have to be
7 the sole cause, we can blame it on the tree. But
8 you know what, it contributed to the death,
9 therefore, he's responsible. So, if you're firmly
10 convinced, which is what beyond a reasonable doubt
11 is, if you are firmly convinced that he was reckless
12 in his driving and he killed Max Shanks, if you're
13 firmly convinced that Corey Shanks suffered great
14 bodily injury, based on what Dr. Crawford told you,
15 and it was by an unlawful act committed by the
16 Defendant, he's guilty of assault and battery of a
17 high and aggravated nature. If you believe he had
18 constructive possession of the drugs that were in
19 his vehicle, then he's guilty. I'm going to end
20 with this right here, and there's a reason for it,
21 because there hasn't been enough talk in this case
22 about how you move away from and you move on from
23 something like this. So, this is from Trooper
24 Holland where he's marking where the vehicle is.
25 Remember what Jessica said about that blue glider?

JURY TRIAL

1 That's all that's left of Max on the side of that
2 road. Find him guilty, ladies and gentlemen,
3 because the evidence is so overwhelming. Let's stop
4 that storm. Thank you.

5 JUDGE GIBBONS: Thank you, Madam Solicitor.
6 Mr. Frick?

7 MR. FRICK: Thank you, Your Honor. Judge,
8 this is going to take me a second to get set up.

9 JUDGE GIBBONS: Okay, sure.

10 MR. FRICK: I remember when I started doing
11 this I would stand up in front of you, no notes
12 whatsoever and I would just go through the entire
13 case, there was nothing written, and now I've gotten
14 older and I can't remember everything, so I use my
15 PowerPoint as kind of a reminder of where I'm going.
16 Additionally I left my clicker in another office, I
17 bought a new one this morning, and it -- it you
18 know, I've just had (inaudible).

19 MS. LIVELY: Sure.

20 MR. FRICK: All right, ladies and gentlemen.
21 Obviously, you know that this case is, the State of
22 South Carolina versus Jason Palmer. He's been
23 charged with reckless homicide, and he's been
24 charged with assault and battery of a high and
25 aggravated nature, possession of cocaine base and

1 possession of marijuana. And I told you, and I'll
2 tell you again, and the Judge will give you the
3 final charge in the case, the State has the burden
4 of proof, Jason Palmer doesn't have to prove he is
5 innocent. The State has to prove he's guilty. And
6 they have to do that with competent evidence, and
7 they have to do that with evidence that satisfies
8 you of his guilt, and it's beyond a reasonable
9 doubt. And my definition is that that is there is
10 no other reasonable explanation. But it's not -- I
11 know this is a horrible case, and I know it was a
12 horrible tragedy that occurred. It's not yeah, so I
13 think he's guilty of those charges. It's not well,
14 yeah, probably he's guilty. It's not maybe. It's
15 not even well, I don't know. He said he was
16 maneuvering through traffic, they said he was
17 weaving in and out of traffic, so it's suspicious,
18 no; is there any other reasonable explanation. And
19 in this particular case it's got to be proximate
20 cause; is he the proximate cause or are there other
21 factors in the case. Let's start with the initial
22 scene investigation. Now, folks, I'm going to warn
23 you, I'm not going to make you watch that whole
24 video that you had to watch before, it is in
25 evidence, but I did make some snippets so you can

JURY TRIAL

1 see. I want to -- I want you to see certain parts
2 and I want to draw your attention to it. This is
3 Trooper Holland, is getting out of his vehicle, soon
4 as he sets foot out of the vehicle, he starts
5 hearing he did, that guy over there, the guy in the
6 van, the guy in the dreadlocks.

7 (VIDEO PLAYS)

8 TROOPER HOLLAND:

9 Let me try and get some of this traffic flowing
10 again.

11 (VIDEO STOPS)

12 MR. FRICK: Ladies and gentlemen, I'm going to
13 play it for you, but you've got the audio.

14 (VIDEO PLAYS)

15 TROOPER HOLLAND:

16 Just hang tight for me just a minute. I -- I'm
17 going to try to get some of this traffic flowing
18 again, and I'm going to start the investigation.

19 FEMALE VOICE:

20 (inaudible) white van (inaudible) 'cause he's the
21 one that caused everything, and there's already one
22 fatality. So, it's the gentlemen with the dreads
23 like he ran everybody off the road.

24 TROOPER HOLLAND:

25 Okay, all right. They're a secondary, right? They

1 happened after -- that happened after the fact,
2 they're trying to look?

3 FEMALE VOICE:

4 Probably looking to see (inaudible).

5 TROOPER HOLLAND:

6 Yes, so -- okay.

7 FEMALE VOICE:

8 (Inaudible).

9 TROOPER HOLLAND:

10 Well they were trying to look probably at what was
11 going on over here.

12 MALE VOICE:

13 Just so you know the (inaudible) (inaudible) driver
14 that's driving (inaudible) the van was going up and
15 over, so I don't know if the van (inaudible)
16 actually up and over and then came back. It looked
17 like (inaudible).

18 FEMALE VOICE:

19 (Inaudible) went across the (inaudible).

20 MALE VOICE:

21 So they may be --

22 FEMALE VOICE:

23 Scared.

24 MALE VOICE:

25 -- themselves getting hit.

JURY TRIAL

1 TROOPER HOLLAND:

2 Okay. All right. All right, I got one confirmed.

3 So, this thing's gonna be a whole -- gonna be a

4 whole thing to mark up. You already tracking?

5 MALE VOICE:

6 Yeah.

7 TROOPER HOLLAND:

8 One confirmed?

9 MALE VOICE:

10 (Inaudible).

11 TROOPER HOLLAND:

12 Okay, well, right now we need to start getting

13 information. We got a secondary that happened over

14 there. I guess they were trying to not get hit by

15 the van, which they thought was going to cross over

16 the cable barrier, so (inaudible). That car, that

17 van. I'm not sure what that red car is. This

18 female in the -- leaning against the truck there

19 witnessed what happened. They're saying the van is

20 the primary cause of what went on. That van right

21 there. That male -- the driver of that van is that

22 (inaudible) with the dreads sitting against that car

23 right there.

24 FEMALE VOICE:

25 (Inaudible).

1 MALE VOICE:

2 (Inaudible) van hitting (inaudible) dreadlocks, he's
3 sitting over there.

4 FEMALE VOICE:

5 The witness is him and his wife he said (inaudible)
6 his wife (inaudible) details.

7 TROOPER HOLLAND:

8 Okay. That's fine, we'll get him in a car.

9 MALE VOICE:

10 I was (inaudible) when I seen the van --

11 TROOPER HOLLAND:

12 You (inaudible).

13 FEMALE VOICE:

14 (Inaudible).

15 TROOPER HOLLAND:

16 Your (inaudible).

17 MALE VOICE:

18 Yeah.

19 TROOPER HOLLAND:

20 He's the driver of that white van that struck this
21 vehicle.

22 MALE VOICE:

23 Okay.

24 TROOPER HOLLAND:

25 That caused them to leave the road.

JURY TRIAL

1 MALE VOICE:

2 I'm gonna talk to her then I'm gonna talk to him.

3 MALE VOICE:

4 (Inaudible) I was asking him if he needed help

5 (inaudible).

6 TROOPER HOLLAND:

7 Yeah. That's not good. That's a young kid, it's

8 not an adult. I need to try and figure out what in

9 the world happened here.

10 MALE VOICE:

11 840 is stuck.

12 TROOPER HOLLAND:

13 Oh, 840 is stuck, okay, 'cause they're kind of --

14 MALE VOICE:

15 (Inaudible).

16 TROOPER HOLLAND:

17 And kind of -- kind of confusing there with all the

18 --

19 MALE VOICE:

20 (Inaudible).

21 TROOPER HOLLAND:

22 Can you work that secondary (inaudible) because the

23 van went through the cable barrier, and they thought

24 he was coming into the oncoming traffic, so that --

25 that's when that Honda slammed on brakes

1 (inaudible).

2 MALE VOICE:

3 Coming back?

4 TROOPER HOLLAND:

5 Yeah.

6 MALE VOICE:

7 (Inaudible).

8 TROOPER HOLLAND:

9 Yeah. A child down there on the other side of the
10 car. I'm not sure -- it looked -- they looked to be
11 if not 10, 11 12, something like that.

12 MALE VOICE:

13 (Inaudible) walked through the median.

14 TROOPER HOLLAND:

15 She just walked through the median?

16 MALE VOICE:

17 Yeah, 'cause I seen the (inaudible).

18 TROOPER HOLLAND:

19 So from what I could gather, well you got --
20 (inaudible) confirmed 10-7, okay, child. They're on
21 the other side of that -- they're on the other side
22 of that car covered up. From what I can gather,
23 that van passed -- they said (inaudible) down there
24 and the white car, passed them, struck that car --

25 MALE VOICE:

JURY TRIAL

1 That was moving?

2 TROOPER HOLLAND:

3 Yeah.

4 MALE VOICE:

5 Okay.

6 TROOPER HOLLAND:

7 That -- that -- struck that SUV that's over here.

8 Yeah. They had left the roadway, overturned up in
9 the wood line there, came to rest. He went across
10 the center lane from witnesses are saying, through
11 the cable barrier, up that side of the median, and
12 he was able to steer before he went into oncoming
13 traffic, causing that white car to slam on brakes,
14 that car to rear end that white car, and then he
15 came to rest down (inaudible) steered it back
16 towards the cable barrier (inaudible).

17 MALE VOICE:

18 So this guy slams on brakes to (inaudible) to avoid
19 getting hit by the van (inaudible).

20 MALE VOICE:

21 'Cause they -- they thought that he was gonna come
22 on the other side of the cable barrier.

23 TROOPER HOLLAND:

24 Right. And I don't even know where the point of
25 impact is. I -- I got very minimal debris in the

1 roadway back there. But I know this is where she
2 started sliding, 'cause I can see it. (Inaudible).
3 One of the passengers they don't know (inaudible)
4 they have one transported to Piedmont, I think
5 (inaudible).

6 MALE VOICE:

7 (Inaudible).

8 TROOPER HOLLAND:

9 He's right there, that gent -- (inaudible) in the
10 red shirt and dreads, he's the driver of the van.

11 MALE VOICE:

12 Sitting on the ground?

13 TROOPER HOLLAND:

14 Yeah. Far as I know (inaudible).

15 MALE VOICE:

16 He (inaudible) said I looked down for a split
17 second, I looked up and boom. I said (inaudible)
18 speed, how fast were you going. He said I don't --
19 I don't remember. (Inaudible) he looked down and he
20 hit them.

21 TROOPER HOLLAND:

22 Any odor of alcohol or anything? Any signs of
23 impairment whatsoever?

24 MALE VOICE:

25 (Inaudible).

JURY TRIAL

1 TROOPER HOLLAND:

2 That's what I was just asking, if there are any
3 signs of impairment. (Inaudible) reckless in and out
4 of traffic according to witnesses and (inaudible).
5 But I'm gonna (inaudible). Something's going on
6 'cause Dye's got to go to the hospital with him.

7 (VIDEO STOPS)

8 MR. FRICK: I'm assuming something's going on
9 'cause Dye's going to the hospital with him. You
10 saw there, and you've got the whole video, so you
11 can see it, as soon as the trooper gets out they're
12 already telling him, Jason Palmer is at fault. He
13 hasn't even started the investigation. He didn't
14 even know what's going on, and he's got people
15 screaming at him it's Jason Palmer's fault. and
16 then you see the one lady comes up, watch that guy
17 over there, he caused it all, the guy with the
18 dreadlocks. Have not talked to a single person. As
19 you saw in there he's trying to figure out where the
20 scene is. He sent Trooper Dye to go talk to people.
21 You see the other troopers come up, Gordon and
22 Warlick, come up and talk to him he says, this is
23 what happened. No one's talked to him. We don't
24 have any story from him at this point. We've just
25 listened to everything that the people on that side

1 of the road have said. (Inaudible) witnesses. They
2 talk to Ms. Dempsey, she said she was going between
3 75, 80 miles an hour, and this van flies up behind
4 her, gets on her ass, and then before she can move,
5 he cuts down and goes around her on the right.
6 Well, ladies and gentlemen, guess what, if you're
7 going slower than the flow of traffic you're
8 supposed to move to the right, if you don't people
9 go around you. Everybody does it, it happens all
10 the time. Should you do it? Not necessarily, but
11 if people don't move over that's what people do.
12 Joseph Parker said then he got behind me, I was
13 locked in at 79, and then he cut in behind the white
14 car. Now, he is further back, Jessica -- I mean
15 Brittany, Brittany tells you -- Brittany tells you
16 that she didn't -- she didn't see the wreck. She
17 was far enough back she couldn't see the impact.
18 Joseph tells you, I saw the impact, he hit her on
19 the driver's side. The evidence shows that that is
20 not correct. So what did he see? Who knows. But
21 he reported is incorrect. Ms. Logan, I suggest to
22 you ladies and gentlemen, if you watch that video
23 you're going to see her on the side of the road.
24 Her demeanor was completely different on the side of
25 the road. She is quiet, clearly emotional, quiet,

1 but not at all the person you saw testify this week.
2 Mr. Logan -- Mr. Logan testified that he went up to
3 the car and cut the seatbelt to get the child out.
4 They also said they were going about 70 miles an
5 hour, which I would submit to you that flow of
6 traffic it's probably inaccurate was well. Mr.
7 Logan said he cut the seatbelt. That's the seatbelt
8 ladies and gentlemen. That's the booster seat.
9 That's the seatbelt coming around it. It's not cut.
10 It's also not locked in. I believe the trooper
11 testified that when he examined it, everything was
12 as it should be, but as you see in that picture that
13 end is not the end of that seatbelt. Points or area
14 of impact, you've got Trooper Holland on the scene
15 that's looking for the point of impact. We've got
16 MAIT who comes in later and is like no, I want it
17 call area of impact. And then he kind of concedes
18 it really doesn't make (inaudible) one thing. But
19 we're looking for this. You see in the video
20 Trooper Holland's talking about I got to figure out
21 what's going on. He's walking through. He's
22 looking on this side of the road where he's told the
23 accident occurred. He says, I don't see any debris.
24 I don't see any debris. And that's typical, I would
25 submit if you got impact like that, that there's

1 gonna be debris. The Ford is hit in the back, his
2 taillight is broken, he even says I'm looking for a
3 taillight. He's not finding anything on that side
4 of the road. And this is where he's looking
5 essentially, maybe a little further down there's a
6 little further up, but this is really where we are.
7 And as you've seen, and that you've heard testimony,
8 there were a lot of first responders out there.
9 There were a lot of fire trucks out there. There
10 were a lot of volunteer fire fighters. There was
11 the rescue squad was out there. You see the mud all
12 over the road. He even said at some point it's kind
13 of making it difficult, one of the trucks you see
14 the guy walk up, one of the fireman walks up and
15 says 480 got stuck over there, 'cause he's looking
16 at these tracks on the side of the road and he says,
17 well that was confusing me it's what I was looking
18 for. Part of what they're looking for is some kind
19 of gouge in the road that shows where impact is.
20 That's about five long gouges that are already in
21 the road, they go all the way down the (inaudible)
22 over here. But ultimately we decide here's the
23 point of impact. Even though we found no debris
24 around there. And we say well, one part tracks that
25 way, and then this is from the MAIT report, they say

1 unit 2, unit 2 is Jason's van, that goes off to the
2 left. And they go on the scene we go his tire marks
3 are going off that way, and I -- you saw me ask a
4 couple people how do tires leave rubber on the road
5 unless you braking, unless you're (inaudible),
6 Trooper Holland even talks about him braking. So,
7 ladies and gentlemen, I understand that they say
8 that it occurred in lane one, but can you count on
9 that? Why do I say that? We're looking for a
10 taillight. That looks like the taillight on the
11 left side of the road and the tire marks from the
12 van. There's a close-up of it. That was taken from
13 Trooper Holland at the scene that day. So the idea
14 that it blew across the road is not accurate. Plus
15 it's the whole taillight, you can see the wiring
16 coming out the back of the housing right there.
17 That's a whole unit, that's not a piece of plastic.
18 Come on, you're just doing Defense attorney stuff.
19 That's the other taillight, that's the taillight,
20 that's where it was missing. It's on the left side
21 of the road. Again, ladies and gentlemen, you're
22 the one who decides what is the facts and what are
23 not, but I submit to you there could be an
24 explanation, other than what you've heard so far.
25 Here we are a little closer up. We're trying to

1 make a determination as to what -- what happened and
2 I don't know whether they even themselves got
3 questions about Dye, 'cause watch this briefly.

