

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Mar 02 2026

S.C. SUPREME COURT

Certiorari to Laurens County

Honorable J. Derham Cole, Circuit Court Judge

PAMELA MICHELLE TACKETT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001274

APPENDIX

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

ALAN WILSON
Attorney General

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

ZACHARY WILLIAM JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211
(803) 734-1680

ATTORNEY FOR PETITIONER

DAVID MATTHEW STUMBO
Solicitor, Eighth Judicial Circuit
Eighth Circuit Solicitor's Office
PO Box 516
Greenwood, SC 29648
(864) 942-8802

Pages 501-850

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 15-18, 2019	1
INDICTMENTS	783
SENTENCE SHEETS	789
APPLICATION FOR POST-CONVICTION RELIEF DATED APRIL 18, 2022	792
STATE’S RETURN DATED AUGUST 5, 2024	801
AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED AUGUST 13, 2024	809
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 19, 2024	811
ORDER OF DISMISSAL DATED JUNE 10, 2025	842

SW - D. GARVIN - CROSS

1 -- that's a different warning. Well, it may impair
2 your ability to drive. It, one of the things -- and
3 I thought that maybe it's in evidence, maybe it's
4 not. Don't -- or use caution driving until you know
5 how this medicine affects you. Is that a -- oh, by
6 the way, I should have ---

7 MR. STODDARD: Judge, I might, I forget, I
8 would like to introduce Exhibit 1 into evidence. I
9 don't believe I've done that.

10 THE COURT: Any objection?

11 MR. MOWRY: Well, I don't, number one I
12 don't think it's been authenticated, Your Honor.
13 And number two, it's after the accident so I don't
14 know what relevance that would have.

15 THE COURT: Well, it's not been
16 authenticated so at this point in time I'll not
17 allow it to come in. You need to get it
18 authenticated as to time and person and that will
19 have to be done in another fashion. This witness,
20 this witness has some experience with that.

21 MR. STODDARD: Well, I know. I have
22 another way it might be relevant that she might ---

23 THE COURT: Okay. All right. At this
24 point in time I'm gonna deny the motion for it to be
25 admitted.

SW - D. GARVIN - CROSS

1 BY MR. STODDARD:

2 Q This exhibit 1, it have a warning on it?

3 A Yes, sir, it does.

4 Q Does that appear to be a common warning
5 for that drug?

6 A Yes.

7 Q And it's a little, it's certainly
8 different in size and color than this exhibit?

9 A Yes, that's just one example.

10 Q Right.

11 A Many other labels ---

12 Q And this is another example?

13 A Correct.

14 MR. STODDARD: I would offer Exhibit 1
15 into evidence at this time.

16 THE COURT: Have you had a chance to look
17 at it, counsel?

18 MR. MOWRY: I glanced at it, Your Honor;
19 but again, you know, it's one that was dispensed
20 after this accident this year so I would question
21 the relevance.

22 MR. STODDARD: It ---

23 THE COURT: All right, ladies and
24 gentlemen of jury, I'm gonna ask you to step back to
25 the jury room. I need to discuss a matter with the

SW - D. GARVIN - CROSS

1 lawyers. Don't discuss the case until I ask you to
2 do so. You may retire to the jury room. Thank you.

3 (WHEREUPON, the jury was removed from the
4 courtroom at approximately 12:42 p.m.)

5 THE COURT: All right. Mr. Stoddard. I've
6 not seen that pill bottle, but I suspect it's a
7 bottle for your client.

8 THE CLERK: It is.

9 THE COURT: What's the date on it?

10 MR. STODDARD: She said it was from this
11 year.

12 THE COURT: So it's not from the time of
13 the accident?

14 MR. STODDARD: It's not. What I should
15 ---

16 THE COURT: So it would not be -- you're
17 not offering it as an example of the pill bottle
18 that she was using at the time of the accident. You
19 don't have that one.

20 MR. STODDARD: I don't.

21 MR. MOWRY: Your Honor, also, according to
22 prescription records the dosage was 2-milligrams and
23 one of the questions I'm going to ask Doctor Garvin
24 on redirect, is that the highest dosage that was
25 produced and I'm confident she will say yes. And

SW - D. GARVIN - CROSS

1 the dosage on that is 1-milligram.

2 MR. STODDARD: Well, ---

3 THE COURT: Can you pass it up to me,
4 Mr. Stoddard. Let me just take a look at it and let
5 me confirm what I suspect it is.

6 MR. MOWRY: Let me hand it to you.

7 THE COURT: Let me take a look at it for a
8 second.

9 MR. MOWRY: Yes, sir.

10 THE COURT: Thank you very much. I
11 appreciate it.

12 All right now, Mr. Stoddard, I think
13 you're offering this for the purpose of getting in
14 the important information listed on the side of the
15 label which has to do with the warnings ---

16 MR. STODDARD: Yes, sir.

17 THE COURT: ---that are on here?

18 MR. STODDARD: Yes, sir.

19 THE COURT: There's a lot of other
20 information on this bottle that may or may not be
21 admissible into evidence at this point.

22 MR. STODDARD: I get that, and I'm gonna
23 withdraw it at this time 'cause if it's authen-- of
24 course, my client may not testify. She may be able
25 to authenticate it and then some of that other

SW - D. GARVIN - CROSS

1 information may be relevant. I understand they're
2 gonna say it's not because of the time factor, but I
3 think I have an argument as to why that may be
4 relevant.

5 THE COURT: I don't have any problem with
6 you asking this witness if these warnings are
7 standard warnings for this drug and would have
8 appeared possibly on a bottle. But for this bottle
9 to come in itself ---

10 MR. STODDARD: Right.

11 THE COURT: ---I'm gonna grant the motion
12 -- I mean, I'm gonna deny the motion that it be
13 admitted at this point in time.

14 MR. STODDARD: Yes, sir, I get it. I
15 understand that.

16 THE COURT: You understand?

17 MR. STODDARD: I understand that. And I
18 may offer it on that reason alone later, but if I
19 do, I think there have got to be redactions.

20 THE COURT: There's probably gonna have to
21 be some things taken off of there, I believe.

22 MR. STODDARD: I get that.

23 THE COURT: Okay.

24 MR. STODDARD: And we may have additional
25 information later in the trial.

SW - D. GARVIN - CROSS

1 THE COURT: We'll see, but at this point
2 in time I'm denying the motion. Bring the jury
3 back.

4 (WHEREUPON, the jury was returned to the
5 courtroom at approximately 11:45 p.m.)

6 THE COURT: About how much longer do you
7 think you're gonna be with this witness?

8 MR. STODDARD: It's hard to say. I think
9 I may be close. Maybe 15 minutes, maybe less. I'm
10 running out of stuff to ask.

11 THE COURT: Well, I'm probably gonna break
12 around 1:00. And I know they may have some
13 questions as well.

14 MR. STODDARD: Right.

15 MR. MOWRY: Not many, Your Honor.

16 THE COURT: Thank you.

17 (WHEREUPON, the jury was returned to the
18 courtroom at approximately 11:45 p.m.,
19 and the following proceedings commenced
20 in open court.)

21 THE COURT: Thank you very much. I have
22 denied the motion to have the item admitted into
23 evidence.

24 You may proceed.

25 MR. STODDARD: Yes, sir.

SW - D. GARVIN - REDIRECT

1 BY MR. STODDARD:

2 Q So, if -- with this concentration of drugs
3 in the system some people you wouldn't say that
4 nobody can drive with this. And I wouldn't ask you,
5 you can't -- well, I'll ask you, can you state a
6 percentage of the number of people that could drive
7 safely?

8 A No, sir.

9 Q I didn't think you could, but I thought
10 I'd ask. So for those that can drive safely, is
11 there any way that you would suggest that they
12 determine whether I should get in a car or not when
13 they're the last person, as you say, that you would
14 ask?

15 A That's based on for the most part on the
16 length of time an individual has been on the
17 medication, how they've been educated about the
18 medication, the route of administration, the dosing,
19 whether they are adhering to or complying with the
20 prescriptions that have been written for them,
21 whether or not they're using any other compounds, in
22 addition to whether elicited or illicit that their
23 health care provider may not know about.

24 Q And when you mention the length of time
25 they've been taking the medicine, I assume the

SW - D. GARVIN - REDIRECT

1 longer they've been taking it, the better they're
2 able to determine whether they're able to drive?

3 A That can -- yes, that can be true, yes.

4 Q Well, when you say the length of time --
5 well, you know, you mention all these factors. How
6 does the length of time you've been taking it play
7 into that decision?

8 A For some drugs. Medication, that
9 prescribed medication that's properly prescribed,
10 unless other drugs are added or there are other
11 changes in their health, we would anticipate that
12 some, but not all, of the adverse effects would
13 diminish or perhaps go away.

14 Q And would that person also have a better
15 understanding of how it affects that person?

16 A That would be the hope, yes.

17 MR. STODDARD: Your Honor, I don't think I
18 have any further questions.

19 THE COURT: You may redirect the witness.

20 **REDIRECT EXAMINATION**

21 BY MR. MOWRY:

22 Q Just a few questions, ma'am. Mr. Stoddard
23 asked you several questions about the studies on
24 alcohol as opposed to prescription drugs.
25 Prescription drugs before they become available to

SW - D. GARVIN - REDIRECT

1 the public are studied at length by the Food and
2 Drug Administration; are they not?

3 A They're not studied by the Food and Drug
4 Administration, but the Food and Drug Administration
5 requires that they be studied in a variety of ways,
6 prescribed drugs, beg your pardon.

7 Q Can you go into that just a little bit?
8 I'm not asking for a great deal of detail, but what
9 kind of studies are we talking about?

10 A Well, if the drug is going to be
11 prescribed just loosely there are studies that have
12 to occur that deal with the effects of the drug,
13 both beneficial and adverse in healthy people, in
14 people who have the illness for the condition for
15 which the drug will ultimately be prescribed; and
16 there are also studies, for example, that address
17 the given routes that administration, what the
18 concentrations of that drug are in various body
19 fluids and tissues, as well as how the drug is
20 broken down in the body, how long it takes to be
21 broken down, how it's eliminated from the body and
22 how long it takes to be eliminated, again, by
23 example.

24 Q You had access to the defendant's
25 prescription records from the one CVS store in

SW - D. GARVIN - REDIRECT

1 Simpsonville; is that right?

2 A Yes, sir.

3 Q What was her dosage level on Clonazepam,
4 how many milligrams?

5 A Over a period of several months
6 Ms. Tackett was receiving 2-milligram tablets as
7 prescribed.

8 Q Okay. And as it relates to the level of
9 dosage or the level of milligrams for Clonazepam,
10 how does 2-milligrams stack up? You understand what
11 I'm asking?

12 A I'm not sure, no, sir.

13 Q Is there a higher available dosage than 2,
14 or pill, I guess, than 2-milligrams?

15 A No, sir.

16 Q That's the highest?

17 A Yes, sir.

18 Q Mr. Stoddard asked you about the
19 defendant's slurred speech at the hospital, and he
20 brought up the fact that she had a cervical collar
21 at the hospital. When you observed the roadside
22 body camera, video, did you see a cervical collar
23 around her neck?

24 A No, sir.

25 Q He also asked you about the time passage

SW - D. GARVIN - RECROSS

1 test as part of David Terry's protocol, the 42
2 seconds when she was judging 30 seconds time
3 passage. You said not exclusive to all others. You
4 do not use that as the only consideration in
5 determining whether someone is on drugs or under the
6 influence; is that right?

7 A It's potential indicator, yes, sir.

8 Q What do you then consider? Do you
9 consider the total of the circumstances?

10 A Yes, sir.

11 Q Okay. And did you do that in this case?

12 A Yes, sir.

13 Q Mr. Stoddard asked you about the
14 defendant's sleep apnea. If -- you read her
15 testimony from a prior court hearing; is that right?

16 A Yes, sir.

17 Q And did you see in there that she said she
18 slept ten hours the night before and felt great?

19 A Yes, sir.

20 Q Does that sound like any effect from sleep
21 apnea in your opinion?

22 A No, sir.

23 Q Okay. Doctor, once again, what is your
24 opinion based on all of your observations, all of
25 your studies, based on your education and

SW - D. GARVIN - RECROSS

1 experience, what is your opinion as to the
2 defendant's condition on the morning hours of
3 March 28th, 2018?

4 A That based on my education, training,
5 experience, and everything that I stated for the
6 record I reviewed, I feel that Ms. Tackett was
7 impaired and should not have been operating a motor
8 vehicle.

9 Q Thank you, ma'am. That's all I have.

10 THE COURT: Recross.

11 **RECROSS-EXAMINATION**

12 BY MR. STODDARD:

13 Q Again, you're not a medical doctor, right?

14 A No, sir.

15 Q But you understand what sleep apnea is;
16 don't you?

17 A Oh, yes, sir.

18 Q And if somebody with sleep apnea,
19 especially without a Bi-pap or C-pap machine, sleeps
20 or is in bed for ten hours, by definition they
21 didn't get ten hours of sleep; wouldn't you agree
22 with that?

23 A No, I wouldn't agree with that.

24 Q I mean, if they got ten hours of sleep in
25 a ten hour period and they've got sleep apnea --

1 well, if they don't have sleep apnea, do they?

2 A I couldn't say. I'm not a diagnostician.

3 Q Okay. I've got no further questions.

4 THE COURT: All right, ma'am, you may have
5 step down.

6 Wish to excuse the witness?

7 MR. MOWRY: Yes, sir.

8 THE COURT: Any objections?

9 MR. STODDARD: No objections.

10 THE COURT: Ma'am, you're free to go if
11 you'd like.

12 All right, ladies and gentlemen of the
13 jury, I'm going to go ahead and break for lunch at
14 this time. You know my instructions as you leave
15 the courthouse. You're not to listen to, watch, or
16 read media reports, don't gather any information on
17 your own. Please don't discuss the case with
18 anyone. Don't allow anyone to discuss it with you.
19 If anybody tries to do that, report it upon your
20 return. We'll start back at 2:15 and hope you have
21 a good lunch. We'll see you at that time. Thank
22 you very much.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 12:56 p.m.)

25 THE COURT: All right, you had indicated

1 perhaps that might be the State's last witness?

2 MR. MOWRY: Yes. I think we'll rest after
3 lunch.

4 THE COURT: Okay.

5 MR. MOWRY: Give us just a little time to
6 make sure we've got our bases covered.

7 THE COURT: Until you officially rest I'm
8 gonna hold off asking for any kind of motion or
9 anything.

10 MR. MOWRY: Yes, sir.

11 THE COURT: Thank you very much. See
12 everybody at 2:15. Thank you very much.

13 (WHEREUPON, a lunch break was taken.)

14 THE COURT: All right, Mr. Mowry, is the
15 State going to present any additional witnesses?

16 MR. MOWRY: No, sir, we will rest on the
17 record in front of the jury. We will not present
18 anything further.

19 THE COURT: All right, well, I'll take it
20 that you've rested at this time, and we'll announce
21 it formally in front of the jury when they come in.
22 Any motions the Defense wish to make at this time?

23 MR. STODDARD: Yes, sir, I would move for
24 directed verdict because there is insufficient
25 evidence to submit this case to the jury even on a

1 scintilla of evidence standard. They haven't met
2 their burden of proof, and you've heard the evidence
3 so.

4 THE COURT: I have.

5 MR. STODDARD: That's my motion.

6 THE COURT: State, your position?

7 MR. MOWRY: Well, obviously in a light
8 best suited for the State, Your Honor, I will do the
9 minimalist view we have presented sufficient
10 evidence on each and every element of the crime to
11 certainly get past this stage and present it to the
12 jury for a verdict.

13 THE COURT: Well, as you know I'm not to
14 weigh the evidence at this time to determine whether
15 or not evidence does exist sufficient to justify the
16 case to go to the jury. I will deny the motion for
17 directed verdict. I'll allow the case to move
18 forward.

19 I do want to discuss with your client her
20 right to testify or not testify in the case so at
21 this time I'll ask the clerk to please place the
22 defendant under oath.

23 THE CLERK: Raise your right hand, please.
24 WHEREUPON,

25 **PAMELA TACKETT,**

1 having been duly sworn by the Clerk, testified
2 as follows:

3 THE COURT: All right, Ma'am, you can be
4 seated. You don't have to remain standing. Now,
5 Ms. Tackett, we have reached the stage of these
6 proceedings where you have the right to present your
7 defense. Now as a part of that defense you have the
8 right to testify in this case, but you also have the
9 right not to testify. At this time I'm going over
10 with you certain of your constitutional rights, and
11 in particular, the rights that are given to you
12 under the Fifth Amendment to the United States
13 Constitution. It reads in part that no person in a
14 criminal case can be compelled to be a witness
15 against themselves. Now what that means is that
16 while you do have the right to testify, you can't be
17 forced or made to testify so you have the right to
18 remain silent if you chose to do that.

19 Now I will tell you that if you do decide
20 to testify, your testimony would be governed by the
21 same rules that govern any other witness's
22 testimony. You will be examined by your lawyer,
23 cross-examined by the State's lawyer.

24 Let me ask the State, do you have any
25 convictions on her record that you would use to

1 attack her credibility?

2 MR. MOWRY: None for impeachment purposes,
3 Your Honor.

4 THE COURT: Okay. So I won't go over that
5 at this time. If there are convictions on your
6 record they would only be used in rebuttable should
7 you somehow deny any criminal, prior criminal
8 wrongdoing or something of that nature. But at any
9 rate, I will tell you that they would be allowed to
10 cross-examine you as well. Now I will advise you
11 that if you decide not to testify in this case I
12 will instruct the jury that the fact that you did
13 not testify cannot be considered by them at all in
14 reaching a verdict in the case. In fact, my
15 instructions to them at the close of the trial would
16 be that they can't even discuss the fact that you
17 did not testify in their deliberations in their
18 effort to reach a verdict in this case. So there
19 should be absolutely no prejudice to you or your
20 case should you decide not to testify.

21 The decision as to whether or not to
22 testify in a case is left entirely up to you. You
23 have the right to consult with your attorney,
24 family, friends, anybody else you'd like to talk to
25 about this decision; but the ultimate decision,

1 final decision, is yours and yours alone. That
2 decision must be made knowingly and intelligently
3 and freely and voluntarily. So if you would like to
4 discuss the decision with your attorney or anyone
5 else before telling me how you wish to proceed, you
6 certainly have the right to do so. Now do you
7 understand what I have explained to you so far?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions of
10 me concerning this matter?

11 THE DEFENDANT: No, sir.

12 THE COURT: Now have you had an
13 opportunity to consult with your attorney about the
14 decision whether to testify or not?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you need to talk with
17 him or anyone else any further before I ask you
18 about this decision?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you intend to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay, thank you very much.

23 Anything further from the State before we
24 proceed?

25 MR. MOWRY: No, sir, Your Honor.

DW - J. TACKETT - DIRECT

1 THE COURT: Anything further from the
2 Defense before we proceed?

3 MR. STODDARD: No, sir, Your Honor.

4 THE COURT: All right, let's bring the
5 jury in.

6 (WHEREUPON, the jury was returned to the
7 courtroom at approximately 2:21 p.m., and
8 the following proceedings commenced in
9 open court.)