4 (VIDEO PLAYS)

5 MALE VOICE:

6 (Inaudible).

7 TROOPER HOLLAND:

8 No, I didn't (inaudible) just Dye (inaudible).

9 (VIDEO ENDS)

10 MR. FRICK: Warlick's asking him, you spoke to
11 him too, right? And the other trooper kind of leans
12 in, interestingly, and he says, no, no I didn't, it
13 was just Dy. Let's talk about the drugs that were
14 found in the van. The audio on this one is not --
15 it has some value, but what I want to tell you is --
16 this is Trooper Holland down there painting. That's
17 the door where they said they found the -- the
18 drugs.

19 (VIDEO PLAYS)

20 TROOPER HOLLAND:

21 Uh, yeah, it's probably narcotics, that's what they
22 use to tie off their arm.

23 MALE VOICE:

24 (Inaudible).

25 MALE VOICE:

JURY TRIAL

1 It should.

2 MALE VOICE:

3 It's got residue.

4 TROOPER HOLLAND:

5 Is that a straw or is that -- I think they use that

6 to tie around his arm.

7 MALE VOICE:

8 That's what (inaudible) marijuana. Yeah, that's

9 what that is.

10 MALE VOICE:

11 (Inaudible).

12 TROOPER HOLLAND:

13 Yeah. That's marijuana.

14 MALE VOICE:

15 (inaudible)

16 MALE VOICE:

17 Ready to -- ready to be put in -- (inaudible).

18 MALE VOICE:

19 (Inaudible).

20 TROOPER HOLLAND:

21 We're going to need to (inaudible). (Inaudible).

22 It's right there in that black (inaudible) in that

23 van. I don't want to get the pictures out of order,

24 so that's gonna have to wait until the last -- well,

25 no, it was in the van, right?

1 MALE VOICE:

2 It was in the back of the (inaudible)

3 TROOPER HOLLAND:

4 We probably should've documented it as well as

5 (inaudible). (Inaudible).

6 MALE VOICE:

7 (Inaudible).

8 TROOPER HOLLAND:

9 Clear baggie? What is that a white powder?

10 MALE VOICE:

11 (Inaudible).

12 TROOPER HOLLAND:

13 Here you go. (inaudible) kind of down on the -- on

14 the side -- against that black surface.

15 (inaudible) this it is. Okay. Yeah, throw

16 (inaudible).

17 MALE VOICE:

18 (Inaudible).

19 TROOPER HOLLAND:

20 I mean, you don't -- you don't need that straw, you

21 just need the drug part of it (inaudible) that's

22 what (inaudible) use it (inaudible). That's --

23 that's paraphernalia.

24 (AUDIO STOPS)

25 MR. FRICK: You see there, Trooper Holland

1 tells him you know that he doesn't have his camera
2 when he's down there and that's not -- that's not
3 his role at that point, he is painting the scene.
4 He's going back later and taking pictures. But
5 Gordon's got his camera. He looks at Dye and he
6 says, you got your State phone. And if you recall I
7 asked Holland about that. I said, is that what you
8 pictures with, and he said yeah, he would take
9 pictures on his State phone. And you saw Dye said
10 no, I don't have it. So Dye didn't take pictures
11 down at the van. Holland didn't take pictures of it
12 while he was down there when the stuff was
13 discovered. In fact he reiterates that when they
14 got stuff that they've taken and they've laid it on
15 the tailgate, and they're kind of putting it in
16 place so they can take their pictures of it, and
17 then -- and he says, we probably should have
18 documented this while it was in the van. Then you
19 see them looking through it, and you see them take
20 one evidence bag, Dye has it in his hand, he's
21 putting the stuff in there, they put everything in
22 there, except the straw, 'cause you don't need that,
23 that's what they use to stick up his nose and sniff
24 it. So, now we're taking stuff back out of the bag
25 that we've already put in it, but it was one bag.

1 It got separated, does that sound familiar?

2 Constructive possession, 'cause that's what this is.

3 There's actual possession, and there's constructive

4 possession. Constructive possession is -- well

5 actual possession is, I'm holding this pen in my

6 hand. I actually possess this pen. The idea of

7 constructive possession is, that pen is where all us

8 could reach it. We have the possibility for

9 dominion control, so we all possess that pen. So

10 they've got to prove that Jason had dominion control

11 over the drugs. He knew they were there. They have

12 to prove knowledge. And mere presence where drugs

13 are is not enough. So, if they have not satisfied

14 those elements of this offense, then he is not

15 guilty of possession of any of the drugs. This is

16 where they nicely put it on the tailgate, put it

17 together and made a nice little picture of it,

18 realizing they probably should've done that while

19 they were at the van. But wait, we have a picture

20 at the van, couple things I want to point out here.

21 One, I don't know when the heck this picture got

22 taken. I don't know who the heck took this picture.

23 But you got a picture and this is one of those they

24 say see, that's where it was before Dye found it.

25 No one looks in here. No one looks in here. No one

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1 talks about a bag. They don't pull it back.

2 There's also -- just keep this in the back of your

3 head, you see there's some debris down here, I

4 submit to you that that's a bolt. There's some

5 debris down here on the step as you walk into that

6 sliding door. This is where they say they found it.

7 There's also another thing. Remember Jason talked

8 about there was a cage behind him. This is the

9 cage. This is a solid wall, on the other side of

10 this is the driver and passenger compartment.

11 Here's another thing I would submit to you, Jason

12 got on the stand and told you yeah, I knew I had the

13 beer in the front of the van. I saw what was

14 happening, and it was not looking good so yeah, I

15 threw that into the median. And you see it in

16 there. They found it right there in the median, the

17 bag in the median. He was honest about that. Do

18 you honestly think that if he was thinking enough to

19 throw the beer he wouldn't have thrown the drugs?

20 Who found the drugs? Dye. Who took the pictures?

21 (Inaudible). Obviously there are other matters in

22 this case, but the reason why I'm harping on this is

23 this is part and parcel of the investigation. If

24 you can't trust this part of the investigation, can

25 you trust the whole thing. And why can't you trust

1 it? Trooper Dye, he was the primary investigator,
2 everything goes through him, if you recall I said
3 who did the at-fault report, they said oh, it was
4 Trooper Holland. When I showed him the report he
5 goes oh, yeah, it was Dye. Everything ran through
6 Dye. Yes, there were other people doing things in
7 the operation, but your primary investigator is a
8 trooper who was fired for mishandling evidence and
9 falsifying documents. And he lied to you from that
10 stand. 'Cause when I asked him he said he quit, and
11 I showed him a piece of paper that said he was
12 fired. He told you from that stand that he couldn't
13 get in the van. And then we have this picture where
14 they're standing in the middle of the van. He told
15 you from that stand, oh, yeah, I was wearing my body
16 worn camera the whole time, we got to the hospital
17 it was dead, that's why I don't have any body cam
18 from the van. There is no body cam from Trooper
19 Dye. Now how I know that, and you're gonna know it,
20 this is a still shot from (inaudible) standing
21 there, he's not wearing a body cam. That thing
22 right there below his collar, that's the radio. He
23 is not wearing a body cam. He sat up here under
24 oath and said I was wearing a body cam the whole
25 time. He lied again to you. If he's going to lie

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1 about this, what else would he lie -- the simple
2 thing about wearing a body cam, there are troopers
3 who said no, I just don't wear it. All he had to do
4 was say that. Okay. But he said I did it, and
5 here's proof he was not wearing a body cam. And
6 folks, you got the whole video. You see several
7 scenes of him walking around, this device is the
8 only thing on his chest. There is nothing below
9 there. There is no body cam. Now let's talk about
10 the MAIT team investigation. They came in the next
11 day to look at the scene, the vehicles had been
12 removed and I'll -- I'll admit that -- I mean,
13 that's not terribly unusual. A lot of times MAIT
14 comes in the next day and starts looking at things,
15 that's why the troopers go out there and paint the
16 scene, so you can move stuff along and they come out
17 later. So, that's not the issue that I have. The
18 issue I've got the entire investigation that they
19 did is based on what happened at the scene that was
20 based on a kneejerk reaction from all the people on
21 the side of the road who said it's Jason, it was --
22 that's the guy, look at that guy. This is taken
23 from the MAIT report, this is what they're supposed
24 to do. First, I do have an issue with this, they
25 were told -- told it was a felony charge. You've

1 heard -- you know we didn't go out because it wasn't
2 a felony charge. And then under cross-examination,
3 I said well this says you knew it was a felony.
4 Well, yeah, yeah, but I mean, yeah, we still decided
5 to go out later. Fine, I don't have a problem with
6 going out the next day. My problem is why you said
7 it wasn't a felony charge when you knew it was a
8 felony charge. And then they're supposed to go back
9 through, do the mapping, they did that. Do the EDR,
10 we're gonna talk about that in a minute. And then
11 do a mechanical exam -- examination from unit 2.
12 There's no examination of the Ford Explorer. And I
13 think a couple of them testified that was above my
14 level, that was not my decision. Do you do it, yes,
15 we do it sometimes, we did not in this case. We
16 decided not to. Ladies and gentlemen, if we are
17 searching for the truth, as the State alleges, for
18 this incident why wasn't that done on both vehicles?
19 How do we know something wasn't wrong with the Ford?
20 Yes, it was badly damaged, but these are trained
21 people who can go look. They were able to look at
22 Jason's car. They look at cars all the time that
23 are damaged, but they just didn't look at the Ford.
24 And then they're supposed to determine how the
25 collision occurred, and I told you it's all based on

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1 what happened the day before. Mechanical
2 examination, I've told you they only looked at the
3 van, they didn't look at anything else. But they
4 looked at the van, yes, I'll give you that. Rotors,
5 I mean, look at it, they actually just kind of
6 looked at it, took a picture of it. Brake lines,
7 yes, fine. Master cylinder, I asked about that,
8 'cause when you look at the picture you see the
9 reservoir and that's -- you can't -- I can't see the
10 master cylinder, so I asked about that and he said
11 oh, it's below it. And I asked, did you examine
12 that and he said no. Well, they said they did. The
13 event data recorders, this is the one from unit 1,
14 this is their summation of the data, obviously
15 (inaudible) chart, and in their report they show
16 there's a drop in speed from two and a half seconds
17 to time zero, dropping speed from 78 to 76, and the
18 brake switch is activated at zero. And the
19 Solicitor just told you for that to occur, the brake
20 has to be pressed. I agree with that. The brake
21 has to be pressed. To what degree, I can't tell you
22 that, but I know it's got to be pressed. Why would
23 they make a big deal of that in this report -- we're
24 gonna talk about the EDR in just a second. Well, I
25 want you to look at who signed it, Cooke who is the

1 expert who then gets up on the stand and goes oh,
2 no, no, no it doesn't have to be from pressing the
3 brake pedal, it's from when you got hit from behind
4 (inaudible). He signed off on it in the report, and
5 he testifies oh, it could be something different.
6 All right, I'm not trying to bore you with all these
7 numbers, but I got to go through some of them. This
8 is the van, all right. Event one, this is the
9 initial when there's contact on I-77, the first hit
10 on I-77 between the van and between the Ford. This
11 is the issue I got, ladies and gentlemen, the
12 accelerator pedal, we went through that, that's
13 about a third-way down -- third-way down -- almost
14 the third-way way down, foot's not on pedal, 18
15 percent, a third-way way down, third-way down, foot
16 not on pedal, foot not on pedal, RPM's never
17 changed. Miles per hour doesn't change. Ladies and
18 gentlemen, I ask you, how does that make any sense?
19 You take your foot off the gas for a full second,
20 and there's no change in RPM's, and there's no
21 change in speed. Ladies and gentlemen, I suggest to
22 you, you do not have to accept the data from this
23 computer that was downloaded. I don't know why they
24 don't like that term, they like to call it
25 imagining, fine. Whatever you want to call it, it's

1 an Excel spreadsheet is essentially what they get
2 from a drive. I've had three technical issues in
3 this very closing, do you not think it's possible to
4 have a technical issue with one of these devices?
5 Use your common sense. If you take your foot off
6 the gas, RPM never go down, the speeds never go
7 down. Can you trust this data? This is one second
8 before impact, he has taken his foot off the gas.
9 Does he press the brake? No. But I would tell you
10 he did exactly what I when I'm on I-77 in that kind
11 of traffic, 'cause I cannot stand people just
12 touching their brakes on the interstate. I don't
13 know if he slammed on brakes, I don't know if you're
14 just touching your brakes. If I'm behind you and I
15 see that, it scares me. It scares me. So, I would
16 take my foot off the gas to slow down as I'm
17 approaching the vehicle. If you get close enough,
18 obviously you start pressing the brakes. But,
19 initially you start taking your foot off the gas.
20 He did that. Yet this data will tell you nothing
21 changed in the engine. This is the second part of
22 it, again, this is -- this is -- it's after the
23 impact it was going over onto the left into the
24 median, still -- and here we go, two and a half
25 seconds, pedal is on the floor, now speed's