10 THE COURT: The jury has returned to the
11 courtroom. I hope everyone had a good lunch break.
12 If any of you had any problems or difficulty in
13 complying with my instruction during your absence,
14 please stand.

15 (There was no response.)

16 THE COURT: It appears that everybody has
17 been able to comply with my instructions thus far.
18 When we took our break early the State had just
19 called its, called a witness and at this time the
20 State may call its next witness.

21 MR. MOWRY: Your Honor, we have no further
22 witnesses. The State would rest at this time.

23 THE COURT: All right. Now, ladies and
24 gentlemen, that completes the presentation of
25 evidence in this case by the State. I told you that

DW - J. TACKETT - DIRECT

1 when we reach this stage of the proceedings the
2 Defense would have the right to present any evidence
3 they choose to present.

4 Mr. Stoddard, do you wish to call
5 witnesses?

6 MR. STODDARD: Yes, sir, I will call
7 Joseph Tackett.

8 THE COURT: All right. Come forward,
9 please, and be sworn.

10 WHEREUPON,

11 **JOE TACKETT,**
12 having been duly sworn by the Clerk, testified
13 as follows:

14 THE COURT: Sir, once you're seated I'll
15 ask that you state your name and then spell your
16 last name for us.

17 THE WITNESS: Joe Tackett, T-A-C-K-E-T-T.

18 THE COURT: Thank you.

19 Mr. Stoddard, your witness.

20 **DIRECT EXAMINATION**

21 BY MR. STODDARD:

22 Q You're Pamela Tackett's husband?

23 A Yes, sir.

24 Q How long have y'all been married?

25 A Going on ten years, I think.

DW - J. TACKETT - CROSS

1 Q That was an unfair question by the way. I
2 don't know why I even asked it. I didn't go over it
3 with you before. Did you give the Navigator that
4 we've heard talked about in this trial, did you
5 purchase that vehicle?

6 A The ---

7 Q Not a Navigator, the Chevrolet?

8 A Equinox.

9 Q Equinox, I'm sorry.

10 A Yes, I purchased, yeah.

11 Q Now did you research features that you
12 wanted on the vehicle before you purchased it?

13 A Yes, sir.

14 Q Were safety features something your were
15 interested in?

16 A Yes.

17 Q Was there a feature about the braking
18 system that attracted you to that car?

19 A Yes, what is called auto braking.

20 Q What's your understanding of how that
21 works?

22 A If it hits a big enough bump it will
23 automatically start braking.

24 Q Did it also do something if it, if
25 whatever, the computer on board since it wasn't

DW - J. TACKETT - CROSS

1 tracking in the direction of the steering, like
2 sliding, I guess?

3 A Yes, it had something called shift
4 braking. The wheel that was starting to slide it
5 should shift the braking to that one, then shift the
6 drive, the tire to the other side.

7 Q The vehicle that was in this incident had
8 those systems on it?

9 A Yes, sir.

10 MR. STODDARD: No further questions.

11 THE COURT: State may cross-examine.

12 **CROSS-EXAMINATION**

13 BY MR. MCMAHON:

14 Q Do you -- good afternoon, Mr. Tackett, how
15 are you?

16 A Hello.

17 Q Do you have a Navigator?

18 A No, it was a Equinox.

19 Q I didn't ask you what that was. Do you
20 have a Navigator?

21 A No, I do not.

22 Q Did you have one back then?

23 A No, I did not.

24 Q So the vehicle you had was an Equinox; is
25 that correct?

DW - J. TACKETT - CROSS

1 A Yes, sir.

2 Q Did you have any other vehicles?

3 A Dodge Ram pickup, a little Volkswagen bug
4 type thing, like a station wagon.

5 Q So you had that Dodge Ram truck and the
6 Chevrolet Equinox that your wife was driving?

7 A Yes, sir.

8 Q And then this older Volkswagen?

9 A Correct.

10 Q What year is that Ram truck?

11 A It was a 2006.

12 Q 2006?

13 A Yes, sir.

14 Q And the Equinox was ---

15 A 2012.

16 Q 2012?

17 A Correct.

18 Q Okay. How long had y'all owned that
19 vehicle?

20 A Probably about two, three years.

21 Q So if this happened in 2018, which it did,
22 was that '15 or '16 you purchased it?

23 A Sounds about right, yes.

24 Q And you were very interested in certain
25 features on that vehicle; is that right?

DW - J. TACKETT - CROSS

1 A Yes, sir.

2 Q And specific safety features?

3 A Yes.

4 Q And what safety features do you have on
5 your Dodge Ram pickup truck?

6 A Not as many safety features as the
7 Equinox.

8 Q When did you decide to buy your Dodge Ram
9 pickup truck?

10 A My grandfather passed away and gave it to
11 me.

12 Q What year was that? What year did you
13 acquire that vehicle?

14 A Probably about a year before, maybe two
15 years before.

16 Q Year before the Chevrolet?

17 A Correct.

18 Q Okay. And it doesn't have any safety
19 features?

20 A No, it does not.

21 Q And of course, it was inherited, I take
22 it. Is that a fair statement?

23 A Correct.

24 Q You weren't interested to the extent that
25 you wanted to put any safety features on it?

DW - J. TACKETT - CROSS

1 A I mainly wanted because it was basic. I
2 didn't have all the computer stuff in the vehicle
3 because I don't want to spend a lot of money and I k
4 now when the computer goes out you're looking at
5 probably 5 and 10,000 dollars.

6 Q I like the way you think. I like that.
7 Now was the Equinox purchased new?

8 A No, it was purchased right down the road.

9 Q From a used vehicle?

10 A Correct.

11 Q From a car lot?

12 A Correct.

13 Q Had you looked at other vehicles in that
14 time frame before the Equinox was purchased?

15 A Correct.

16 Q How many vehicles had you looked at before
17 you purchased it?

18 A I can't tell you how many. We have went
19 from lot to lot, and I did research on every single
20 one of them.

21 Q Okay. And do you have any of that
22 research?

23 A Do I have any of the research?

24 Q Around the house somewhere, pack rat like
25 me too?

DW - J. TACKETT - CROSS

1 A No, I wish I did.

2 Q I do too. Now you talked about two
3 features. I think one of them you talked about was
4 something like a braking system; is that correct?

5 A Correct.

6 Q And is this a GM product?

7 A No, it was a Chevy.

8 Q Chevy is a GM; isn't it?

9 A It's technically not. It's a branch off
10 of Chevy or a Chevy branch off of GM.

11 Q Chevy is a branch of GM?

12 A Correct.

13 Q Okay. And what year was this vehicle?

14 A 2012.

15 Q And what kind of system you said?

16 A It was something like that intelligent
17 braking safety or something like that, what it was
18 called; but basically how I understood it is it
19 would automatically brake.

20 Q Would it be like a automatic braking
21 system?

22 A Correct, sort of like that.

23 Q And it's a GM product?

24 A Chevrolet.

25 Q Yes, sir. And that's a ---

DW - J. TACKETT - CROSS

1 A That's a branch off of GM.

2 Q Brach of GM, correct?

3 A Correct.

4 Q Did you know that GM first offered
5 automatic braking in 2013?

6 A No, I did not know that.

7 Q What year is your vehicle?

8 A 2012.

9 Q Okay. And it wasn't even out at that time
10 because they only offered on the Cadillac, the XTS.
11 Do you realize that?

12 MR. STODDARD: I'm gonna object. He's
13 putting facts in evidence.

14 THE COURT: Well, he is on
15 cross-examination so ---

16 MR. STODDARD: Okay, okay.

17 THE COURT: ---that allows him to lead the
18 witness so I'm going ask him if he knows that
19 information or not so I'll allow the question.

20 BY MR. MCMAHON:

21 Q Did you realize that?

22 A What's that?

23 Q Did you realize?

24 A That GM came out with that in 2013?

25 Q Yes, sir, just on Cadillacs?

DW - J. TACKETT - CROSS

1 A No, I did not know that.

2 Q Now there was another feature you
3 mentioned, something about tracking?

4 A Yes.

5 Q What, tell me about that system.

6 A It would -- if you started spinning it
7 would automatically switch the braking to one of the
8 other so you won't slide.

9 Q So that would be an event in which the
10 vehicle was spinning around?

11 A No, it was to make sure that you wouldn't
12 slide. Like. If you started loosing traction, then
13 it would automatically brake.

14 Q All right. And generally you're an
15 experienced driver?

16 A Yes, sir.

17 Q And generally, you don't start sliding on
18 a highway unless it has some substance on it, water?

19 A Could be water, it could be gravel, it
20 could be loose dirt.

21 Q Dirt, anything like that, some object
22 besides the roadway itself.

23 A Correct.

24 Q By the way, did y'all have the vehicle
25 checked afterwards?

DW - J. TACKETT - REDIRECT

1 A Every 3000 miles it went to Chevy
2 dealership right up here in Laurens.

3 Q Did you have it checked after the incident
4 ---

5 A No, it was totaled.

6 Q ---to see if the ABS on, was working
7 right, or the tracking on it was working
8 appropriately?

9 A No, it was totaled.

10 Q You never had it checked?

11 A (No verbal response.)

12 MR. MCMAHON: One moment please, Your
13 Honor.

14 THE COURT: Yes, sir.

15 MR. MCMAHON: Your Honor, I would like to
16 offer a document in support -- I'd like to offer a
17 document concerning the GM automobile and the
18 Chevrolet.

19 THE COURT: Have you shown that to the
20 Defense?

21 MR. STODDARD: I object that it hasn't
22 been authenticated.

23 THE COURT: I sustain the objection at
24 this time.

25 MR. MCMAHON: May I mark it?

1 THE COURT: It can be marked for
2 identification purposes.

3 MR. MCMAHON: For identification purposes
4 only, yes, sir. Thank you. Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 (WHEREUPON, State Exhibit No. 56
7 marked for identification only.)

8 THE COURT: Any other questions,
9 Mr. McMahon?

10 MR. MCMAHON: Nothing further, Your Honor.
11 Thank you.

12 THE COURT: Redirect?

13 **REDIRECT EXAMINATION**

14 BY MR. STODDARD:

15 Q He's been using the word automatic braking
16 system. Do you know what the braking system used
17 we're talking about is called?

18 A It's called I believe intelligent braking
19 assist.

20 Q Somebody, somebody gave me this 2014
21 Equinox book and I'm not gonna put this in evidence
22 but, tell me if this would refresh your memory.

23 MR. MCMAHON: Your Honor, I would object.

24 THE COURT: All right. Ladies and
25 gentlemen of the jury, I'm gonna ask you to step

1 back to the jury room while I take up a matter with
2 the attorneys. Don't discuss the case while you're
3 outside the courtroom. Thank you very much.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 2:36 p.m.)

6 MR. MCMAHON: Can I have a moment to look
7 at that?

8 THE COURT: Oh, sure. All right,
9 Mr. Stoddard, that is an owner's manual, I guess, is
10 that what it is?

11 MR. STODDARD: It is. I was gonna ask him
12 if it refreshed his memory the name of it.

13 THE COURT: Now that's a 2014 that was on
14 it you just said.

15 MR. STODDARD: Uh-huh.

16 THE COURT: He had a 2012 vehicle.

17 MR. STODDARD: Yeah, but you can refresh
18 your memory. For example, if I have a feature on my
19 car and I forgot the name and you give me a manual
20 from any year and see that's the name, I mean, it
21 refreshes your memory. You can refresh your memory
22 with anything.

23 THE COURT: You can refresh your memory
24 from your own notes and things of that nature.

25 MR. STODDARD: That would be ---

1 THE COURT: If this was something he used
2 regularly for some purpose that would be another
3 thing, a document he relied on in the past. But you
4 can't bring something in that he's never seen or
5 used and say refresh your memory from this. He's
6 got to have an independent recollection before you
7 can refresh your memory and -- so, and here's the
8 concern I have. I've been up here doing a little
9 independent research myself. And that's a 2014
10 manual and I'm, what I'm reading here is that a 2014
11 Chevy Impala got a radar camera based crash
12 avoidance service is what I did. And it says that
13 GM had a collision alert system and the GM C Terrain
14 SUV in 2012, it used the camera to warn the driver,
15 but it didn't take any action, put on brakes or
16 anything, just gave a warning to the driver. And
17 then after that in 2014 Chevy Impala got a radar
18 camera base in it and if the driver didn't react to
19 the warning it would apply the brakes. Because
20 that's the first thing, information I got says GM
21 had a crash avoidance system.

22 MR. STODDARD: Well, this manual ---

23 THE COURT: From 2014 they did.

24 MR. STODDARD: I understand, I understand,
25 but it's got a thing called traction control system

1 and it's even got one of those little bars like it's
2 a ---

3 THE COURT: Well, traction control, my
4 understanding is that's a whole different -- that's
5 like the ole positraction. You would have a
6 situation where a wheel starts slipping and it
7 would, it would transfer the drive to the wheel that
8 wasn't slipping.

9 MR. STODDARD: This cite TCS activates if
10 it senses that any of the drive wheels are spinning
11 or ---

12 THE COURT: That's what I'm saying.

13 MR. STODDARD: When this happens TCS
14 applies the brakes to the spinning wheels and
15 reduces engine power to limit the ---

16 THE COURT: Much like the old
17 positraction, really like the positraction because
18 it does apply the brakes.

19 MR. STODDARD: Does apply the brakes.

20 THE COURT: Yes, that's a 2014 manual.

21 MR. STODDARD: I understand it. If you
22 look up when did this traction control system ---

23 THE COURT: Your witness has testified to
24 something that applied the brakes period and he said
25 there was two systems if I heard him right.

1 MR. STODDARD: All right, I understand.
2 I'm just saying if you do the research you'll find
3 that this system was available as early as 2007
4 according to what I found.

5 THE COURT: Maybe I misunderstood his
6 testimony, but what I heard him testifying to is
7 that there was something that applied the brakes.
8 That's different. See, that applies the brakes on
9 one wheel, but speeds up the other wheel. That's
10 not exactly like applying the brakes on a car, you
11 follow what I'm saying?

12 MR. STODDARD: No, I don't.

13 THE COURT: If apply the brake pedal you
14 don't have any wheels spinning.

15 MR. STODDARD: But If the feature applies
16 the brakes and that expert testified he wouldn't
17 know the difference.

18 THE COURT: Well, that's not what he
19 called it so I don't know what he's referring to.
20 And I'm gonna let you ask him about it, but I don't
21 think you're going to use the 2014 manual to english
22 what the 2012 car had. That's gonna be confusing to
23 the jury. That's gonna prejudicial to the State and
24 I find the probative value of a newer manual applied
25 to a older car, I'm not gonna allow you to do that.

DW - J. TACKETT - REDIRECT

1 If you've got a 2012 manual for an Equinox, then
2 I'll be glad to reconsider my ruling.

3 MR. STODDARD: Again, all I was doing was
4 trying to get him to refresh his memory to what the
5 name of the system was.

6 THE COURT: Okay. Well, I'm gonna let you
7 ask him if he knows that; but again, I'm gonna
8 explain to you, he's got to have the independent
9 recollection of whatever it is you're asking about
10 before he can refresh his memory.

11 MR. STODDARD: Okay.

12 THE COURT: I don't know if he knew what
13 that system was called or not. You haven't gone
14 down that route yet.

15 MR. STODDARD: I understand. I think do.

16 MR. MCMAHON: Judge, he's been educated
17 while he's been sitting up here.

18 THE COURT: Oh, that happens sometimes.

19 MR. STODDARD: Not on purpose.

20 THE COURT: I know.

21 MR. MCMAHON: All right, yes, sir. Thank
22 you, Your Honor.

23 THE COURT: Not much I can do about that.

24 MR. MCMAHON: Yes, sir.

25 THE COURT: I can't un-ring the bell,

DW - J. TACKETT - RECROSS

1 Mr. McMahon. All right, so I'm gonna rule that
2 manual is not applicable to this case.

3 MR. STODDARD: Yes, sir.

4 THE COURT: Bring the jury in.

5 (WHEREUPON, the jury was returned to the
6 courtroom at approximately 2:47 p.m.,
7 and the following proceedings commenced
8 in open court.)

9 THE COURT: I have made a ruling on the
10 manual; I excluded it.

11 You may proceed.

12 MR. STODDARD: Yes, sir.

13 BY MR. STODDARD:

14 Q Mr. Tackett, by the way, do you know the
15 specific name of the system that you were
16 describing, the brake system?

17 A Not the specific name, no, I don't. I
18 just know what it did. I looked at a lot of cars.
19 I looked at a lot of vehicles. I read a lot of
20 stuff, and the Equinox stood out because it had auto
21 braking and it did -- it had a lot safety features
22 that I wanted my wife to have.

23 MR. STODDARD: I've got no further
24 questions.

25 THE COURT: All right, recross.

DW - J. TACKETT - RECROSS

1 MR. MCMAHON: Yes, sir, very briefly, Your
2 Honor.

3 **RECROSS-EXAMINATION**

4 BY MR. MCMAHON:

5 Q Mr. Tackett, this is July 17th the
6 incident happened over a year ago, a year, however
7 many months, you never had your vehicle checked?

8 A It went to the car dealership in Laurens
9 every 3000-miles.

10 Q Since the accident have you had your car
11 checked?

12 A No, I have not.

13 Q So it didn't go every 3000-miles? Since
14 the accident did it?

15 A No.

16 Q Never had a mechanic look at it?

17 A No.

18 Q Since the accident?

19 A No.

20 Q About if it was functioning properly on
21 the date of the accident?

22 A No, but if it wasn't, wouldn't that be
23 vehicle malfunction?

24 Q I'm not here to answer questions,
25 Mr. Tackett. I'm here to ask them. You never had

DW - J. TACKETT - RECROSS

1 it checked?

2 A No.

3 Q And also, how long have you had this
4 knowledge since before you purchased the vehicle; is
5 that correct?

6 A Yes.

7 Q So you had this knowledge on the date the
8 event happened the 28th of March of '18?

9 A Yes, sir.

10 Q When did you ever tell law enforcement
11 about this?

12 A I told my lawyer about this.

13 Q I asked you when did you ever tell law
14 enforcement about this?

15 A They didn't give me time to tell them.

16 Q All right, so for over a year you haven't
17 had time to tell law enforcement about the safety
18 feature that you don't know the name of?

19 A Do you want me to explain why?

20 Q For over a year, you didn't have time to
21 tell?

22 THE COURT: Mr. Tackett, I'm gonna
23 instruct you to answer the question, but I'll give
24 you a chance to explain your answer as well.

25 THE WITNESS: Okay. No, I have not.

DW - J. TACKETT - RECROSS

1 BY MR. MCMAHON:

2 Q And I'll give you time. Why?

3 A Because they told me to shut up, it was
4 none of my business.

5 Q All right. So who told you to shut up, it
6 was none of your business?

7 A The video you have on there where doctor,
8 where officer what's his name? Gabriele. When I
9 went in there I was trying to explain to him. He
10 told me that I needed to leave the room and it was
11 none of my business.