1 reducing. Now RPM's are changing. So, it can
2 happen on one but it can't happen on the other?
3 Again, ladies and gentlemen, I ask you, can you
4 trust this data that was downloaded from some
5 electronic device into a computer? Here's the
6 Explorer. Very steady, very steady, the accelerator
7 is 15.8, 15.6, 15. -- very steady foot on the pedal
8 until one second before impact they're at 78 miles
9 per hour, and then our foot's off the gas. And then
10 right at impact they're at 76 mile per hour, foot's
11 off the gas, brake switches on. Ladies and
12 gentlemen, I suggest she took her foot off the gas
13 and she touched the brakes. A tragedy occurred, a
14 horrible tragedy, but that's a -- that's a
15 contribution to a tragedy. And I don't say that
16 trying to take anything away from the tragedy,
17 ladies and gentlemen. I'm simply trying to present
18 you the facts of the case. That's a fact.
19 Afterwards, this is where they say the impact occurs
20 and she goes into 86 miles per hour, foot is also on
21 the gas. Foot is on the gas, foot is on the brake
22 as well. There's a lot of stuff going on. Ladies
23 and gentlemen, this is interesting, I don't know
24 that I've seen this in my years, the Solicitor and I
25 both asked witnesses the same exact cross-

1 examination question about this data. I asked Ms.
2 Shanks did she disagree that she touched the brake
3 and took her foot off the gas, she said I did not.
4 I said, well the expert says you did, you disagree
5 with the expert, she did. She disagrees. Same
6 thing with Jason, he disagrees that that's as fast
7 as he was going. He had that van for a little
8 while, he knew what he could do, couldn't get up to
9 that speed. Checked with his brother to find out
10 what the maximum speed was. Couldn't get there.
11 But when he disagrees it's just wrong. Well, ladies
12 and gentlemen, I'm telling you maybe there's
13 something wrong with that data. Maybe there's
14 something wrong with that data. Well, let's check
15 it. Oh, we don't know where it is. They downloaded
16 it from the van, they downloaded it from the Ford,
17 left it in the van and Ford, and nobody can tell me
18 where either one of those vehicles are. They don't
19 have it. So, even if we wanted to look, we can't.
20 Let's go back just the reliability of the case,
21 these are some pictures, I'm just going to show you
22 a few. What -- and there's a question that we
23 always ask as we introduce a picture, does this
24 truly and accurately depict the scene. Well, what
25 really truly and accurately depicts the scene. This

1 is the front of the van on the side of -- in the
2 median of I-77. This is the seat, this is the
3 passenger seat with nothing there, there's nothing
4 here. This is the next day at Danny's towing,
5 there's now something in the console, we put a
6 sweatshirt over here, and a 12-pack of beer over
7 here, and made it tried to look like that that's
8 some evidence. We know that's not what it looked
9 like. This is that same picture of -- just talked
10 to you about it before, I was telling you about the
11 debris down here on the step. There's the next day,
12 except (inaudible) and we've got this little pipe
13 here. Where'd that come from? Ah, we didn't
14 collect it anyway, doesn't matter. But it's there.
15 Why are there different pictures? Why are there
16 different -- why (inaudible). All right, so that's
17 what you got to rely on ladies and gentlemen, we
18 don't have DNA. We don't have fingerprints. We
19 don't have the other forensic evidence. It's the
20 statement of the witnesses who are inconsistent with
21 each other. And it's the data from these EDR
22 devices. That's what you got to rely on. That's
23 it. I know, Jason is -- I have a slide on this, but
24 I'm going to -- I'm going to ahead and get to it.
25 Jason was honest with you. He told you the good,

1 bad, and ugly about his situation in this case. He
2 told you yeah, I said some stupid things about the
3 child at the hospital. But, when did he say it?
4 It's after he's been there for a while, they're
5 telling him they need to draw his blood, fine, draw
6 my blood. He knows that he didn't drink any of that
7 beer. He knows he didn't consume any drugs. He
8 knows the toxicology screen is clean, and then they
9 tell him we're charging you with felony DUI death
10 results and great bodily injury. He got mad. And
11 he said something stupid, he told you it was stupid.
12 But it's a reaction I think many people would have.
13 Getting angry and saying something in anger, that's
14 what he did. Is it regretful? Does he regret it?
15 I believe so. Could he take it back, obviously
16 (inaudible). Jason told you the truth. He told you
17 I threw the beer out. I submit to you if he's going
18 to throw the beer out, why wouldn't he throw the
19 drugs out if he knows about that. He told you he
20 was maneuvering in and out of traffic. He told you
21 that it had been a long day, and he was tired and he
22 was ready to get back home. Anybody -- I suggest to
23 you ladies and gentlemen, he got on -- I don't know
24 how -- I don't even know where Lugoff is, but it's a
25 little bit past Columbia on I-20 before you get to

1 Camden, and that in and of itself is a hectic drive
2 on I-20 back into Columbia. It's a two lane road
3 itself, it finally goes -- I think it finally goes
4 to three. But anyway, then you merge into 77, you
5 got to deal with that. Then you end up with all the
6 traffic that's heading up to Charlotte, and that was
7 a busy weekend. I know, I was on I-77 the day
8 before. I know what that traffic was, it was
9 horrible. He's tired, he's trying to get back home,
10 it had been a long day. He's just going in and out
11 trying to get home. Talk quickly about the
12 constantly changing narrative. I told you it was a
13 knee jerk reaction at the scene and then we start
14 building the evidence to show that. We look at him
15 on the scene you see Dye they keep asking him, did
16 you notice any intoxication? No. Did you smell any
17 alcohol? No. Smell anything? No. No, didn't smell
18 anything. Then we find the drugs. Oh, okay. Then
19 we don't even have the blood draw yet, we had no
20 idea what's in the blood draw, but we're already
21 going to charge him with felony DUI without anything
22 further, except for looking at his eyes and deciding
23 that that must be evidence of that. So, then once
24 we have two tests, a large panel of testing from
25 SLED and a large panel of testing from another

1 agency to determine he was not under the influence,
2 so we changed the charge, and added a charge.
3 Ladies and gentlemen, this is a horrible incident.
4 Nobody wants to see this. It's horrible. It's a
5 tragedy. But it's a tragic accident. And an
6 accident is (inaudible). The Judge is going to
7 charge you on that, I'm not going to go into the
8 law. I'm also going to tell you that recklessness
9 is more than negligence. So, even if you find
10 Jason's activities driving on I-77 to be negligent,
11 it's got to be more than that. But I submit to you
12 it is in fact an accident. It was tragic, tragic,
13 horrible accident (inaudible). Again, ladies and
14 gentlemen, you get to believe what you want to
15 believe, who you want to believe, and what parts you
16 want to believe, and that -- and that includes
17 computers. And anybody who has the label of expert,
18 just because they've been labeled that doesn't mean
19 you have to accept their findings. You can go that
20 I don't believe that (inaudible). And again it's
21 not this is a bad case, it's a horrible incident.
22 If you think Jason did it, probably he did it, yeah,
23 maybe he's reckless, it's got to be there's no other
24 reasonable explanation, and as sorry as I am to say
25 it, and I tell you there is, there's contribution

1 from the other side. The entire case starts from
2 that initial scene where they're all going as soon
3 as Holland gets out, he hasn't even put on his vest,
4 they're going, the guy on the other side of the road
5 -- the guy on the other side of the road, the
6 (inaudible) on that side of the road, that's what
7 the trooper said. They've already decided before
8 we've started the investigation. Then we reverse
9 engineered the question and come up with the answer.
10 Ladies and gentlemen, I suggest to you don't let
11 emotion drive your -- drive your finding. Look at
12 the evidence, please. Please honor your -- your
13 duty, your oath, I know you will. When you do, I
14 suggest that you will find that the State has not
15 met their burden, and Jason Palmer is not guilty of
16 reckless homicide, and he's not guilty of assault
17 and battery of a high and aggravated nature, not
18 guilty of possession of drugs. Thank you very much
19 for your time and your attention and your service.

20 JUDGE GIBBONS: Thank you, Mr. Frick. All
21 right, State brief rebuttal, and then we'll take a
22 brief recess.

23 MS. LIVELY: Getting out of my Highway Trooper
24 car, carnage everywhere, the van down the road, the
25 vehicle almost torn in half, people start coming up

1 and saying, this is what happened, he did -- ah,
2 don't tell me anything, don't tell me anything, no,
3 no, no, 'cause when we're in court in about two
4 years from now, if you start telling me something
5 that's going to make me think or make a conclusion
6 about what really happened here, that's gonna mess
7 me up, we can't do that. Come on. Everybody that
8 sat in this courtroom that we put in that stand they
9 were there. They're the best people to tell you who
10 did it. Are they supposed to say, you know, what
11 I'm gonna let these guys figure it out, they're the
12 ones wearing the uniforms, no need for me to talk,
13 I'm not gonna get involved. They were good
14 citizens. They said what they saw. If that is
15 wrong, then that's a part of society that we don't
16 need to be in anymore, 'cause those are people who
17 don't care. Then, what about the fact that, you
18 know, all this EDR talk, you know, the event data
19 recorder, and I know it gets a little complicated,
20 but I'm just gonna kind of narrow it down based on
21 what the defendant tells you, what he told Warlick,
22 what he told y'all, and what he told Dye, what he
23 told everybody, what happened, how fast were you
24 going. He was never willing to really say how fast
25 he was going. Why? Because he knew he was hauling

1 butt down that road. All right, 'cause he was tired
2 and ready to get home and everybody was in his way.
3 So, he was getting them out of the way. So, here's
4 what we know with the EDR. And it's exactly what
5 now it -- just perfect example, and I forgot to
6 bring this up, so I'm going to tell you. His foot
7 does come off of the gas, right before he hits her.
8 But you know why, he told all of us, think about it,
9 remember he told Warlick, I looked down for a minute
10 and then it was bam. He was looking for his phone.
11 And when he reached down in that big old van, what's
12 a normal thing to do, if you're pressing the gas,
13 you're looking, maybe you take your foot a little
14 bit of the gas, make you take it completely off the
15 gas, that's what happened. He told you that
16 himself. So guess what, the EDR is the evidence in
17 this case. You could argue with computers all the
18 time, I hate computers, hate all that technology,
19 but you know when I do appreciate it, is when
20 experts who are trained hours and hours and years
21 and years know how to use it, and they can bring it
22 in here, and they can tell all of y'all, so you can
23 use that information, that evidence to make the
24 right decision. Now, the seatbelts have always kind
25 of been the strange thing with Max, and I think

1 there was so much confusion, and when they saw --
2 and I don't know because if I had that evidence I
3 would've given it to you, about how he ended up on
4 the side of the SUV. You know, people do things in
5 situations like that when they see a real tragic
6 situation that we can't explain. But the one thing
7 that we do know is there's no contributing factor
8 when it comes to how he was in that vehicle, because
9 the EDR did tell us, and it told our experts, that
10 all of the seatbelts in the SUV with the Shanks
11 family were engaged. So, the fact that his wasn't
12 cut, you know, Corey's was cut, I don't know. All I
13 know is Mr. Logan, when you saw him crying on the
14 side of that road and saw Felicia Logan, and she
15 looked like she was -- didn't know what to say or
16 do, maybe they were pretty traumatized and just saw
17 a horrible thing, and unfortunately when you heard
18 Mr. Logan he told you he saw Max in his condition.
19 So, here's the thing ladies and gentlemen, does it
20 change the fact that Max was gone? No. None of
21 that changes. What you do, and I understand is that
22 you have to attack the investigation when the facts
23 are so clear, when you use your common sense, that
24 you have to tear it apart. But when you look at the
25 entire totality of the evidence, and you use your

1 common sense, don't forget to rely on that, ladies
2 and gentlemen. He took his foot off the gas, and
3 then how about whenever they said she hit her
4 brakes, 'cause that's a big deal that they're making
5 it. When she hit the brake it was when he hit her
6 and then he pushed her, causing her to go another --
7 up to 86 miles an hour, pushing her into the trees,
8 which caused Max's death. So, here's the thing,
9 when you hear what the Judge is getting ready to
10 tell you, all right, in regards to the law, which is
11 gonna be the most important part since you have the
12 entire case now. You have all the evidence, you can
13 watch the videos, and everything. Intent for a
14 crime you have that knowledge that you're reckless
15 for criminal negligence. And then we get into
16 reckless homicide, and reckless homicide's gonna
17 tell you the Defendant drove the vehicle with
18 reckless disregard for the safety of others. A
19 conscious indifference to the rights and safety of
20 others. A conscious failure to exercise ordinary
21 care. Reckless disregard for the safety of others,
22 is more than mere negligence. There's so much
23 evidence here that this was more than mere
24 negligence. This was so reckless. And proximate
25 cause, that's a fancy word, okay. Basically, was

1 that act, those acts he chose that day, were they
2 the direct cause, and then the judge is going to
3 tell you, it's the efficient cause, it is a
4 contributing cause, it's that cause without which
5 the death of the victim would not have resulted.
6 The act of the defendant does not have to be the
7 sole cause of death, and the fact that other causes
8 may have contributed to the death does not relieve
9 the defendant of that responsibility. So, all you
10 have to agree on is that his driving that day was
11 reckless and he is guilty. Even if you say, well
12 maybe someone touched their brakes, even though the
13 evidence doesn't show that, maybe he took his foot
14 off the gas so he went from 98 miles per hour to 97,
15 so he was trying to avoid slamming into that family
16 of four. It doesn't matter, because the law is what
17 you have to apply your facts to and the evidence to,
18 and that is without question beyond a reasonable
19 doubt that he acted reckless. The assault and
20 battery of a high and aggravated nature, the same
21 thing, acted unlawfully, guilty. So whenever Mr.
22 Frick said oh, he's charged with felony DUI death,
23 felony DUI great bodily injury, then we come up with
24 a whole new charge, like this is just something that
25 is oh, yeah, we just -- you know, we spin the wheel

1 and see where it lands. Absolutely not, ladies and
2 gentlemen, there has to be consequences when you
3 violate the law, when someone dies or almost dies,
4 because that is what our society is made of, and
5 that is we keep the peace, we follow the law, we do
6 what is right. And when we don't, and someone is
7 reckless, they need to be held responsible. And
8 that is what the State is asking you to do. That's
9 what the Shanks family is asking you to do. That is
10 what the (inaudible) to do. So, I thank you for
11 your patience. Thank you for listening to me again.
12 And please listen to the Judge, find him guilty,
13 ladies and gentlemen.

14 JUDGE GIBBONS: Thank you, Madam Solicitor.
15 Ladies and gentlemen, let's take a quick comfort
16 recess, about no more than 10 minutes. Don't talk
17 about the case yet, all right. Thank you very much.