12 Q And you're talking about the video, I take
13 it, that was at the Greenville Memorial Hospital?

14 A Yes, when I went in to check on my wife.

15 Q And those words you can hear clearly on
16 that video?

17 A He told me to leave the room.

18 Q I didn't ask you what he told you. You've
19 already testified to that. Those words you can hear
20 clearly on that video?

21 A No, he told me when I was heading out the
22 door.

23 Q So he said it kind of softly?

24 A He told me, yeah.

25 Q Said it kind of softly so maybe it

DW - J. TACKETT - RECROSS

1 wouldn't be picked up on the audio that was on the
2 video, if that makes sense.

3 A On the audio he did tell me that I needed
4 to leave the room, and I needed to leave the
5 emergency room and basically it was none of my
6 business. He was arresting her.

7 Q Yes, sir, for felony DUI.

8 A Correct.

9 Q Correct.

10 A And then that's when I have said I'm going
11 to see, I said daughter, I meant niece, but she's
12 like a daughter so. And then he said, well, then
13 you better go.

14 Q Okay.

15 A Then I told Mr. Stoddard about it.

16 Q Now that had to be before 11:30 if I
17 recall the timeframe. Trooper Terry was also in the
18 room?

19 A Yes, I believe so.

20 Q There were two troopers in this room?

21 A Yes, sir.

22 Q And by the way was the nurse still in the
23 room?

24 A I don't think so.

25 Q Just two troopers?

DW - J. TACKETT - RECROSS

1 A Well, the doctor, I mean Officer Gabriele
2 was in the hallway. I came in and officer -- I'm
3 really bad with names.

4 Q Terry ---

5 A Terry.

6 Q ---I think was the officer doing the
7 tests.

8 A And I stood right in front of him, and
9 then Officer Gabriele came in and told me that I
10 needed to leave.

11 Q And I apologize and I hate to use this
12 word but I use it well before this trial, I'm not
13 tracking you, okay, I'm not tracking. Did you go to
14 the hospital and you spoke with Officer Gabriele in
15 the hallway and then went in?

16 A No.

17 Q Okay. Just tell me where you were when
18 this conversation you're testifying to occurred.
19 Where were you?

20 A It started in the emergency room.

21 Q Not in the room your wife was in?

22 A Yes, in the room ---

23 Q Okay, in the room where your wife was at?

24 A Yes.

25 Q That's where it started?

DW - J. TACKETT - RECROSS

1 A Yes.

2 Q Tell me the flow of this conversation.

3 A I told him that I wanted to check on my
4 wife; I was worried about her. And he told me that
5 he was arresting her and I needed to leave the room.
6 And then I said, well, the -- I was starting to
7 leave the room and I started telling him that that
8 car has, you know, auto-lock braking on it, did it
9 activate or was there skid marks.

10 Q So you talked to the highway patrol?

11 A And he told me that he was arresting her
12 and it was none of my business.

13 Q So you told the highway patrol?

14 A Yes.

15 Q Not only did he, the trooper advise you
16 out of the room?

17 A He told me to leave the room.

18 Q He told you to go out the room, however
19 you want to phrase it. And your response to that
20 was, well, the cars got, what did you call it?

21 A Auto-lock braking.

22 Q Auto braking system, okay. So you told
23 trooper the date, the 28th of March, 2018, in the
24 room?

25 A No, it was in the hallway. It started in

DW - J. TACKETT - RECROSS

1 the room they told me to leave.

2 Q All right. And you left?

3 A Yeah, I walked out. He walked out right
4 behind me and I said about the auto braking and he
5 told me to leave.

6 Q Was he following you out?

7 A Yes.

8 Q He just happened to be going ---

9 A I don't know if he was following me out or
10 going the same direction, but he left the room with
11 me.

12 Q Then you spontaneously said -- it wasn't
13 the result of conversation -- you spontaneously said
14 what to him?

15 A I turned around, I said, did the auto
16 braking activate, and he told me this was none of my
17 business.

18 Q All right. So you notified them that
19 morning, in your mind it was an auto braking system?

20 A Yes.

21 Q Okay. All right. And since that time
22 you've had no further contact with the Highway
23 Patrol?

24 A They won't talk to me.

25 Q Is that an opinion?

DW - J. TACKETT - RECROSS

1 A No, I have not.

2 Q Have you tried to call them?

3 A No.

4 Q Have you tried to talk to them?

5 A No.

6 Q It's your opinion, with all due respect I
7 think Mr. Tackett, is you think they won't talk to
8 me. That's what you think.

9 A Well, in the court system had said I
10 wasn't allowed to talk to them.

11 Q Who told you couldn't to talk to the
12 highway patrolman?

13 A Because it had to deal with her.

14 Q Who told you in the court system you
15 couldn't talk to a highway patrolman?

16 A Because he was a witness. No one told me
17 that. I just, he was a witness and I was told that
18 I wasn't allowed to talk to the witnesses because I
19 was the defendant's husband.

20 Q And all I'm asking, Mr. Tackett, is who
21 told you you couldn't talk to a witness or highway
22 patrolman, who told you that?

23 A The judge.

24 Q The judge told you that?

25 A Yes.

DW - J. TACKETT - FURTHER DIRECT

1 Q What judge?

2 A The judge that was there. He stood up.
3 He said, now you are not allowed to tamper with any
4 evidence on this case or talk to any witnesses.

5 Q The judge that was up here?

6 A Yes.

7 Q What judge was it?

8 A Judge -- I don't know if it was a judge.
9 The last judge you had.

10 Q It was the last ---

11 A Yes. I'm really bad with names, sir.

12 Q Okay.

13 A But when he was explaining to all the
14 court system and everything he said that we were not
15 allowed to talk to any of the witnesses in the case
16 and tamper with them or just like we're not allowed
17 to speak to any of the jurors.

18 Q Okay. You feel like Trooper Gabriele
19 mistreated you?

20 A No. He was under a stressful situation; I
21 understood that. That's why I walked away and I
22 checked on Kara.

23 Q All right.

24 Q Thank you very much, Mr. Tackett.

25 MR. MCMAHON: Thank you, Your Honor.

1 THE COURT: Redirect.

2 **FURTHER DIRECT EXAMINATION**

3 BY MR. STODDARD:

4 Q When you said you asked Gabriele about the
5 brake system engaging, you were just asking did that
6 happen?

7 A Right.

8 Q Now, because there's been evidence
9 introduced today that brake engage half a second
10 degree before impact, when and where did you learn
11 that?

12 A The half a second ---

13 MR. MCMAHON: I object, Your Honor.

14 THE COURT: Overrule the objection.

15 BY MR. STODDARD:

16 Q When did you learn that that was an issue?
17 Where were you?

18 A I was, I was in the courtroom when we
19 found out.

20 Q That was in March this year?

21 MR. MCMAHON: Your Honor, may I approach
22 the Bench, please.

23 THE COURT: Yes, you may.

24 (WHEREUPON, counsel approached the
25 Bench for an off-the-record discussion.)

1 MR. MCMAHON: Yes, sir, thank you.

2 THE COURT: All right. Ladies and
3 gentlemen of the jury, again, I'm gonna ask you to
4 step back to the jury room. Don't begin any
5 discussion about the case until I ask you to do so.
6 Thank you very much.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 2:56 p.m.)

9 THE COURT: All right. Now, Mr. Stoddard,
10 you raised an objection, put it on the record.

11 No -- excuse me, you raised an objection.

12 MR. MCMAHON: I did. I objected because
13 what we're headed into is sometimes not the road
14 less traveled. Sometimes it's a road traveled a lot
15 more than it should be. This goes back to the case
16 that was previously tried, mis-tried, against
17 Ms. Tackett.

18 THE COURT: And that's my concern. I
19 think we're starting to get into information that's
20 going to put before the jury that this case has been
21 previously tried and mis-tried and have to result in
22 another mistrial so I don't want us to go there.

23 MR. STODDARD: And I'm trying to get this
24 the out without going there.

25 THE COURT: What is it that you want to

1 get out there?

2 GUARDIAN: He raised the issue why didn't
3 you go to the police earlier with that information.
4 In the last trial just like in this trial, he
5 learned that they put a fact into evidence that
6 the -- there was a brake engage moments before
7 impact, and I think their implication is she did
8 that. And he came to me after that, during brake
9 and said we had this automatic braking system which
10 I think, I think it's called -- I think it's a
11 different system than what y'all are calling it
12 doing some it will track.

13 THE COURT: Yeah, I'm reading about it
14 right now.

15 MR. STODDARD: Did it have that in '12?

16 THE COURT: Yeah.

17 MR. STODDARD: And it applies to brake.

18 THE COURT: It's a StabiliTrac, I'm
19 reading about it. I didn't know what StabiliTrac is
20 what I said it was. It's a posit track system. And
21 when your car starts, one wheel starts sliding it
22 brakes that wheel, speeds up the other wheel.

23 MR. STODDARD: But does it apply brakes?

24 THE COURT: It does apply brake to one
25 wheel, but not to all of them. Again, if that wheel

1 is slipping it tries to stop the wheel that's
2 slipping and speed up the ones that aren't slipping
3 to keep the car from becoming track, keep it going
4 more stable.

5 MR. STODDARD: But he didn't -- the
6 officer that testified ---

7 THE COURT: It might be what he was
8 testifying about. What I heard was that it was a
9 automatic braking system that stopped the car when
10 it hit a bump. I think that's what he said.

11 MR. STODDARD: Well, I didn't know the
12 name of it mechanically enough to know the
13 difference.

14 THE COURT: And I'm not trying -- I'm
15 reading the owner's manual to this car. That's what
16 I'm looking at and so I don't know where we're going
17 and needs to be quiet over here because I'm talking
18 to his lawyers.

19 MR. STODDARD: And I was just trying to
20 answer the questions that you were asking why did he
21 wait so long to bring it up and he brought it up to
22 me and I ---

23 THE COURT: This question about when and
24 where it got brought up is going to end up going to
25 something that I'm not going to let you go into.

1 MR. STODDARD: I have no further
2 questions.

3 THE COURT: So I'm gonna tell you let's
4 not go there. Now if you want to ask him when he
5 told you about it, ask him that. That doesn't have
6 anything to do with the trial, does it?

7 MR. STODDARD: I think I'm just gonna
8 leave this alone.

9 THE COURT: I think that'd be a good idea.

10 MR. STODDARD: It's not that important in
11 a way, but...

12 THE COURT: But as far as what you were
13 talking about, again, from what I can gather we're
14 talking about apples and apples. There was a
15 system, I think, on that car. He's testified to it.
16 And it appears to be a system that was to keep the
17 car stable which is not one to stop it from hitting
18 something; it's something to keep it from spinning
19 out of control.

20 MR. MOWRY: And that's like the system
21 that was described in My Cousin Vinny, Your Honor.

22 THE COURT: Well, as I recall that he had
23 one wheel was spinning on one car and ---

24 MR. MOWRY: In the Alabama mud.

25 THE COURT: This is not My Cousin Vinny, I

DW - J. TACKETT - FURTHER DIRECT

1 promise you.

2 MR. MOWRY: But again, it had something to
3 do with a slip differential on the car.

4 MR. STODDARD: But it does apply to brake.

5 THE COURT: Well, you can bring that up,
6 and of course, what it says is -- and I agree that
7 it indicates that it does apply brakes to one tire,
8 the one that's sliding and the idea is to keep the
9 car from going into the speed.

10 MR. MOWRY: And that's if you're in the
11 mud or wet pavement or something like that.

12 THE COURT: I can just tell you it says
13 it's a StabiliTrac system. Control system is off
14 the spin wheel is not limited. If it is, if it is.
15 I mean, I'm just reading what it says. And that's
16 off the manual that applies to this car. So I'll
17 just say that we'll leave it at that and let's not
18 get into when and who he told it to or where.
19 That's gonna get into prior trial and I'm ruling
20 that out of order. Bring the jury back.

21 And I believe you're still on your
22 re-cross, redirect at this point in time. But my
23 ruling doesn't keep you from asking him about that
24 system.

25 MR. STODDARD: Yes, sir, I understand.

DW - P. TACKETT - DIRECT

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 3:10 p.m., and
3 the following proceedings commenced in
4 open court.)

5 THE COURT: Thank you. I've given
6 instructions to the attorneys. You may proceed in
7 accordance to my instructions, Mr. Stoddard.

8 BY MR. STODDARD:

9 Q I'm not gonna ask you how you learned the
10 issue of the car braking in this case, but was it
11 later sometime this year? You know, the issue that
12 the officer testified that the car, there was a
13 braking incident right before the crash.

14 A Yes, sir.

15 Q Did you learn about that this year?

16 A Yes, sir.

17 Q Okay. And you told me about it?

18 A Yes, sir.

19 Q And then you brought to my attention that
20 your car had a feature. Do you know the name of
21 that feature?

22 A No.

23 Q Does it -- is it to keep the car straight
24 when it's in a slide, keep it from sliding,
25 stabilize it?

DW - P. TACKETT - DIRECT

1 A It's supposed to put the brakes on and
2 downgrade the -- that's all I know.

3 Q Okay, I've got no further questions.

4 THE COURT: Anything else?

5 MR. MCMAHON: No, sir. Thank you, Your
6 Honor.

7 THE COURT: You may step down. Thank you
8 very much.

9 Defense may have call its next witness.

10 MR. STODDARD: Pamela Tackett.

11 THE COURT: Come forward, ma'am, to be
12 sworn.

13 WHEREUPON,

14 **PAMELA TACKETT,**
15 having been duly sworn by the Clerk, testified
16 as follows:

17 THE COURT: Ma'am, state your full name
18 and spell your last name, please.

19 THE WITNESS: Pamela Michelle Tackett,
20 T-A-C-K-E-T-T.

21 THE COURT: Thank you.

22 Mr. Stoddard, it's your witness.

23 **DIRECT EXAMINATION**

24 BY MR. STODDARD:

25 Q Ms. Tackett, I'm gonna ask you questions

DW - P. TACKETT - DIRECT

1 I'm not supposed to ask ladies probably, but we're
2 in court. How old are you?

3 A I'm 32.

4 Q And you're married to Joseph Tackett who
5 just testified?

6 A Yes, sir.

7 Q And I think he said how long y'all have
8 been married.

9 A We've been together almost 11 years.

10 Q Okay. Do you have children?

11 A Yeah, I have a stepson.

12 Q Excuse me?

13 A I have a stepson.

14 Q All right. And we heard some testimony
15 about a child named Kara that was in the Equinox on
16 the day of this event. Who is Kara?

17 A Kara was a friend of mines daughter and
18 she called me Aunt Shel so she was like a niece to
19 me.

20 Q Did you sometimes call her your baby?

21 A Yes.

22 Q Did she live with you at that time?

23 A She was.

24 Q How long had she been living with you at
25 that time?

DW - P. TACKETT - DIRECT

1 A About six months.

2 Q All right. And tell me a little bit about
3 your education. Did you graduate high school?

4 A I did. I graduated Laurens High School
5 and then I went to Piedmont Tech for EMT and went to
6 Piedmont Tech for Phlebotomy and CNA.

7 Q And have you worked in any of those areas
8 since you got those degrees?

9 A I worked with Hillcrest Hospital as CNA
10 and a piece as unit secretary.

11 Q So, there's been testimony about the
12 medications that you were taking at the time. And
13 can you recall what you were taking at the time, I
14 think it was March 2018, what medications you were
15 taking?

16 A I was taking Klonopin, Wellbutrin,
17 Effexor, Gabapentin.

18 Q And what -- can you tell me what each one
19 was for?

20 A The Effexor and Wellbutrin were for my
21 depression and my manic depression and my major
22 depression and the Geodon was for my night terrors
23 and paranoid.

24 Q What are -- you've mentioned some
25 diagnoses: depression, major depression, manic

DW - P. TACKETT - DIRECT

1 depression you said.

2 A Yes, sir.

3 Q Major depression, night terrors, do you
4 have any other things that you ---

5 A I have severe anxiety and I have problems
6 being in groups of people I get close to pick.

7 Q Any I think migraines have been mentioned?

8 A Yes, sir, I do suffer from migraines.

9 Q At the time of this, tell me about them.
10 How often you had them and how long they last.

11 A I was having more migraines in a month
12 than I was having days without migraines.

13 Q And when you have one how long would it
14 last?

15 A Days. Sometimes it lasts five days,
16 sometimes it lasts two days.

17 Q What would you have to do to relieve it?

18 A The only thing that really works is smoke
19 a little bit of weed, marijuana.

20 Q Let's set that aside for a minute. Did
21 you do anything like -- I've known people who did
22 things like that they would have to go lay down in a
23 dark room, things like that? Is that part of it?

24 A I tried to sleep.

25 Q So let's go ahead and talk about the

DW - P. TACKETT - DIRECT

1 marijuana. Tell me how you, what your habit was at
2 that time.

3 A I would smoke right before I went to bed
4 and I'd smoke a half a bowl to a bowl and that would
5 help me sleep. It would help my pain and my
6 migraine.

7 Q Do you know how long you've been doing
8 that?

9 A For a few years.

10 Q So the ones you just listed -- and I can't
11 read my own writing. Klonopin, Effexor, Gabapentin,
12 tell me when you would take them. Do you have some
13 that you take at night, some during the mornings?

14 A The Geodon and the Gabapentin and
15 Effexor -- not Effexor. The Klonopin I would take
16 at night. Then I'd take a Klonopin and Wellbutrin
17 and Effexor in the morning.

18 Q That day we're talking about do you know
19 what time you got up?

20 A I got up at 8:00.

21 Q Do you know what time you took your
22 medicines?

23 A As soon as I got up.

24 Q And that's the Klonopin, Wellbutrin, and
25 Effexor?

DW - P. TACKETT - DIRECT

1 A Yes, sir.

2 Q Did you eat anything?

3 A I had a piece of toast that morning with
4 Kara.

5 Q Did you do anything else before you left
6 the house?

7 A Got dressed and told them that I was
8 leaving.

9 Q And did you -- where were you going?

10 A I was going to my psychiatric appointment.

11 Q Where was that?

12 A At Greenville Psychiatry at Patewood.

13 Q All right. Tell me, these medicines,
14 Klonopin, Wellbutrin, and Effexor, how long have you
15 been on those?

16 A For five years.

17 Q All three of those?

18 A Yes, sir.

19 Q How about the Gabapentin?

20 A I've been on it for two.

21 Q Have I missed any?

22 A No, sir.

23 Q Had you experienced any problem? During
24 that five years have you driven on occasions?

25 A Yes, sir.

DW - P. TACKETT - DIRECT

1 Q My understanding is you had a car. Your
2 husband had a car to drive?

3 A Yes, sir.

4 Q Did you drive them on a fairly regular
5 basis?

6 A Yes, sir.

7 Q Had you had any, experienced any problems
8 driving under those medications?

9 A No, sir.

10 Q That morning, was there anything unusual
11 that you were experiencing?

12 A No, sir, I felt great.

13 Q Okay. So tell me what happened after you
14 got in the car.

15 A Before I got in the car I buckled Kara in
16 her toddler seat, and I got in the front seat and
17 buckled up. We made our way down McCray Road to 49,
18 and we just were talking and singing to the music.

19 Q What's the last thing you -- we've seen
20 when the officer got there and he asked you what
21 happened and you didn't know. What is the last
22 thing you remember happening?