18 (JURY EXITS)

19 (OFF RECORD)

20 (JURY ENTERS)

21 JUDGE GIBBONS: All right, thank you again,
22 ladies and gentlemen for your attention to the
23 attorneys. I now direct your attention to me as I
24 read you, and tell you about the law in South
25 Carolina, as it pertains to the issues which have

1 arisen in this case. Under the Constitution and
2 laws of South Carolina you are the finders of fact.
3 I do not have the right to pass upon the facts, or
4 even stress any opinions I may have as to them,
5 because that's solely for you, the jury, to
6 determine. As jurors then, it is your duty to
7 determine the effect, the value, the weight, and
8 their credibility of the evidence presented during
9 this trial. Now, I have all this typed up and
10 written down, 'cause what I tell you is very
11 important, and I want to make sure and get it right,
12 okay. So, I know there's nothing worse than looking
13 at a talking head, you know, just reading something,
14 so I'll try to make eye contact as much as possible
15 with you, okay. Now, as the trial judge it's been
16 my responsibility to preside over the trial of this
17 case, and to rule upon the admissibility of the
18 evidence offered during this trial. You are to
19 consider only the testimony which has been presented
20 from this witness stand, together with any exhibits
21 which have been made part of the record, and any
22 stipulations of counsel. If a witness may have
23 answered a question that I sustained an objection
24 for, and the witness got the answer out before the
25 objection was sustained, you are to not take that

1 witness's testimony into consideration whatsoever,
2 because I said it couldn't be in evidence, okay.
3 Now, I have the additional duty to charge you the
4 law applicable to this case, and as the presiding
5 judge I am the sole judge of the law. It is your
6 duty as jurors to accept as correct, and to apply
7 the law as I now state it to you, and use that to
8 reach your verdict. Now, the fact that I may
9 instruct you on various subjects in this case, must
10 not be taken by you as indicating what you think my
11 opinion is of the facts. Finally, I charge you,
12 ladies and gentlemen, that you should not be
13 concerned with what you think the law ought to be,
14 but rather what I charge you the law is. Now, the
15 indictments in this case, ladies and gentlemen, and
16 we've been over that before, that's the written
17 description of the charges made by the State against
18 the Defendant. These indictments allege four
19 different offenses. Now, each indictment, ladies
20 and gentlemen, can charge as a separate and distinct
21 offense. You must decide each indictment separately
22 on the evidence, and the law applicable to it,
23 uninfluenced by your decision as to any other
24 indictment. The Defendant may be convicted or
25 acquitted on any or all of the offenses charged.

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1 You will be asked to write a separate verdict of
2 guilty or not guilty for each indictment. Mr.
3 Foreman, I'll go over that with you here
4 momentarily, okay. Now, let's talk about
5 credibility. Ladies and gentlemen, you're the
6 judges, the sole judges of the credibility, also
7 known as the believability of the witnesses who have
8 testified, and of the evidence which has been
9 presented during this trial. In passing upon
10 credibility you could take into consideration many
11 things such as the demeanor, or the manner in which
12 a witness has testified, whether or not a witness
13 had reason to be biased or prejudiced or whether or
14 not a witness's testimony was contradicted on the
15 one hand, or supported and corroborated on the other
16 hand. All these things you will consider, bearing
17 in mind that you should give the defendant the
18 benefit of any reasonable doubt. It becomes your
19 duty as jurors to analyze and to evaluate the
20 evidence and determine that evidence which convinces
21 you of its credibility. Let's talk about evidence
22 in general. There's two different types of evidence
23 that are presented during a trial, something called
24 direct evidence and something called circumstantial
25 evidence. I'm gonna give you some law school

1 definitions, but I want to make sure you understand
2 this, so I'll try to make this simple for you.
3 Direct evidence directly proves the existence of a
4 fact, and does not require any further deduction.
5 In other words, yes, is a mallet, you know, this is
6 something that a judge uses -- that's direct
7 evidence, I just testified that's what that is,
8 okay. That's an example of that. Now,
9 circumstantial evidence is a proof of a chain of
10 facts and circumstances which indicate the existence
11 of a fact. Well, what does that mean? Well, just
12 think about we're about to approach winter and you
13 know your lawn, if you have grass or whatever maybe
14 going dormant, it may be turning tan or brown, okay,
15 you go to bed and you wake up the next morning and
16 you see snow in your yard all covering your yard,
17 along with footprints on your lawn. Well, first you
18 can inferred that it snowed while you were sleeping
19 even though you didn't see it. But secondly, you
20 can infer that somebody has been walking on your law
21 even though you didn't see it happen. See, these
22 are things you can infer, even though you didn't
23 actually see it happen, okay. That's an example of
24 circumstantial evidence. And crimes can be proven
25 by circumstantial evidence. The law makes no

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1 distinction between the weight or value to be given
2 to either direct evidence or circumstantial
3 evidence. However, to the extent that the State
4 relies on circumstantial evidence all of the
5 circumstances must be consistent with each other and
6 when taken together point conclusively to the guilt
7 of the accused beyond a reasonable doubt. If these
8 circumstances merely portray each defendant's
9 behavior as suspicious, the proof has failed. Now,
10 the State has the burden of proving the Defendant
11 guilty beyond a reasonable doubt on each charge.
12 This burden rests with the State, regardless of
13 whether the State relies on direct evidence,
14 circumstantial evidence, or some combination of the
15 two. I've already told you about expert witnesses.
16 Briefly, again, the Rules of Evidence ordinarily do
17 not permit witnesses to testify as to their opinions
18 or conclusion. This means that normally they can
19 only testify about what they either saw, heard, or
20 sensed by smell, or something like that. However,
21 there is an exception for witnesses who are
22 qualified because of their education or experience,
23 they are permitted to give an opinion in certain
24 areas, if the Court qualifies them that way. There
25 were several expert witnesses who testified in this

1 trial. And ladies and gentlemen, to give opinion
2 testimony in a certain area does not mean that you
3 have to accept that opinion. But it's evidence for
4 you to use in any way you see fit, and give it the
5 weight and credibility you believe is appropriate.
6 An expert witness's testimony should be given no
7 greater weight than that of other witnesses, simply
8 because the witness is an expert. Further, you're
9 not required to accept an expert's opinion, even
10 though it may not be contradictory. Let's talk
11 about various statements that you've heard witnesses
12 testify the Defendant may have made, okay. Now,
13 various statements made by the Defendant have been
14 admitted into evidence in this case for you to
15 consider. Now, while, I, the Court, has determined
16 that these statements are admissible, you must
17 determine whether these statements were voluntary,
18 and of the Defendant's own free will. This means
19 that the statement was not caused by pressure,
20 force, fear, threats, coercion, or intimidation, or
21 by hope, or a promise of leniency, or a reward of
22 any kind. Now, in determining whether a statement
23 was voluntary, you should consider both the
24 characteristics of a Defendant, and the details of
25 any questioning. Some of the factors you can

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1 consider are the age -- his age, the Defendant's
2 age, his education or lack of education, his mental
3 ability or capacity, his intelligence or IQ, his
4 background, his environment, whether or not he was
5 detained at the time, and the place he was allegedly
6 detained, the nature of any questioning he was
7 facing, the advice or lack thereof to the defendant
8 of his Constitutional right; including, but not
9 limited to, the right to remain silent; that any
10 statement used against him could be used against him
11 in a court of law; any statement made by him could
12 be used against him in a court of law; the right to
13 have a lawyer present; that if he could not afford a
14 lawyer, a lawyer would be appointed to represent him
15 without any cost; and that he could stop making a
16 statement at any time. You must carefully consider
17 all of the surrounding circumstances before you give
18 any weight to a statement, okay. Now, the State has
19 the burden to prove beyond a reasonable doubt that
20 the statements were voluntary, and if you determine
21 they were, you can give that statement any further
22 consideration that you deem proper. You must decide
23 what weight, if any, should be given to the
24 statement, and if you determine the statement was
25 not freely or voluntarily made, you should not

1 consider the statement at all. Let's talk about
2 presumption of innocence, ladies and gentlemen. The
3 Defendant has pled not guilty, and that plea puts
4 the burden on the State of South Carolina to prove
5 the Defendant guilty. A person charged with
6 committing a criminal offense is never required to
7 prove himself innocent. I charge you, ladies and
8 gentlemen, that it is an important rule of law, that
9 a defendant in a criminal trial, no matter what the
10 seriousness of the charge may be, is always presumed
11 to be innocent of the crime for which the indictment
12 was issued, unless guilt has been proven by evidence
13 satisfying you of that guilt beyond a reasonable
14 doubt. Now, this presumption of innocence does not
15 end when you start your deliberations, but it
16 accompanies the Defendant throughout your
17 deliberations until you've reached a verdict, a
18 unanimous verdict, of guilt based upon the evidence
19 which satisfies you of that guilt beyond a
20 reasonable doubt. This presumption of evidence is
21 like a robe of righteousness, just like I'm wearing
22 a robe, placed around the shoulders of the
23 defendant, which remains with him until it has been
24 stripped from him by evidence satisfying you of his
25 guilt beyond a reasonable doubt. This presumption

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1 of innocence, ladies and gentlemen, is not just mere
2 legal theory. It's not just a legal phrase. It is
3 a substantial right to which every defendant is
4 entitled, unless you the jury, are satisfied from
5 the evidence of the defendant's guilt beyond a
6 reasonable doubt. And I've said that word -- or
7 that phrase numerous times. So, what is a
8 reasonable doubt in the law? A reasonable doubt is
9 a doubt which makes an honest, sincere, conscious
10 juror in search of a verdict to hesitate to act.
11 Proof beyond a reasonable doubt must therefore be
12 proof of such a convincing character, that a
13 reasonable person would not hesitate to rely and act
14 upon it in the most of his or her own affairs. Now,
15 proof a reasonable doubt can also be described as
16 proof that leaves you firmly convinced of the
17 defendant's guilt. Now, there are very few things
18 we know in this world with absolute certainty. In a
19 criminal case, the law does not require proof that
20 overcomes every possible doubt. If, based upon your
21 consideration of the evidence, you're firmly
22 convinced that the defendant is guilty, then you
23 must find him guilty. If on the other hand, you
24 think there's a real possibility he's not guilty,
25 you must then give him the benefit of that doubt and

1 find him not guilty. Let's talk about intent. In
2 order to establish criminal liability, criminal
3 intent is required. For example, the mental state
4 required to be proven by the State for a particular
5 crime might be purpose, intent, knowledge,
6 recklessness, or criminal negligence. Criminal
7 intent must be proven by the State beyond a
8 reasonable doubt. Criminal intent is always a
9 matter that must be determined by you the jury, from
10 the circumstances which have surrounded a situation,
11 okay. There's no way that you can prove intent to a
12 mathematical certainty. There's no way that medical
13 science can dissect a person's brain and determine
14 what that person had in mind. So, the law says a
15 criminal intent may be inferred, by you the jury,
16 from the circumstances which have been shown to have
17 existed. That's how you make a determination of
18 whether or not the element requiring intent was
19 present. Now it's not necessary to establish intent
20 by direct and positive evidence, but intent may be
21 established by inference, in the same way as any
22 other fact, by taking into consideration the acts of
23 the parties, and all the facts and circumstances of
24 the case. Criminal intent is a mental state that's
25 a conscious wrongdoing. It's up to you to determine

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1 what the defendant intended to do, based on the
2 circumstances shown to have existed. Now, criminal
3 intent can arise from action or failure to act. It
4 may arise from negligence, recklessness, or an
5 indifference to duty to consequences that is
6 considered by the law to be the equivalent of
7 criminal intent. All right, let me describe and
8 charge you the law on reckless homicide. The
9 Defendant is charged with with reckless homicide.
10 The State must first prove beyond a reasonable doubt
11 that the defendant drove a motor vehicle with
12 reckless disregard for the safety of others.
13 Reckless disregard for the safety of others means an
14 indifference to the consequences or results of one's
15 acts, a conscious indifference to the rights and
16 safety of others, or a conscious failure to exercise
17 ordinary care. Reckless disregard for the safety of
18 others is something more than just mere negligence
19 or carelessness. Now, the State must also prove
20 beyond a reasonable doubt that a person was injured
21 and died within one year of the date of injury.
22 Finally, the State must prove beyond a reasonable
23 doubt that the injury to the victim, from the
24 defendant's reckless driving, was the proximate
25 cause of the victim's death. Well, what's proximate

1 cause mean? Proximate cause is the direct cause.
2 It's the immediate cause. It's the efficient cause.
3 It's the contributing case. It's that cause without
4 which the death of the victim would not have
5 resulted. Proximate cause does not necessarily mean
6 that it occurred immediately prior death. To be the
7 proximate cause, the act of the defendant does not
8 have to be the sole cause of death, and the fact
9 that other causes contribute to the death does not
10 relieve the Defendant of responsibility. Let's now
11 move to what has been called ABHAN, or assault and
12 battery of a high and aggravated nature. A person
13 commits the offense of assault and battery of a high
14 and aggravated nature, if the person unlawfully
15 injures another person, and great bodily injury to
16 another person results, or the act is accomplished
17 by means likely to produce death or great bodily
18 injury. Great bodily injury means, bodily injury
19 which cases a substantial risk of death, or which
20 causes serious permanent disfigurement or protracted
21 loss or impairment of the function of a bodily
22 member or organ. Let's talk about accident. The
23 Defendant has raised the defense of accident. Now,
24 an act may be excused on the ground of accident, if
25 it is shown that the act was unintentional, that the

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1 defendant was acting lawfully, and that reasonable
2 care was used by the defendant. The burden is on
3 the State to prove beyond a reasonable doubt that
4 the act was not an accident, but was caused by the
5 recklessness on the part of the defendant by his
6 unlawful activity. Let's talk about possession of
7 cocaine base, or what's called known as crack
8 cocaine. The State must prove beyond a reaosnsable
9 doubt that the Defendant knowingly or intentionally
10 possessed cocaine base. Knowingly means, with
11 knowledge, consciously, not accidentally.
12 Intentionally means willfully. Intending the result
13 which actually occurs, not accidentally or
14 voluntarily. Intent may be shown by acts and
15 conduct of the defendant in other circumstances from
16 which you may naturally and reasonably infer intent.
17 To prove possession, the State must prove beyond a
18 reasonable doubt that the defendant had both the
19 power, and the intent, to control the disposition or
20 use of the cocaine base or crack cocaine.
21 Possession may either be actual possession or
22 constructive possession. Actual possession means
23 that the cocaine base was in the defendant's actual
24 physical custody. Constructive possession means
25 that the defendant had to dominion and control, or

1 the right to exercise dominion and control over
2 either the cocaine base itself, or the property
3 where the cocaine base was found. Now, mere
4 presence at the scene where drugs were found is not
5 enough to prove possession. The defendant's
6 knowledge and possession may be inferred when a
7 substance is found on the property under the
8 defendant's control. However, this inference is
9 simply an evidentiary fact to be taken into
10 consideration by you. As to possession of
11 marijuana, the State must prove the same factors as
12 it relates to marijuana. The State must prove both
13 the power and intent to control the disposition or
14 use of the marijuana. They must prove either actual
15 possession or constructive possession, which I just
16 defined for you. And again, mere presence at the
17 scene where marijuana is found is not enough to
18 prove possession. You can infer -- the defendant's
19 knowledge and possession may be inferred when the
20 substance is found on property under the defendant's
21 control. However, this is something to be taken
22 into consideration by you, okay, along with the
23 other evidence in the case, and to be given the
24 weight you decide it should have. So, let me wrap
25 this up, ladies and gentlemen, with saying something