23 A Talking and singing with Kara.

24 Q And what was the next thing you remember?

25 A OnStar screaming my name.

DW - P. TACKETT - DIRECT

1 Q Was the vehicle stopped when that
2 happened?

3 A Yes, sir.

4 Q There's been testimony that someone
5 thought you were on the phone when they arrived.
6 Was that OnStar?

7 A Yes, sir.

8 Q Did they, were they still talking to you
9 when Officer Gabriele had came?

10 A I was getting off the phone when Officer
11 Gabriele came to the door.

12 Q And you mentioned EMT training.

13 A Yes, sir.

14 Q Did they teach you anything when you're in
15 a wreck such as this, what you should do?

16 A Keep your neck and back straight and don't
17 get out of the car until unless it's on fire.

18 Q Is that what you did?

19 A Yes, sir.

20 Q Did you give any instructions to Kara?

21 A I told Kara to sit still and stay buckled.

22 Q Just a few minutes. You have sleep apnea?

23 A Yes, sir.

24 Q And at that time were you -- did you have,
25 at the time of this accident did you have a CPAP or

DW - P. TACKETT - DIRECT

1 BiPAP to treat it?

2 A No, sir.

3 Q Had you been diagnosed at that time with
4 it?

5 A Yes, sir.

6 Q Have you tried using the CPAP before or
7 since?

8 A Since I have.

9 Q Some people tolerate it real well. I do, I
10 sleep well, but some people can't tolerate it.

11 A I can't tolerate it.

12 Q I don't know if you told the officer, I
13 think you told the officer at the hospital that you
14 said how long had you slept. When you sleep do you
15 sleep all night?

16 A No, sir, I'm up and down.

17 Q Officer Gabriele testified that he went to
18 an address and you weren't there. Do you know
19 anything about that address issue?

20 A The address that was on my driver's
21 license is the one that he went to, but I was living
22 with my grandfather at his house to take care of
23 him.

24 Q Do you know if anybody in the process at
25 the hospital or booking or anything asked you for

DW - P. TACKETT - DIRECT

1 your address and did you give one?

2 A I don't remember anybody asking for my
3 address.

4 Q Is it possible that people took your
5 driver's license address and took that on whatever
6 paperwork it could be?

7 A It could be possible.

8 Q The address where you were living, how
9 long had you been there?

10 A About a year.

11 Q Do you know what your blood pressure
12 normally runs?

13 A It runs low.

14 Q Do you know what it is?

15 A It runs sometimes 106 over 70, 106 over
16 90.

17 Q How about is your -- when they take your
18 temperature is it normally 98.6?

19 A No, sir, it's normally lower.

20 Q It is 98. -- if it's over 98.6 how do you
21 feel?

22 A I feel like I have a fever.

23 MR. STODDARD: Beg the Court's indulgence.
24 (WHEREUPON, Defense Exhibits Nos. 2 and 3
25 were marked for identification only.)

DW - P. TACKETT - CROSS

1 BY MR. STODDARD:

2 Q I'm handing you what been marked
3 Defendant's Exhibit 2 and 3. Do those appear to be
4 part of your family doctor records from a visit
5 before and after this accident?

6 A Yes, sir.

7 Q And do they have vital statistics records,
8 vital signs like blood pressure and temperature?

9 A Yes, sir.

10 MR. STODDARD: I offer these into
11 evidence.

12 THE COURT: Any objection?

13 MR. MCMAHON: May I see them just very
14 briefly. No objection.

15 THE COURT: Without objection they'll be
16 admitted to the record. They've been marked, is
17 that right, Mr. Stoddard?

18 MR. STODDARD: Yes, sir.

19 THE COURT: All right, they'll be admitted
20 as marked. You may proceed.

21 (WHEREUPON, Defense Exhibits Nos. 2 and 3
22 were admitted into evidence.)

23 BY MR. STODDARD:

24 Q Can you read what your blood pressure was
25 on those two occasions and your body temperature?

DW - P. TACKETT - CROSS

1 A In January of '18 my blood pressure was
2 119 over 72 and my temperature was 96.5.

3 Q And what about the other?

4 A In May of 2018 my blood pressure was 102
5 over 70 and my temperature was 97.1.

6 Q Do you know -- you've given me the last
7 thing that happened before, the last thing you
8 remember when you were driving and the first thing
9 you remember after the accident. Do you know
10 anything more about what happened?

11 A No, sir, I didn't know anything that
12 happened.

13 Q I've got no further questions.

14 THE COURT: You may cross-examine.

15 MR. MCMAHON: Thank you. Thank you very
16 much, Your Honor.

17 THE COURT: Yes, sir.

18 **CROSS-EXAMINATION**

19 BY MR. MCMAHON:

20 Q Ms. Tackett, I might have heard from you
21 and Mr. Stoddard he was questioning you about sleep
22 apnea.

23 A Yes, sir.

24 Q And prior to the incident you have been
25 diagnosed with sleep apnea?

DW - P. TACKETT - CROSS

1 A Yes, sir.

2 Q Had you consulted with any doctor or taken
3 sleep study or anything of that nature ---

4 A Sleep study.

5 Q ---prior to March, the date of the
6 incident?

7 A Yes, sir.

8 Q And had you followed up on that in any way
9 about your sleep apnea?

10 A I followed up with a doctor.

11 Q Yes, ma'am.

12 A Yes, sir.

13 Q What did you do in that regard?

14 A I just took his advice for the CPAP
15 because it makes me feel comfortable.

16 Q So back on March 28 of '18 you had the
17 CPAP?

18 A Not then.

19 Q Ma'am?

20 A Not then.

21 Q You did not?

22 A No, sir.

23 Q Well, you testified previously in sworn
24 statement, let me show you this. This is your sworn
25 statement. You were asked a question by your lawyer

DW - P. TACKETT - CROSS

1 about sleep apnea. "Do you get treatment for that."
2 "I do. I have a CPAP machine." Is that true or
3 false?

4 A I guess it's true. I mean, I don't
5 remember.

6 MR. STODDARD: I would ask that she be
7 given the date of that statement.

8 MR. MCMAHON: Sure.

9 BY MR. MCMAHON:

10 Q March of this year, 2019. So I guess you
11 just forgot about the CPAP machine, or is that not
12 true?

13 A I didn't have my own. I was using my
14 grandfather's.

15 Q Well, that's not what you answered.

16 A Yeah.

17 Q And let me talk just a minute before we
18 move on about your education. I believe you
19 testified you finished Laurens High School?

20 A Yes, sir.

21 Q And then went to Piedmont Tech?

22 A Yes, sir.

23 Q That was probably back in 2000 -- what
24 year did you finish high school?

25 A 2004.

DW - P. TACKETT - CROSS

1 Q 2004. Then you went to Tech in 2005?

2 A Yes, sir.

3 Q And what was the course of study at Tech?

4 A EMT.

5 Q EMT. And is there -- I apologize, I think
6 Tech is a great school. But was there other courses
7 or studies that you were taking along with taking
8 the courses EMT?

9 A Not at that point.

10 Q Not at that point. Did you take other
11 courses later on?

12 A Later on, yes, sir.

13 Q To further your education?

14 A Yes, sir.

15 Q All right. Now the EMT course, did you
16 complete it?

17 A I completed the class hands-on.

18 Q Did you take the test?

19 A I couldn't pass the test.

20 Q You ever certified an EMT ---

21 A No, sir.

22 Q ---by the Tech of South Carolina?

23 A No, sir.

24 Q You furthered your education; is that
25 correct?

DW - P. TACKETT - CROSS

1 A Yes, sir.

2 Q That was unit manager?

3 A Unit secretary.

4 Q Unit secretary. And that was at a
5 phlebotomy lab?

6 A Yes, sir.

7 Q And that's where they take your blood?

8 A Yes, sir.

9 Q And talked about being a CNA. Did you
10 take a CNA course?

11 A Yes, sir.

12 Q Did you complete that?

13 A Yes, sir.

14 Q Were you certified?

15 A Yes, sir.

16 Q Where did you work as a CNA?

17 A I worked in Simpsonville at Hillcrest
18 Hospital.

19 Q How long did you do that?

20 A Until six years.

21 Q When were you last employed in that
22 capacity?

23 A About five years ago.

24 Q About five years ago, all right. Now the
25 day of the incident, let's go back, let's start

DW - P. TACKETT - CROSS

1 maybe the night before. Where were you at the night
2 before the 28th of March?

3 A My grandfather's.

4 Q You're the caretaker for your grandfather?

5 A Yes, sir.

6 Q Is that where you spent the night?

7 A That's where I was staying.

8 Q You were staying at your grandfather's?

9 A Yes, sir.

10 Q Who all stayed in that house that night?

11 A It was my, me husband, my grandfather, my
12 stepson, and my friend and her kids.

13 Q Okay. And the child you're talking about,
14 that's the mother of the child that was in the
15 vehicle?

16 A Yes, sir.

17 Q Your granddaddy, a stepson, and your
18 husband; is that right?

19 A Yes, sir.

20 Q Anything unusual about that night?

21 A No, sir.

22 Q What time did you go to bed that night?

23 A 10:00.

24 Q 10:00. And that's what you told the
25 officers when they got there. You indicated 10:00

DW - P. TACKETT - CROSS

1 the night before?

2 A Yes, sir.

3 Q Is that right?

4 A Yes, sir.

5 Q You had plans to go somewhere the next
6 day. You had an appointment I believe.

7 A Psychiatrist.

8 Q Physician assistant for your psychiatrist.

9 A Yeah.

10 Q Is that right?

11 A Yes.

12 Q And that was up in Greenville?

13 A Yes, sir.

14 Q And where this location was on Curry Road;
15 is that right?

16 A Yes, sir.

17 Q That wasn't your house, that was
18 granddaddy's house; is that right?

19 A Yes, sir.

20 Q So your appointment was around 10:00 that
21 morning, it'd be around ten?

22 A Around ten.

23 Q 10:00 o'clock?

24 A Around 10:00, yes, sir.

25 Q So you'd have to drive from Curry Road to

DW - P. TACKETT - CROSS

1 your psychiatrist in Greenville, you have to go up
2 391.