1 about your deliberations. The word deliberation is
2 defined as, a careful consideration weighing up with
3 a view to a decision. You see the genius of our
4 jury system, is that it allows 12 good people, both
5 men and women, from differing backgrounds, life
6 experience and perspectives, to consider the
7 evidence, to talk about it, and ultimately reach a
8 verdict. The task of a juror is called
9 deliberations for a reason, because you are to
10 consider the evidence in this case carefully and
11 deliberately. Discuss it calmly, thoroughly, and
12 courteously. Remember you're not partisans or
13 advocates for one side over the other. You are the
14 judges of the facts. Your sole duty is to sort
15 through the information that you've received in this
16 trial, and to find your verdict from the evidence
17 presented in this courtroom. The supreme law of our
18 land, the United States Constitution, affords
19 everyone a day in court and a fair trial. So, this
20 case is very important to both sides because it's
21 their day. I charge you, ladies and gentlemen, to
22 listen to the views of your fellow jurors, carefully
23 consider their viewpoints, and courteously discuss
24 the evidence. Remember, you're doing something
25 deliberately, you're not in a big hurry, and you are

1 tasked with the duty of upmost importance. Your
2 verdict cannot be based on sympathy, passion,
3 prejudice, emotion, or any other consideration not
4 in evidence in this case. And in conclusion, you've
5 been selected by both the State of South Carolina
6 and the Defendant to be fair and impartial jurors.
7 It is your duty in your deliberations to determine
8 the facts in this case, giving the defendant the
9 benefit of every reasonable doubt on these charges.
10 And from the facts which you determined to be
11 relevant, you must take and apply the law, which
12 I've just given you, to arrive at your verdict. I
13 told you the standards you must apply to the charges
14 in these indictments. Now, you've heard the
15 evidence, and now you've heard the law. Whatever
16 your verdict is as to each indictment guilty or not
17 guilty, Mr. Foreman, you will indicate it by marking
18 the jury's decision in the respective blank on the
19 verdict form. Mark only one blank for each charge.
20 You will then sign and date the verdict form. And
21 here's the verdict from right here, and it goes
22 through each charge. You either check not guilty or
23 you check guilty, okay. And your verdict must be
24 unanimous. You can't write on the verdict form
25 until all 12 of you agree as to what the verdict's

1 going to be. Now, ladies and gentlemen, I'm going
2 to send you back to your jury room. But I'm going
3 to say it one last time, don't talk about this case
4 until you've received this verdict form, along with
5 the various evidence in this case that the bailiffs
6 will bring to you. Once you get that in there, that
7 is your signal that you can start finally talking
8 about this case amongst yourselves. Now once you
9 start deliberating, you will deliberate until you
10 have reached a verdict, at which time you'll knock
11 on the door, advise the bailiff, and we'll bring you
12 out to receive your verdict. Thank you again,
13 ladies and gentlemen. You may now retire to your
14 jury room.

15 (JURY EXITS)

16 JUDGE GIBBONS: Any exceptions to the charge
17 from the State?

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

19 JUDGE GIBBONS: Anything from the Defense?

20 MR. FRICK: Just previously as to the intent
21 on ABHAN.

22 JUDGE GIBBONS: Correct, thank you. All
23 right, y'all are both protected. All right, y'all
24 come look through the evidence, get everything
25 straight. Madam Court report, put the verdict form

1 on top of the evidence in the case.

2 (OFF RECORD)

3 JUDGE GIBBONS: Please refrain from any --
4 from as much emotion as you can while the verdict is
5 being read, and then we'll see where it goes from
6 there. Thank you.

7 (JURY ENTERS)

8 JUDGE GIBBONS: All right, thank you. All
9 members of the jury are present. Mr. Foreman, I
10 understand the jury has been able to reach a
11 verdict.

12 MR. FOREMAN: That is correct.

13 JUDGE GIBBONS: And is the verdict unanimous?

14 MR. FOREMAN: Yes, it is.

15 JUDGE GIBBONS: All right, thank you. Hand
16 that to my bailiff please, the verdict form. All
17 right, Madam Clerk, you may publish the verdict.

18 THE CLERK: This is the State of South
19 Carolina versus Jason Connell Palmer, as to
20 indictment number 2023GS12248, for the offense of
21 reckless homicide, we find the defendant guilty. As
22 to indictment number 2023GS12317, for the offense of
23 assault and battery of high and aggravated nature,
24 we find the defendant guilty. As to indictment
25 number 2023GS12249, for the offense of possession of

1 cocaine base, we find the defendant not guilty. As
2 to indictment number 2024GS12809, for the offense of
3 possession of marijuana we find the defendant not
4 guilty. I certify this as a unanimous jury
5 decision, signed by Christopher Elkin, dated on
6 November the 1st, 2024. Jury if this is your
7 verdict, would you please say so by the raising of
8 your right hands? Thank you.

9 JUDGE GIBBONS: Thank you. Let the record
10 reflect that all jurors unanimously raised their
11 right hand. Thank you ladies and gentlemen. I'll
12 ask that you retire to your jury room at this
13 moment; it won't be too much longer, okay. Thank
14 you very much.

15 (JURY EXITS)

16 JUDGE GIBBONS: Mr. Frick?

17 MR. FRICK: Your Honor, at this time, the
18 Defense would renew all objections and request for
19 mistrial, the three times that we've made that
20 motion, and renew all exceptions that we've had.
21 Defense would also request a new trial, and ask for
22 the Court to consider setting the jury verdict aside
23 as the thirteenth juror.

24 JUDGE GIBBONS: All right, that motion --
25 those motions are all denied. And all my previous

1 rulings shall remain intact. This is the verdict of
2 the jury. Okay, I'm going to take a brief recess
3 while the State gets the sentence sheets ready on
4 the reckless homicide and the ABHAN charge. And of
5 course I'll let y'all grab your thoughts before we
6 proceed into sentencing okay? Give me just --
7 you've got things ready Madam? How far off are you
8 from being ready?

9 MS. LIVELY: Printing and then picking it up.

10 JUDGE GIBBONS: All right, I'll be out here in
11 about five minutes.

12 (OFF RECORD)

13 JUDGE GIBBONS: I need the Defendant to come
14 in front of the bar, please. Mr. Frick? If there
15 is any victim testimony I will, of course, allow
16 them to go back, depending on the length of the
17 presentation ,you can have a seat back there, so.
18 But just the initial we'll do this. All right,
19 Madam Solicitor, I'll be glad to hear from you.

20 MS. LIVELY: Yes, sir, Your Honor. This case
21 has been pending now for two and a half years and
22 there -- I've talked to Jessica Shanks in regards to
23 she does, of course, want to make a victim impact
24 statement. This is one of those cases that was
25 completely preventable. And I know as in this job

1 and the things that we have to do, Your Honor, there
2 are choices that people make that sometimes are
3 going to end in a very tragic manner, but this
4 Defendant and his acts on that day and his lack of
5 remorse and -- I mean I just -- it's been a hard
6 time working with this family, and just trying to
7 help them -- not because they've done anything wrong
8 but just because I've -- I've had to keep up a
9 buffer of some of the things that -- that have --
10 that's been discussed and some of the things that's
11 been said in this case. It's -- it was a tough one.
12 It's been -- not only from the loss of a child that
13 was completely preventable, but to see this family
14 and what they've gone through since then, and I -- I
15 had to put up these pictures of -- of Max to show
16 the Court because, you know, the victims a lot of
17 times get lost in the shuffle because it is all
18 about the Defendant, and you know, and his fair
19 trial, and I understand that, and that's the way our
20 Constitution is, that's the way our justice system
21 is, but it just really is sad whenever we're talking
22 about the death of someone, whether it's an adult,
23 and especially a child, and it is -- is becomes lost
24 in the translation. And it should not happen. And
25 I know I have to really hold myself back whenever

1 I'm dealing with those issues. But this family
2 they've just been so honorable in everything they've
3 done. And to know how preventable this was I think
4 just -- just the complete waste of a beautiful life
5 is just very hard to swallow. And the fact that
6 this defendant has had no remorse. I'm sorry, I
7 mean, maybe he hides it well, I don't know. But,
8 the State is looking at it and with his history. I
9 mean, he doesn't have a bad record, you know, he's
10 got the larceny from 2004 and it looks like he had a
11 few run-ins with the law since then, and then it's
12 just like in 2018 and 2019 he's -- you know, he was
13 around that situation in North Carolina where a
14 person was killed and he helped dispose of a body or
15 failed to -- or failed to report it. You know I
16 don't even know all the details of that case, but
17 it's just, you know -- you're -- you're out on bond
18 for something like that and you leave the state
19 without permission and for me the idea that this man
20 is actually, you know, out of jail, he's been given
21 that chance to now possibly cooperate with the State
22 of North Carolina and testify in that case, so that
23 they can get justice for their victim, and this
24 defendant doesn't ask for permission to leave the
25 state of North Carolina. He gets in this van with

1 an address where I'm pretty sure he -- he probably
2 wasn't supposed to be living in the van. He was not
3 supposed to leave the state of North Carolina. He
4 leaves the state of North Carolina without
5 permission, still charged with the accessory after
6 the fact and with, you know, failing to report a
7 dead body, I mean all this hanging over his head,
8 and he leaves and this happens. I mean, and -- and
9 I -- you know, he -- justice does require, and not
10 necessarily vengeance, justice requires that he be
11 given a significant, if not the maximum, sentence in
12 this case. He made so many choices that violated
13 the law. He made so many choices that destroyed --
14 I would say destroyed this family, but that's not
15 fair because this family is still here, and they're
16 still standing, and they are still able to move
17 forward. But Max is gone. His little brother
18 Griffin, who's in that top corner, he'll never be
19 able to grow up with his brother. He was only four.
20 He only had four years with his brother. And Max is
21 gone. So, to me the -- the gravity of this case it
22 warrants -- it warrants the maximum sentence in this
23 case. And we've given him opportunities too, which
24 I know it's his right to a trial, and I always
25 struggle with bringing that up, and it's like saying

1 that he -- we're not asking him to be punished as a
2 result of that, but I'm just saying when you have
3 this family here who has to sit and go through the
4 pain of a trial, we can also look at that 'cause
5 we're human. He was given an opportunity as well to
6 accept responsibility for his actions, he asked for
7 a trial, he gets a trial. But he also has to accept
8 to the fact that now not just have determined that
9 he was reckless, and that he killed that child, and
10 that he harmed Corey in the way he did. We have 12
11 people who heard the evidence who don't even know
12 about his history, and don't know about anything
13 other than the facts in this case, who decided that
14 he his guilty. So, Your Honor, I think that the
15 verdict speaks volumes. The family speaks volumes
16 with them being here, and every single person, every
17 single first responder, they have kept in contact
18 with this family. It has impacted -- the ripple
19 effect of this case has been phenomenal. And at
20 this point I know he's going to turn to you, his
21 attorney is too, who's done a very admirable job,
22 but, Your Honor, I'm just asking at this time that
23 we don't forget the real reason why we do our jobs
24 is to seek the truth, which the jury has given us
25 that truth here today, and that there are human

1 beings in this world who deserve just as much
2 fairness as justice as the defendants do in these
3 cases. And this little boy deserves that. And this
4 little boy will never run again, and those are the
5 last teeth he ever lost before this man hit him with
6 a van at 98 miles an hour 5:00 on I-77 on a holiday
7 weekend when family people were driving up and down
8 the road, there was -- this is a senseless crime.
9 Senseless crime, Your Honor. Let's not forget about
10 Max, that's all I ask the Court to do in making your
11 decision, and I respect what that is. Thank you.

12 JUDGE GIBBONS: Thank you, Madam Solicitor.
13 I'll be glad to hear anything else from the victim's
14 family before I impose the sentence. Mr. Frick, if
15 y'all would like to have a seat back at the table
16 you can.

17 MR. FRICK: Yes.

18 MS. LIVELY: Yes, Your Honor, the parents of
19 Max, Jessica and Corey Shanks, and of course Corey,
20 who also was a victim in this case. And Your Honor,
21 I'm going to approach and hand this to you.

22 JUDGE GIBBONS: Okay. Yes, ma'am?

23 MRS. SHANKS: Max should be nine. He should be
24 at school today after a fun night trick-or-treating,
25 and we should be preparing for a full Saturday at

1 the baseball fields. Instead, we are here in this
2 courthouse. He is forever seven, and we are left
3 with only wonder as to what Max would have been
4 dressed up as, and what his interests would've been.
5 One thing is sure, and can never be taken away, I
6 know he would still have been the energetic,
7 curious, empathetic, fiercely protective big
8 brother, truck loving son, and brother he always
9 was. But how would he have used these gifts to make
10 his impact on the world, should he have been given
11 the opportunity to live a full life. We will never
12 know. I recall back to one of Griffin's t-ball
13 practices of the season following our accident, as
14 we were leaving I hesitantly glanced over at what
15 should've been Max's team and coach starting their
16 practice. I hesitated, because I knew they were
17 there and I wasn't sure if I could handle the sight.
18 This happens more than you know. The constant
19 reminders and sudden crumbling at the realities of
20 our life without Max. It's the clothes that were
21 carefully and slowly put away. It's straining to
22 hear his voice for fear that I will forget the sweet
23 sound. It's sitting and feeling his footprints in
24 the bottom of his sneakers. With the pass -- with
25 the pass of each year, I am filled with this awful

1 feeling about wanting time to pass, but not wanting
2 to move further away from a life that held him,
3 while also rejoicing in being one year closer to
4 him. It's the constant toggle of being present with
5 my living son, and wishing my life away to get to my
6 other. My heart is split between two places and two
7 wishes. Corey always tells me that I am the
8 strongest woman he knows. He is my biggest
9 cheerleader and supporter, what he doesn't realize
10 is how strong he is. Corey should've died on July
11 10th, 2022, but by God's grace and miracles alone,
12 he didn't. I have had the honor and privilege of
13 watching him fight for over two years to regain a
14 life. Daily he struggles with memory, physical
15 ableness, anger, emotional processing, and executive
16 functioning, as a result of his brain injury. But
17 still he wakes every day, and he chooses to fight
18 simply because it wasn't his time and there is more
19 work God intends for him to do. By far the hardest
20 thing I have ever done is to tell Griffin that his
21 brother died and is not coming home. It has been to
22 hold him as he cries and asks for his brother. It
23 has been to parent him as he experiences --
24 expresses understandable anger, distrust in the
25 world around him, social struggles, and severe

1 separation anxiety. I remember laying with him in
2 bed two nights after the accident and he said to me,
3 "Momma, it's just me and you now." We watch as
4 similar -- as similar to us as adults, he looks for
5 the confirmation of his brother's presence in the
6 clouds, colorful sunsets, bird feathers and
7 rainbows, when he should be wrestling with him over
8 Halloween candy, and who's turn it is to have the
9 remote. Life is now very surreal. Before accident
10 life, feels like the sweetest dream, but that's it,
11 simply a dream. And this post-accident life is
12 confusing, hard, and doesn't feel real either. It
13 is difficult to understand. Last year Griffin
14 started kindergarten, and for the first several
15 weeks they discussed rules, and why we -- can you
16 please give that to the Judge? They discussed rules
17 and why we have them. His teacher, who was also
18 Max's at one time, sent home an assignment that
19 Griffin completed for me to see. I brought it
20 today, at the top it says, draw and write an example
21 of why we need rules in our community. Griffin drew
22 a picture of our accident. There is a road, our car
23 on to one side, with him standing next to it, a
24 cross on the ground to represent Max, and a person
25 across the street to be depicted as in jail. How do

1 you quantify the loss of Max's life? The life Corey
2 has lost? All of this pain and its life-long
3 effects. Your Honor, I will tell you there is no
4 amount of years that will bring Max back, or make
5 Corey whole again, we are aware. In our family we
6 talk a lot about natural consequences, you're
7 adamant about wearing shorts in the winter and then
8 you get cold, that's a natural consequence and you
9 deal with it. And then there's discipline, you hit
10 or destroy out of anger, you lose privileges. We
11 don't do this out of hate, but instead out of love
12 and care in hopes that our children will grow into
13 adults that show love, care, and respect
14 (inaudible). As adults we are not exempt. We
15 have natural consequences to every choice we make,
16 and then we have our justice system to uphold
17 consequences for when our actions affect the safety
18 and livelihood of those around us. This includes
19 getting behind the wheel of a car, and making the
20 choice to drive 98 miles per hour, while weaving in
21 and out of traffic. What is not fair is that our
22 choice was removed, and now we all suffer the
23 consequences of someone else's choices. I stand
24 here and speak today not from a place of hatred, but
25 instead asking you to hold Jason Palmer accountable

1 for his reckless behavior and disregard for life, by
2 placing a maximum and consecutive sentence for the
3 charges he has been found guilty of. I ask for this
4 as justice for Max and Corey. I ask for this for
5 the safety of our greater community. If maximum and
6 consecutive sentencing isn't used now, what will it
7 take? What message does that send to others driving
8 recklessly? What message does that send to the
9 first responders and State Troopers who were by our
10 sides and witnessed the devastation, whose lives are
11 also changed forever, and changed by the pain they
12 witnessed and felt. What message does that send to
13 Griffin, who drew a picture with the hope that our
14 community rules would hold Jason Palmer accountable.
15 But Jason Palmer's testimony yesterday he proved a
16 lack of empathy, remorse, and disregard for others.
17 He chose to break his bond agreement and leave the
18 state. He chose to drive 98. He chose to act in a
19 manner that would ultimately take Max from us, and
20 change the trajectory of our lives forever.

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

22 MR. SHANKS: I've shared with the parents
23 who've lost a child in therapy groups that I have
24 been blessed with no memory of that day, and still
25 have no memory of that day. But I've learned a lot

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1 this week that happened that day, and I wish I can
2 forget it. So, Your Honor, I just want to get
3 straight to the point, I think Jason Palmer needs to
4 remain in jail for the maximum consecutive sentence
5 time. Yesterday when Jason took the stand he did
6 not appear to come across remorseful or empathetic
7 of the loss of human life. Had to get up and walk
8 out during his testimony when Jason kept using the
9 phrase weaving in and out of traffic. He comes
10 across as completely dangerous to me. You know,
11 Jason with his CDL license makes a living driving on
12 the road, then I think it's only going to be a
13 matter of time before an event like this could
14 happen again. Again, Your Honor, I'm asking for
15 consecutive maximum sentencing.

16 JUDGE GIBBONS: Thank you, sir. Anything
17 further from the State?

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

19 JUDGE GIBBONS: Mr. Frick, thank you for your
20 patience.

21 MR. FRICK: Your Honor, I don't want anything
22 that I say, or fixing to say, to take away from the
23 tragedy that occurred. I truly am sorry for the
24 Shanks family loss, and the injury to Mr. Shanks.
25 But my job here is to advocate for my client, and I

1 need to do that at this time. That was a horrific
2 accident that occurred. And I -- I don't know, I
3 think -- I think maybe I took this one a little
4 personal. As I said in closing, the very day before
5 I was travelling down 77 back home from a family
6 vacation with my family in a car. And I've done
7 enough cases like this that I essentially have PTSD
8 driving down 77. I see exits where I've had cases,
9 and I hate that highway. And when I got home I saw
10 that there was a story about a man who was charged
11 in Chester County with felony DUI death results and
12 great bodily injury. So, I looked over to WSOC and
13 I saw Jason Palmer in our Magistrate Court bond
14 room, with a room full of people, the Solicitor
15 there, and him by himself, and I knew that he was
16 not going to get a fair shake if I didn't try to
17 help him. So, I went to the jail to go visit him as
18 soon as I could after that. And Judge, I've been
19 trying to get him that fair shake ever since that
20 day, and so far I have not been able to show him
21 that the system can be fair to him. I am going to
22 ask you to do that for him today. But, I do have a
23 little more I need to tell you about him. Judge, I
24 have not had a meeting shorter than two hours with
25 Jason Palmer every time I've visited him. The other

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1 day I met with him we were in the jail talking in
2 the visitation room for five hours, and then I came
3 back a couple days later, we spent another three
4 hours. I've come to know Jason Palmer, and I can
5 tell you it takes a while to get to know Jason
6 Palmer. He is a good and decent human being, who
7 has had a horrible past with his family and his
8 upbringing. He lost his mom, his father left him,
9 he had friends who -- who took advantage of him.
10 His friends who took advantage of him that got him
11 in the situation in Charlotte. I would tell you
12 more about that case, but that charge is still
13 pending, after he cooperated for the State, and they
14 refused to give him any assistance. That charge is
15 still pending, so I can't tell you everything I need
16 to tell you about that. But, I can tell you Jason
17 is not getting justice in North Carolina. Yes, he
18 was out on bond. And the case worker that the
19 Solicitor talked to was the case worker he got
20 assigned in August of 2020 who's never met Jason
21 Palmer. We've spoke with a couple others, Jason
22 advises me that he had been given permission. Now,
23 I can tell you one thing about Jason I have never
24 been able to say about a single client, Judge, Jason
25 Palmer has never lied to me. The day that I met him

1 at the jail, and he had the felony DUI charge, he
2 looked at me and he said, what if the results come
3 back clean? And I looked at him like I have every
4 other client who's sat in that chair and told me
5 that same thing I said, well, we're probably looking
6 at reckless homicide. And thinking to myself, that
7 ain't gonna happen. Well, that's exactly what
8 happened. His results were clean. And what
9 happened, they sought additional testing. Results
10 were clean. He was not under the influence. He
11 told me the truth that day, and he told and he told
12 me the truth every day since then. I can tell you
13 without a doubt, Jason Palmer has remorse for this
14 incident. He shared it with me. What you see,
15 Judge, is a tough exterior that he has developed as
16 a defense mechanism so he could survive. And him
17 not getting up on the stand and crying and showing
18 emotion is what his lawyer told him to do, 'cause
19 that's not appropriate when you're a witness on the
20 stand. And I always find it interesting when I get
21 to this point, and I hear from folks that my client
22 didn't show any remorse. Judge, you well know they
23 can't do that until we're at this point. They have
24 a pending charge, I can't have them come to a bond
25 hearing and apologize for the damage they've done,

1 unless we're able to reach a plea, which we were not
2 able to do. As Your Honor well knows, we were in
3 plea negotiations, we were trying to reach some kind
4 of agreement. Jason did not want this day. He did
5 not want to go through this. He did not want to put
6 this family through this, but we didn't have course
7 -- other choice because we just couldn't reach a
8 resolution, what we believe to be a fair resolution.
9 And, Judge, I'm going to do what I always tell
10 clients not to do, compare cases, and I'm not going
11 to name specific cases, but I know of several in
12 this courtroom when the SLED exam came back clean,
13 they got probation for reckless homicide, and I know
14 that's not going to happen for Jason Palmer today.
15 But I just want the Court to bear that in mind. I'm
16 asking for fairness, Judge, fairness. I certainly
17 understand the tragedy. And I'm not -- again,
18 nothing can change that situation, there's nothing
19 you can do, there's nothing Jason can do to go back
20 and do that. I know that if he could go back that
21 day, he would, and he would not have been on that
22 road. He didn't want to be there. He hasn't been
23 in any trouble since 2004, aside from the matter
24 that he's got in North Carolina. He was trying to
25 put his life together. He sat in jail in North

1 Carolina for three years on the charges that he went
2 up, took the stand himself, putting himself on the
3 line, and is still having to face those charges in
4 North Carolina. Judge, his pastor, who you saw
5 testify yesterday, who -- who has essentially been
6 his father, that's the only way I can phrase it, Mr.
7 Nichols is a great, great man, and he's very busy
8 and he -- he was unable to be here today. But I
9 texted him after the verdict, and asked him if there
10 was anything he would like for me to share with the
11 Court, and this is what he told me. "I am confident
12 that Jason Palmer is a genuinely caring person and
13 can make a positive contribution in his life. I
14 pray that the Court show him grace, that allows him
15 to prove his value to society." And I know Pastor
16 Nichols could say that much more eloquently when
17 they have more to add about that and good, good
18 things to tell you about Jason. Judge, this wreck
19 is not the sum and total of Jason Palmer. And I'm
20 asking you to give him an opportunity, he's in his
21 30's now, a maximum sentence is not justice. I'm
22 asking for fairness. And I believe Mr. Palmer would
23 like to address you.

24 JUDGE GIBBONS: Thank you, Mr. Frick. Mr.
25 Palmer, I'll be glad to hear from you, sir.

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1 MR. PALMER: I don't know -- I really don't
2 know what to say at this point, man, to be honest
3 with you. I don't have -- really haven't gotten to
4 talk except up there and I was told, you know, don't
5 do all the crying and stuff, and all that stuff, so,
6 you know, I held it in. And the last time I cried
7 for anybody I got charged with DUI, you know what I
8 mean. Like, it was -- it was a car accident. I
9 don't want to say as far as my charges in Charlotte,
10 a friend shot a friend almost shooting me. I
11 testified. What am I supposed to do when the man
12 with the gun say, we're gonna put him in your van?
13 No, the fuck we ain't. He goes, shhhh, yeah, we is.
14 I'm picking up the feet. I'm not -- what else am I
15 supposed to do. That's like if somebody comes and
16 robs a bank, and they say well put the money in the
17 car. I'm gonna do what the man with the gun say, he
18 done already shot and killed the security guard,
19 what am I supposed to do? I spent three years and I
20 got pre-trial release. Now, up there pre-trial
21 release is what you give to people with trespassing
22 charges and stupid little stuff, something you
23 probably give what's the boy name, Jeremiah Cherry.
24 Pretrial release. What you all -- they gave me pre-
25 trial release after three years of this body that

1 I'm related to. It's a duress case, plain and
2 simple. And I know I'm speaking light here on
3 something -- but like what -- how about (inaudible).
4 I am sorry. And I -- that -- I said I was sorry in
5 the beginning. I think (inaudible) and somebody
6 else was at the magistrate bond hearing and I was
7 saying I was sorry. And they said don't nobody want
8 to hear that. Took me out the magistrate bond
9 hearing and said don't nobody want to hear that
10 shit. 'Cause I -- I told these people I lost my kid
11 -- I lost my daughter. I lost my daughter
12 (inaudible) it doesn't even help that she was drunk
13 too, but I'd have a 21-year-old daughter right now,
14 21 in January. I don't have that. So, I -- I
15 really did get their pain, empathy and sympathy. I
16 don't know which one's which, but I really do
17 understand their pain. I under -- I had to go
18 through what they're going through now 20 years ago.
19 So, I've never tried to that -- like say nothing,
20 but I was told don't say nothing to them. Don't --
21 don't try to -- don't -- I talked to Mr. Nichols
22 yesterday, right and I think it was the civil
23 attorney and I was telling her like she was kind of
24 like staring at me and I was like I want peace -- I
25 want peace -- I want peace for y'all. I really do.

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1 I true -- I really and truly do want y'all to have
2 peace and know, I -- I -- that ain't gonna happen
3 with me, like they said, I'm glad they even
4 recognize that, that's -- that's gonna take time and
5 God. As far as the time (inaudible) man, I don't
6 know what to tell you, man. I -- I -- I -- I had my
7 DOT number. I mean I had (inaudible) number. I had
8 a EIN, LLC, (inaudible) I mean these things you do
9 when you're starting a business. Them are the
10 things you do for a transportation business. I
11 literally paid everything up to full. That Friday I
12 took a drug test. I stopped by my brother's house,
13 'cause -- my god brother's house 'cause he bought
14 his granddaddy's house, and I helped him pick up
15 these floor boards, and I went to go pick up my
16 registration, don't got my tags, cause my tags is
17 connected to the other case in Charlotte. I bought
18 that van -- I bought that van the day my brother
19 (inaudible) killed. I find this out on (inaudible)
20 coming from Winston-Salem. I moved up -- I moved up
21 to a homeless shelter because was using -- you know
22 how you have friend couch hoppers (inaudible) or
23 paying rent, so I -- I went up to Winston-Salem
24 (inaudible) 7.50 an hour and bought me a van. First
25 thing I've ever bought. The first major purchase in

1 my life, without assistance from my mom -- my mom's
2 life insurance and that -- nothing like that, like
3 my own effort, you know what I mean. Did that,
4 bought that van on -- and losing on it the day Eric
5 died. While I was locked up, my grand momma died,
6 and my best friend died. I saw him the day -- the
7 day (inaudible) the day he got killed. Since him,
8 you probably know Linda Belt, that was my cousin,
9 she dead. That's my god -- that's my other god
10 mother, (inaudible), son Alex, they're my people.
11 My cousin (inaudible) who you saw at the last bond
12 hearing sitting beside the old guy, he died of
13 cancer. (Inaudible) Sinclair got dementia so I know
14 (inaudible) coming. I -- I'm -- I wrote a list the
15 other day, and I got 40 people in my life that died
16 since I was six. The first death was at six years
17 old. My middle name is Connell, I'm named after my
18 great-grandmother Connie. We had the same birthday,
19 [REDACTED]. I'm [REDACTED], 1987, she's [REDACTED]
20 (inaudible). She died Christmas of 1983. So, again
21 40, you count 45, if you count Kelly who died in
22 (inaudible) and other friends and four -- 40 people
23 who like close, like on the list of picking me up
24 from after school. I go to their house on
25 (inaudible) they come to my house on (inaudible).

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1 Ain't nobody want their kid to die. I had --
2 anybody tell you (inaudible) show the hell up.
3 'Cause anybody wouldn't even showed up. I'm there
4 for their kids more than most of them is. I'm on
5 (inaudible) nothing but kids, nothing but kids,
6 three of them is my little brother and two little
7 sister -- twin sisters (inaudible). And they're the
8 one Brandon they're his biological family. All
9 these names, only six is biological. I got about 30
10 some odd names on here, only six biological. The
11 rest, I'm gonna go broke, Uncle Sutton, Uncle Jason.
12 Man, what happened is like pretty much the worst
13 that could possibly happen. And I -- and I -- even
14 my logical thinking I -- I mean, I -- it's -- how I
15 talk sound funny, man, I know like -- it could've
16 been worse, you know what I mean. It really
17 could've. And I'm glad it wasn't. And I'm -- I
18 hate how bad it was as it is. Nobody -- you think I
19 drove out there that day to like -- that I drove out
20 there to kill people or to not give a damn, 'cause I
21 was out there helping somebody move. I was in a
22 rush, yeah. I honestly feel -- I -- I honestly
23 think they came to that conclusion 'cause they saw
24 no remorse, but I mean I -- I was told don't show
25 none of that stuff. Don't say sorry. Don't use the

1 word responsibility. In that -- in that interview
2 with the Lindsay guy, I told him straight like I
3 said look, I don't want to go to jail. I don't ---
4 I know I don't deserve to be in jail for no DUI.
5 But if y'all got like, I guess, man -- vehicular
6 manslaughter 'cause, I guess, manslaughter means
7 accidental death, again, I guess, with the car, so
8 technically I wouldn't be able to argue with that.
9 I accept my respnsibilty. I'm a firm believer in
10 personal responsibility. I've -- where my part is
11 in this wreck, that's my part. But I can't take
12 everybody's fucking responsibility, man. I got -- I
13 got to be responsible for your actions, my actions,
14 their actions, their actions, how? How? So, I get
15 all the questions -- consequences, none of the
16 power. 'Cause if I -- if I had to take
17 responsibility then this is what I'm saying, it's --
18 you know what I mean. Like I don't know how to --
19 I've never once not shied from my responsibility in
20 this wreck, man. I understand I have
21 responsibility, and I hate that I have
22 responsibility, that's the part that suck. That's
23 why you see me in there just like wondering, in that
24 hospital, how the hell did I get here. What the
25 fuck, like this is bullshit. Like this is -- and it

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1 sucks for them. It sucks for me, it sucks for them,
2 it sucks everybody, everybody lose in this
3 situation. Everybody lose in this situation.
4 Everybody's lost. I don't know, man. I don't -- I
5 don't -- I don't -- I just -- I just -- I really --
6 it's -- ain't no words, there ain't no words, like I
7 said, to bring the kid back. Ain't no words that I
8 can say to make them feel better. And you know, I
9 could -- I could say sorry 1,000 times. I just --
10 he ain't coming back, you know what I mean. The
11 same with every -- every -- everything that was --
12 if you can go back in time I'm sure everybody go
13 back in time and change a boatload of things. In
14 all honesty, this would be the one thing. I can
15 deal with -- I couldn't deal with everything else.
16 I wasn't dealing. I don't even -- I ain't gonna
17 necessarily say -- so we got (inaudible) back here
18 and I was watching (inaudible) some new movies on
19 (inaudible) watching One Love with Bob Marley, and
20 you know that's what the lady call me, I actually
21 did them locks because of Bob Marley, I have 33 of
22 them (inaudible). I was looking at the thing and I
23 think I figured out like forgiveness finally and it
24 just kind of -- I think it's just wanting peace for
25 everybody, wanting peace for the next person, even

1 if they hate you, even if I'm -- as the lady had put
2 it, (inaudible) on here, an animal that should be
3 caged -- the person be caged like the animal he is,
4 still want peace for them. I get it, she come from
5 a hurt place. Hurt people hurt people. Most of the
6 time it's (inaudible). So, I get they're hurting.
7 I promise I do. I understand that they're hurt.
8 And so I can understand, you know, you express it
9 out (inaudible) -- so I never -- I -- I wanted to be
10 mad at them, I'm not mad at them. I'm not even mad
11 at Darby. That was a setup. I'm not mad at him.
12 Warlick, they lied, all of them lied. I'm pretty
13 sure that was transparent as all hell. But I'm not
14 mad at them, 'cause they saw a kid and they doing
15 what they thought would be justice for the kid. So,
16 I get it. I get it. I don't like it. I don't
17 agree with it. I've been completely honest, I ain't
18 lied about a damn thing. Like even the stuff that
19 made me look bad, which I honestly think is the --
20 (inaudible) facts, I think the facts tell you this
21 was an accident. You put the calls in there to try
22 to make it as fair as possible (inaudible) and I
23 appreciate that. But I don't think (inaudible)
24 'cause we -- I think everybody knows it was a
25 accident. It's just but he didn't seem remorseful,

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1 we told him not to. And I asked -- I told him, let
2 me just say everything. Let me bring the jail
3 stuff. Let me bring in my whole record. My whole
4 record -- I was 2004, stole a car. Young, dumb --
5 young, dumb kid in Charlotte. Ain't been in no
6 trouble since; I've been homeless. I ain't robbed
7 nobody, killed for nobody. I didn't carry a gun. I
8 don't scam people. I don't do jack squat. I'm
9 homeless because I could go and do that but no, I go
10 to People Ready, Labor Ready, 7.50 an hour, 5:30 in
11 the morning. They ain't got no work for me,
12 (inaudible) work. Finally I get this (inaudible)
13 trucking. I could get out of this homeless
14 situation. And (inaudible) it was a accident, man.
15 I had no intent on getting in a wreck that day. I
16 didn't have no intent to get in -- I ain't trying to
17 make no excuse, it just -- it was an accident
18 though, that's all I can say it's a accident and I -
19 - and I -- and I'm sorry like. I pray for their
20 healing. I pray for y'all's healing. I pray for
21 it. I hope y'all know it was an accident. Maybe --
22 maybe reckless, but not intentional. I didn't try
23 to hurt y'all. And I hate that y'all are hurting.
24 'Cause I know hurt. I really do. And I hate --

25 JUDGE GIBBONS: Thank you, sir.

1 MR. PALMER: I hate to make people feel like I
2 feel, but I'm trying to work past it. And it's
3 hard. It's hard as shit. But at least y'all got
4 each other, and I hope y'all help each other, and
5 love on each other. I pray for you.

6 JUDGE GIBBONS: Thank you, Mr. Palmer. Mr.
7 Frick, anything else?

8 MR. FRICK: No, sir.

9 JUDGE GIBBONS: You know, I'm not gonna talk,
10 'cause I think everything -- not talk too long,
11 'cause I think everything up to this point has been
12 said. I really don't think there's really much left
13 to say. I deal with a lot of bad things. I will
14 tell you this, 'cause this applies to both sides of
15 the aisle here. I go to church right across the
16 road right there, and I've helped out with my youth
17 group for a long time, 'cause I like to think it
18 keeps me young, even though I don't look young.
19 But, this year for whatever reason we have nothing
20 but boys, and they're 10 to 12 years of age, it's
21 just kind of the flow. And one of the topics that
22 came up Wednesday night at our youth group after our
23 little dinner and stuff was talking about how God is
24 all powerful, how God is in control and how he
25 controls everything. And one typically astute young

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1 man, I said what about the hurri -- he said what
2 about the hurricane, 'cause he has some family up in
3 the Asheville area. And I said yeah, you know, God
4 is in charge of that as well. He controlled that.
5 Well, why did he let that happen. I'm like well,
6 you know, because everything with God is perfect and
7 beautiful, and everything happens for a reason. And
8 you can see the hole this was going down, and -- but
9 I'm a true believer in that, especially with you,
10 Mr. Palmer. You made a horrible, horrible judgment
11 and mistake that day that resulted in the loss of
12 this beautiful life. But, out of this horrible
13 tragedy I know, I hope y'all know, that while it
14 does -- it's not fair to us right now, or especially
15 y'all right now, that's part of God's beautiful
16 plan. And there is good that arises out of tragedy.
17 We may not see it now, but we all will hopefully,
18 eventually see it. I'm the father of three boys and
19 I remember when they were involved in youth
20 activities, sports, and traveling here and there and
21 yonder, and all of them being in the back seat. I
22 remember when my wife was in a accident one time
23 with all three of them in there, and just everybody
24 was okay, but that feeling, and that's a feeling
25 that's never gonna go away for you guys. There's no

1 closure. Ma'am, I know you're probably have spoken
2 to therapists, and you know everybody you hear say
3 we just want closure, but there's no closure. This
4 -- you know, there's growth, there's healing, but
5 there's no closure. I pray for y'all. Mr. Palmer,
6 I pray for you. I know it's hard for you to believe
7 that and realized that, but I do. I don't take
8 pride in sending people to prison for what they do.
9 It's something I have to do; that's my duty when I
10 wear this black robe. I have to make these tough
11 decisions as to what the community I serve thinks is
12 best. That's the judgment that's placed upon me,
13 and it's my honor to do it. That's all the talking
14 I'm gonna do. On indictment 23GS12248, having been
15 convicted of the charge of reckless homicide the
16 sentence of the Court is 10 years in the South
17 Carolina Department of Corrections. On indictment
18 23GS12317, having been convicted for the charge of
19 assault and battery of a high and aggravated nature,
20 the sentence of the Court is 20 years in the South
21 Carolina Department of Corrections, both sentences
22 shall run consecutive. Take him into custody. Good
23 luck to you, sir, Mr. Palmer, and he's given credit
24 for all previous time served. All right, that
25 concludes the trial of this case. Court is

JURY TRIAL

1 adjourned.

2 (The proceedings were concluded.)

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STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

THE STATE,)

vs.)

Jason Palmer,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

MEMO ON ABHAN

Indictments
2023-GS-12-248, 249, & 317

In 2010, the General Assembly passed the Omnibus Crime Reduction and Sentencing Reform Act which overhauled the criminal code including abolishing all common law assault and battery offenses and all prior statutory assault and battery offenses. The former common law and statutory offenses were replaced with Attempted Murder and four degrees of assault with each lesser offense being a lesser included of the higher offense. Therefore, ABHAN is a lesser included offense of Attempted Murder, A&B 1st Degree is a lesser included of ABHAN, A&B 2nd degree is a lesser included of A&B 1st degree, A&B 2nd degree is a lesser included of A&B 1st degree and A&B 3rd degree is a lesser included of A&B 2nd degree.

ABHAN is committed when on “unlawfully injures another person” and either great bodily injury results or the act is accomplished by means likely to produce death or great bodily injury. South Carolina Code of Laws §16-3-600(B)(1). The lesser included assault and batteries of first, second and third degree all require the “unlawful injuring” of another and unlawful “offer or attempt to injure another with the present ability to do so.” South Carolina Code of Laws §16-3-600(c)(1), (D)(1), and (E)(1). The Court of Appeals has held the “offers or attempts” to injure

COURT EXHIBIT

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another in A&B 1st degree to be a specific intent crime. State v. McGowan, 430 S.C. 373 at 380. ABHAN, A&B 1st degree, A&B 2nd degree, and A&B 3rd degree all prohibit essentially the same conduct, the unlawful injuring of another. The difference in degrees of assault and battery is the degree of injury to the person.

In State v. Guderyon, Opinion No. 5955 SC Court of Appeals 2022, the Court of Appeals upheld a jury charge stating that to convict one of ABHAN, “the State must prove beyond a reasonable doubt that the defendant intended to unlawfully injure another person.”

The legal theory of transferred intent has been applied to ABHAN in State v. Williams, 430 S.C. 136. In Williams, the defendant fired a gun hitting his intended victim but also hitting a bystander once. The trial judge instructed the jury the defendant could be convicted of ABHAN based on transferred intent. If ABHAN could be conducted recklessly, there would be no need to instruct the jury on transferred intent. Therefore, because transferred intent can be applied to ABHAN it must require intentional conduct and not merely recklessness.

In looking at the legislative intent of the Assault and Battery statute in the Omnibus Crime Reduction and Sentencing Reform Act of 2010, the legislature abolished every common law assault in favor of an entirely new statutory scheme. In so doing there is no indication that the legislature intended to import the common law into the new statute and criminalize less than intentional conduct. This new assault and battery statute required a heightened mens rea. Had the legislature intended to allow the statutory assaults and batteries to be committed with less than intentional conduct, it could have so stated as they did in involuntary manslaughter, hazing, reckless homicide by operation of a boat and reckless homicide with a vehicle. The General Assembly did not choose to do this with the new assault and battery statute.

The South Carolina Supreme court rejected the idea that the old common law standards applied to the new statutory scheme in State v Hernandez, 428 S.C. 257, and State v King, 422 S.C. 47. In Hernandez, the court held the previous common law tradition of ABHAN being a lesser included of Criminal Sexual Conduct did not apply to the new codified ABHAN. In King the court held the statutory crime of Attempted Murder was not a codification of common law ABWIK. These case support the proposition that the Legislature intended to abolish the former common law offenses in favor of a new statutory scheme.

VOID ☐
NOTES

Form S-438 Rev. 08/2017		UNIFORM TRAFFIC TICKET STATE OF SOUTH CAROLINA VERSUS										
FIRST NAME JASON			MIDDLE NAME CONNELL			LAST NAME PALMER						
STREET [REDACTED] BELMONT STAKES LN												
CITY CHARLOTTE			STATE NC			ZIP CODE 282788148						
DL STATE NC	DRIVER'S LICENSE NO. [REDACTED]		NONE ☐		CLASS A	CDL ☒ YES ☐ NO						
RACE B	SEX M	BIRTH DATE [REDACTED] / 1987		HGT. 511	WGT. 150	HAIR BLK	EYES BRO					
VEH. LIC. NO. NONE ☐	STATE NC	MAKE OF VEH CHEV	YEAR 2017	15 PASS. VEH ☐	AUTO ☒	BI-CYCLE ☐	COMB. ☐	COMB. VEH ☐				
VEHICLE OWNER FIRST NAME JASON			MIDDLE NAME CONNELL			LAST NAME PALMER						
OWNER STREET [REDACTED] BELMONT STAKES LN			CITY CHARLOTTE			STATE NC			ZIP CODE 282788148			
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT												
NAME OF TRIAL COURT CHESTER COUNTY MAGISTRATE COURT			12101 STREET 2740 DAWSON DRIVE									
DATE OF TRIAL 08/10/2022		TIME OF TRIAL 14:00		CITY CHESTER, SC		STATE SC			ZIP CODE 29706			
VIOLATION SECTION NO. 44-53-0370		VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO Simple Possession Of Marijuana										
DATE OF VIOLATION 07/10/2022		TIME OF VIOL 2141		SC POINTS		B.A. LEVEL						
VIOLATION LOCATION I 77 MILE 67 I-77 N			COUNTY 12									
LAT N 34 46 47.53		LONG W 81 2 17.18		CITY CHESTER								
NAME AND RANK OF ARRESTING OFFICER DYE, C. C. TPR				SCCJA OFFICER NUMBER 8462-2544								
BAIL DEPOSITED JAIL		DATE OF ARREST 07/10/2022		BOND AMOUNT REQUESTED \$617.00								
DATE BAIL RECD.		BY										
CASE MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐												
BEFORE: NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE:												
TRIAL BY: TRIAL JUDGE ☐ JURY ☐ DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐												
DISPOSITION DATE		DISPOSITION: NOLLE PROSSED ☐ GUILTY ☐ FORFEITED BOND ☐ NOT GUILTY ☐		PLED: NOLLO CONTENDERE ☐ DETERMINED BAC: ☐								
CHARGE CONVICTED OF SAME AS ORIGINAL ☐				SC POINTS								
JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED	COMMITTED TO	Vehicle Searched ☒ NO						
CERTIFIED CORRECT					DATE		Arrest as Result of ☒ NO Collision					
Trial Officer's Copy				TICKET # 20222351084652 								

FILED

2022 JUL 22 PM 12:52

CLERK OF COURT
CHESTER CO S.C.

ARREST WARRANT

2022A1210100344

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

THE STATE

FLTC22CAD117201

against

Jason Connell Palmer

Address: Blemon Stakes Ln
Charlotte, NC 28278-Phone: SSN:
Sex: M Race: B Height: 6 3 Weight: 150
DL State: NC DL #:
DOB: 1987 Agency ORI #: Prosecuting Agency: S C Highway Patrol Troop 4Prosecuting Officer: Cyteco C Dye - S00511Offense: Drugs / Possession of cocaine, 1st offenseOffense Code: 3011Code/Ordinance Sec: 44-53-0370(d)(3)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Jason Connell Palmer
on 11 July 22

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Drawer 580
140 Main Street
Chester, SC 29706

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

Personally appeared before me the affiant Cyteco C Dye Cpl. M. Hughes whobeing duly sworn deposes and says that defendant Jason Connell Palmerdid within this county and state on or about 7/10/2022

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Chester)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Possession of cocaine, 1st offenseI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 07/10/2022 Trp Dye responded to a Fatal collision on Interstate 77 at 67 mile marker. After speaking to involved parties, Trp Dye began looking at involved vehicles and as he approached the 2017 Chevy Express van and opened the rear slide passenger door to conduct vehicle inventory where a sunglass case was located at that time. After opening the case, Trp Dye found marijuana and white rock like substance wrapped in aluminum foil believed to be crack cocaine. These substances were bagged and secured for evidence.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

Affiant's Address Ja Cochran BypassChester, SC 29706-Affiant's Telephone

FILED

2022 JUL 22 PM 12:51

CLERK OF COURT
CHESTER CO S.C.

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/10/2022defendant Jason Connell Palmer

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Chester

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Possession of cocaine, 1st offenseHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before meon 7/11/2022Signature of Issuing Judge (L.S.)

Olivia Darby Williford

Judge Code: 7417Judge's Address Law Enforcement CenterChester, SC 29706-Judge's Telephone (803)581-5136Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

972

ARREST WARRANT

2022A1210100345

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

THE STATE

FLTC22CAD117201

against

Jason Connell Palmer

Address: Blemon Stakes Ln
Charlotte, NC 28278-Phone: _____ SSN: _____
Sex: M Race: B Height: 6 3 Weight: 150DL State: NC DL #: _____DOB: 1/1987 Agency ORI #: _____Prosecuting Agency: S C Highway Patrol Troop 4Prosecuting Officer: Cyteco C Dye - S00511Offense: DUI / Felony driving under the influence, death resultsOffense Code: 0395Code/Ordinance Sec: 56-05-2945(A)(2)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant
onJason Connell Palmer
11 July 22

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Drawer 580
140 Main Street
Chester, SC 29706

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

Personally appeared before me the affiant Cyteco C Dye Cpl. M.E. Hughes who
being duly sworn deposes and says that defendant Jason Connell Palmer
did within this county and state on or about 7/10/2022 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Chester)
in the following particulars:DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, death resultsI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 07/10/22 at 1720 hrs Post C were dispatched to a motor vehicle collision in Chester County at I-77 at mm 67 northbound. Unit 1 (SUV) and Unit 2 (Van) were traveling northbound on northbound on I-77 when Unit 2 driving at a high rate of speed struck Unit 1 in the rear. Unit 1 then ran off the right side of the road and struck several trees. There were four occupants in Unit 1 (father, mother and 2 children). A 7 year old male was pronounced deceased at the scene. The father, mother and other child were transported to Piedmont Hospital by EMS. Unit 2 was occupied only by the driver, Jason Connell Palmer (1987) and he was transported to Chester Regional Medical Center by EMS. Cpl. Warlick made contact with Palmer at the hospital, and he determined that Palmer's faculties to operate a motor vehicle were materially and appreciably impaired due to drugs. Lt Darby obtained a search warrant from Chester County Magistrate and Trp Dye obtained a sample to be tested by SLED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

Affiant's Address Ja Cochran Bypass
Chester, SC 29706-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/10/2022defendant Jason Connell Palmer

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Chester

) as set forth below:

DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, death resultsHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me
on 7/11/2022

Signature of Issuing Judge

Olivia Darby Williford

Judge Code: 7417Judge's Address Law Enforcement Center
Chester, SC 29706-Judge's Telephone (803)581-5136Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

FILED
JUL 22 PM 12:51
CLERK OF COURT
CHESTER CO S.C.

ARREST WARRANT

2022A1210100346

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

THE STATE

FLTC22CAD117201

against

Jason Connell Palmer

Address: Blemon Stakes Ln
Charlotte, NC 28278-Phone: SSN:
Sex: M Race: B Height: 6 3 Weight: 150
DL State: NC DL #:
DOB: 1987 Agency ORI #: Prosecuting Agency: S C Highway Patrol Troop 4Prosecuting Officer: Cyteco C Dye - S00511Offense: DUI / Felony driving under the influence, great
bodily injury resultsOffense Code: 0406Code/Ordinance Sec: 56-05-2945(A)(1)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Jason Connell Palmeron 11 July 22

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Drawer 580
140 Main Street
Chester, SC 29706

ORIGINAL

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

Personally appeared before me the affiant Cyteco C Dyebeing duly sworn deposes and says that defendant Jason Connell Palmerdid within this county and state on or about 7/10/2022State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Chester)

in the following particulars:

DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, great bodily injury resultsI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 07/10/22 at 1720 hrs Post C were dispatched to a motor vehicle collision in Chester County at I-77 at mm 67 northbound. Unit 1 (SUV) and Unit 2 (Van) were traveling northbound on northbound on I-77 when Unit 2 driving at a high rate of speed struck Unit 1 in the rear. Unit 1 then ran off the right side of the road and struck several trees. There were four occupants in Unit 1 (father, mother and 2 children). The father, mother and other child were transported to Piedmont Hospital by EMS. The father was flown to Atrium Charlotte with significant injuries requiring reconstructive surgery. Unit 2 was occupied only by the driver, Jason Connell Palmer (87) and he was transported to Chester Regional Medical Center by EMS. Cpl. Warlick made contact with Palmer at the hospital, and he determined that Palmer's faculties to operate a motor vehicle were materially and appreciably impaired due to drugs. Lt Darby obtained a search warrant from Chester County Magistrate and Trp Dye obtained a sample to be tested by SLED

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chester

Affiant's Address Ja Cochran BypassChester, SC 29706-Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/10/2022defendant Jason Connell Palmer

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Chester) as set forth below:DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, great bodily injury results

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me
on 7/11/2022Signature of Issuing Judge (L.S.)
Olivia Darby WillifordJudge Code: 7417Judge's Address Law Enforcement CenterChester, SC 29706-Judge's Telephone (803)581-5136Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

974

FILED
2022 JUL 22 PM 12:51
CLERK OF COURT
CHESTER CO S.C.

WITNESSES

M. Hughes (TROOP4)

J. McNeal

ARREST WARRANT NUMBER

20222351084852 (DOA 07-10-2022)

TRUE BILL

Scott R. A.
Foreperson of Grand Jury
Date: 10/22/24.

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2024-GS-12-00809

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

OCTOBER 2024 TERM

THE STATE

VS.

JASON CONNELL PALMER

INDICTMENT FOR

POSS MARIJUANA

SC Code: § 44-53-370
CDR Code: 0659
Class: Misdemeanor U

CLERK OF COURT
CHESTER CO S.C.

2024 OCT 22 PM 12:57

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

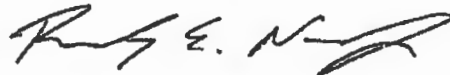
INDICTMENT

At a Court of General Sessions, convened on October 22, 2024 the Grand Jurors of Chester County present upon their oath:

POSSESSION OF MARIJUANA

The defendant, Jason Connell Palmer, did on or about July 10, 2022, in Chester County, South Carolina, knowingly or intentionally possess marijuana, a controlled substance. All in violation of 44-53-370, *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Randy E. Newman, Jr., SOLICITOR

WITNESSES

SCHP Hughes

DOCKET NO. 2023-GS-12-249

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2023

ARREST WARRANT NUMBER/DOA.

2022A1210100344 (DOA-7/11/2022)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 1-31-23

VERDICT

THE STATE
vs.

JASON C. PALMER

Indictment for

Possession of Cocaine Base

SC Code: § 44-53-375(A)

CDR Code: 3009

Class: Misdemeanor, A

Foreperson of Petit Jury

Date:

FILED

2023 FEB -1 AM 11:50

CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

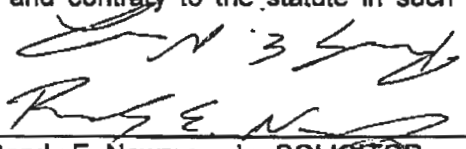
INDICTMENT

At a Court of General Sessions, convened on JANUARY 31, 2023 , the Grand Jurors of
Chester County present upon their oath:

POSSESSION OF COCAINE BASE

That JASON C. PALMER did in Chester County on or about July 10, 2022 ,
knowingly and intentionally possess cocaine base, a controlled substance, in violation
of § 44-53-375(A), *Code of Laws of South Carolina, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.



Randy E. Newman, Jr., SOLICITOR

✓
WITNESSES

979 Hughes SChP

ARREST WARRANT NUMBER/DOA

2023-GS-12-248 DI (DOA 7/11/2022)

ACTION OF GRAND JURY

TRUE BILL

Ryan McWhorter
Foreperson of Grand Jury

Date: 1-31-23

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2023-GS-12- 248

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JANUARY TERM 2023

THE STATE

vs.

JASON CONNELL PALMER

Indictment for

Reckless Homicide

SC Code: § 56-5-2910

CDR Code: 3097

Class: Felony, E

FILED

2023 FEB -1 AM 11:50

CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)

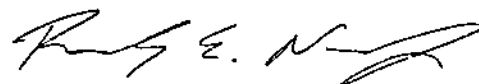
INDICTMENT

At a Court of General Sessions, convened on January 31, 2023, the Grand Jurors of Chester County present upon their oath:

Reckless Homicide

That JASON CONNELL PALMER did in Chester County on or about JULY 10, 2022, operate a vehicle in reckless disregard of the safety of others by driving northbound on I-77 in his 2017 Chevy Express van at speeds of 98 miles per hour (the posted speed limit is 70 MPH) while weaving through traffic, and traveling too close to victims' Ford Explorer SUV, to wit: Palmer did strike the rear of the victims' Explorer causing the victims' vehicle to run off of the right side of the roadway and strike several trees. SCHP and emergency responders arrived on scene and John Maxwell Shanks (DOB [REDACTED] 2015) was pronounced deceased, as a proximate result of the collision caused by the reckless actions and/or driving of Palmer, said death being within three years from the date of the wreck; in violation of § 56-5-2910, *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Randy E. Newman, Jr., SOLICITOR

WITNESSES

SCHP Plyler

DOCKET NO. 2023-GS-12-317

The State of South Carolina
County of Chester

COURT OF GENERAL SESSIONS

MAY TERM 2021

ARREST WARRANT NUMBER/DOA

2023GS1200²¹⁷ (Direct Indictment)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 02/21/23

VERDICT

Foreperson of Petit Jury

Date:

ASSAULT AND BATTERY OF HIGH
AGGRAVATED NATURE

SC Code: §16-3-600(B)(1), 16-3-600(B)(2)

CDR Code: 3411

Class: Felony C

FILED

2023 FEB 22 PM 12:15

CLERK OF COURT
CHESTER CO S.C.

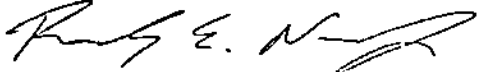
STATE OF SOUTH CAROLINA	)		INDICTMENT
	)		
COUNTY OF CHESTER	)		

At a Court of General Sessions, convened on February 21, 2023, the Grand Jurors of Chester County present upon their oath:

ASSAULT AND BATTERY OF HIGH AND AGGRAVATED NATURE

That Jason Palmer did in Chester County on or about July 10, 2022, unlawfully injure Thomas Shanks, and great bodily injury resulted to the victim to wit: Palmer was driving erratically and recklessly while traveling north on I-77, weaving in and out of traffic when his Econo Van struck the Shanks' vehicle in front of him – and it was determined Palmer was going at least 25 MPH over the speed limit at impact and this impact forced the Shanks' vehicle off the highway where it struck several trees and Thomas Shanks did suffer multiple incapacitating injuries requiring extended hospital treatment resulting in permanent bodily injuries, as a result of this collision, all in violation of Section 16-3-600(B)(1) of the *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 Randy E. Newman, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHESTER

STATE

VS.

INDICTMENT/CASE#: 2023GS1200248JASON CONNELL PALMERAKA: Jason PalmerRace: B Sex: M Age: 37DOB: [REDACTED] SS#Address: [REDACTED] Blumont Stakes LnCity, State, Zip: Charlotte, NC 28278DL#* [REDACTED] SID#A/W#: 2023GS1200248Date of Offense: 07/10/2022S.C. Code §: 56-05-2910CDR Code #: 3097

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Reckless Homicide (NMT 10 years &/or \$1,000-5,000)In violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Candice Lively, Solicitor

12123

SC Bar #

Defendant

Jason Connell Palmer, Attorney for
Defense

69739

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 10 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of \$____; provided that upon the service of ____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 236512 317☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$
§56-5-2995 (DUI Assessment)		\$12	\$
§56-1-286 (DUI Breath Test)		\$25	\$
§14-1-212 (Law Enforce. Funding)		\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)		\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$
§50-21-114 (BUI Breath Test Fee)		\$50	\$
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$
3% to County (if paid in installments)		TBD	\$ 4.95
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$ 48.00
		TOTAL	\$ 169.95

Clerk of Court/Deputy Clerk: Sue Carpenter

Court Reporter: _____

Presiding Judge: _____

Judge Code: _____

Sentence Date: 11/1/24

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHESTER

STATE

VS.

INDICTMENT/CASE#: 2023GS1200317JASON CONNELL PALMERAKA: Jason PalmerRace: B Sex: M Age: 37DOB: [REDACTED] SS#Address: [REDACTED] Blermont Stakes LnCity, State, Zip: Charlotte, NC 28278DL#* [REDACTED] SID#A/W#: 2023GS1200317Date of Offense: 07/10/2022S.C. Code §: 16-03-0600(B)(1)CDR Code #: 3411

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Assault & Battery Of A High And Aggravated Nature (NMT 20 years)In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:



Solicitor12/23
SC Bar #

Defendant

Jason Connell Palmer, Attorney for
Defense

PROSE

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 20 days/months/years/Time Served☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of \$____; provided that upon the service of ____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 23GS 12 248☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.

days/months

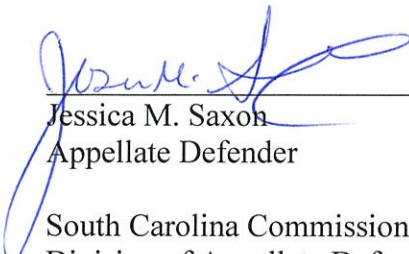
☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED**Feb 17 2026****SC Court of Appeals**

Jessica M. Saxoh
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of February, 2026.