3 A 385.

4 Q 385, that's right. Now the night before
5 you went to bed at 10:00, tell the jury what
6 medications, if any, you took the night before.
7 Medications, prescribed medications.

8 A I took Geodon and mencrez (ph) and
9 Claritin -- no, Zyrtec.

10 Q So Geodon?

11 A Yes, sir.

12 Q And how long had you been taking that
13 medication?

14 A For over five years.

15 Q And how was it prescribed?

16 A You take a drink with it and you eat
17 something.

18 Q So you have to take it with some water?

19 A Yes, sir.

20 Q With some water. And have something to
21 put in your stomach before or after you took it?

22 A After you took it.

23 Q After you took it. And you would take
24 that once a day at night?

25 A Yes, sir.

DW - P. TACKETT - CROSS

1 Q At bedtime?

2 A Yes, sir.

3 Q And you followed that prescription?

4 A Yes, sir.

5 Q Did you have any other routine or other
6 drug or drugs that you were taken non-prescribed?

7 A Yes, sir.

8 Q What was that?

9 A Marijuana.

10 Q That was the marijuana. For how, I
11 believe you said two years, three years you'd done
12 that every night.

13 A Yes, sir.

14 Q And you described it as a bowl or half
15 bowl?

16 A Yes, sir.

17 Q And describe that. What is that?
18 Describe it. You got it with you by the way?

19 A No, sir.

20 Q Is it at the house?

21 A Yes, sir.

22 Q All right. So you still have it?

23 A Yes, sir.

24 Q How do you prepare your bowl to smoke
25 every night?

DW - P. TACKETT - CROSS

1 A You grind the pot up. You put it inside
2 the little bowl and you light it with a cigarette
3 lighter.

4 Q How long has that been your habit?

5 A For about two, three years or more.

6 Q Now Geodon helps you sleep for night
7 terrors, correct?

8 A Yes, sir.

9 Q And I don't know about sleep studies at
10 all, but did you get that hours sleep at night?

11 A Say that again.

12 Q Did you take the Geodon?

13 A Yes, sir.

14 Q You smoked marijuana before or after the
15 Geodon?

16 A After.

17 Q After. Okay, did you take any Geodon to
18 help you sleep?

19 A It helped me fall asleep.

20 Q And isn't it correct that you got a good
21 night's sleep the night of the 27th of March up
22 through the next morning of the 28th?

23 A I may have gotten up and used to the
24 bathroom; otherwise, I did.

25 Q Otherwise you got some good night sleep.

DW - P. TACKETT - CROSS

1 A I felt like I did.

2 Q You got up at 8:00 in the morning?

3 A Yes, sir.

4 Q And I believe you stated on the record
5 that you felt great.

6 A I felt fine before the wreck.

7 Q Felt great?

8 A Yes, sir.

9 Q Okay. And had some bites for breakfast.

10 A French toast bites.

11 Q You later told the officer that.

12 A Yes, sir.

13 Q And I guess you and Kara, you just
14 testified to it, you put her in the car seat.

15 A Yes, sir.

16 Q You got in your car and buckled up.

17 A Yes, sir.

18 Q Was heading to Greenville?

19 A Yes, sir.

20 Q And y'all -- what medication did you take
21 that morning or did you take, if any, that morning
22 before you left to go to Greenville?

23 A I took the Klonopin, Wellbutrin, and
24 Effexor.

25 Q The Klonopin, I don't know what name they

DW - P. TACKETT - CROSS

1 have two different names for them.

2 A Yes, sir.

3 Q But Klonopin, is that Clonazepam I believe
4 it is; is that correct? All right, it's the same
5 thing. And how long you been taking that drug?

6 A I've been taking it for five years or
7 more.

8 Q And you know it's a central nervous
9 antidepressant?

10 A Yes, sir.

11 Q And there are warnings about operating a
12 vehicle with heavy equipment after taking that drug?

13 A Yes, sir.

14 Q You know that?

15 A Yes, sir.

16 Q And you took that and then this is having,
17 I guess, two hours poke to take into account before
18 you don't smoke any marijuana that morning?

19 A No, sir.

20 Q And then you took another one of your
21 medications; is that correct?

22 A I just took the medications that I told
23 you.

24 Q Klonopin. What's the next one?

25 A Wellbutrin and Effexor.

DW - P. TACKETT - CROSS

1 Q Wellbutrin is an anti-depressant?

2 A Yes, sir.

3 Q Effexor?

4 A Anti-depressant.

5 Q All of those affect the central nervous
6 system; don't they?

7 A Yes, sir.

8 Q And you're still feeling great?

9 A Yes, sir.

10 Q So you remember getting in the car, you
11 remember leaving?

12 A Yes, sir.

13 Q And you remember talking and singing with
14 Kara?

15 A Kara.

16 Q What did you say?

17 A Kara.

18 Q I apologize, Kara. And do you remember
19 coming down Curry Road?

20 A. Yes, sir.

21 Q And you're getting on -- do you remember
22 you got on what exit?

23 A It was exit 5 that I got on 385.

24 Q That come right off 49, Highway 49, is
25 that right?

DW - P. TACKETT - CROSS

1 A Yes, sir.
2 Q All right. And y'all are just singing?
3 A Yes, sir.
4 Q Driving fine?
5 A Yes, sir.
6 Q Tracking fine?
7 A Yes, sir.
8 Q Enjoying being with the child?
9 A Yes, sir.
10 Q And on a mission, an appointment with a
11 psychiatrist; is that right?
12 A Nurse practitioner.
13 Q So what is the very next thing -- by the
14 way, you remember going up 385 at all or you just go
15 blank after you get on 385?
16 A I remember going down 385 towards
17 Greenville and OnStar screaming my name.
18 Q Now let me see if I can parse that out.
19 You remember going down 385 towards Greenville?
20 A Yes, sir.
21 Q To what point?
22 A I remember exit 16.
23 Q Exit what?
24 A 16.
25 Q 16?

DW - P. TACKETT - CROSS

1 A Yes, sir.

2 Q And that would be -- well, I guess, what
3 highway is that at?

4 A 101.

5 Q 101, okay. That's a few miles from the
6 wreck, correct?

7 A Right, yes, sir.

8 Q Did you notice other traffic?

9 A There was some traffic on the road.

10 Q From 5 to 16 did you notice traffic?
11 Generally there is traffic.

12 A Generally there is, yes, sir.

13 Q Did you pass any cars?

14 A I'm sure I did.

15 Q Did any cars pass you?

16 A I don't remember.

17 Q Did you change lanes at any time?

18 A Yes, sir, I remember changing lanes.

19 Q Ma'am?

20 A I remember changing lanes.

21 Q Why did you change lanes?

22 A Because I dropped down in speed or
23 something.

24 Q Slowing down?

25 A Yes, sir.

DW - P. TACKETT - CROSS

1 Q Why were you slowing down?

2 A Traffic in front of me.

3 Q So you remember all that?

4 A Yes, sir.

5 Q Did you have a migraine?

6 A Yes, sir.

7 Q Did you have a migraine back when you left
8 Curry Road?

9 A Yes, sir.

10 Q And you had that migraine when you got on
11 the interstate?

12 A Yes, sir.

13 Q Had you taken anything for your migraine?

14 A No, sir.

15 Q Does marijuana help you with your
16 migraine?

17 A Yes, sir.

18 Q And you used marijuana for relief for
19 migraines?

20 A At night.

21 Q And I believe your lawyer said something
22 about some people, I don't know, may, can be very
23 light sensitive.

24 A Yes, sir.

25 Q Eyes, if they have migraines. Are you

DW - P. TACKETT - CROSS

1 like that?

2 A I see something called fireflies. They're
3 like flashes of lights.

4 Q Explain that. I didn't mean to cut off.

5 A They look, I call them fireflies, it's
6 like a little square that flashes. It's black and
7 it flashes, lit up, and then it goes away.

8 Q Is that distracting?

9 A No, sir.

10 Q It's not distracting?

11 A No, sir.

12 Q Have you had those all your life?

13 A Ever since high school.

14 Q You get any treatments for those? Do you
15 see an eye doctor for those?

16 A I was under the care of a neurologist.

17 Q For those?

18 A Yes, sir, for my migraines.

19 Q And for your migraines what kind of
20 treatment did the neurologist do?

21 A Different medications.

22 Q What medications?

23 A At that point I was on Maxalt for
24 break-through migraines, and I can't remember the
25 other one.

DW - P. TACKETT - CROSS

1 Q Do you still take those?

2 A No, sir.

3 Q When is the last time you've taken that
4 prescription medication?

5 A I haven't. I haven't got the Maxalt
6 refilled.

7 Q Haven't what?

8 A I haven't got the Maxalt refilled.

9 Q You don't take anything for your
10 migraines?

11 A It take ---

12 Q Besides smoking marijuana.

13 A I take Maxalt when I have it.

14 Q When you have it?

15 A Yes, sir.

16 Q So you had had that migraine leaving the
17 house?

18 A Yes, sir.

19 Q And do you remember going up 385, remember
20 seeing traffic and all, changing lanes. And as you
21 go towards 19, what's the next memory you have?

22 A Hear OnStar screaming my name and Kara.

23 Q So OnStar is -- your car has OnStar; is
24 that right?

25 A It has OnStar, yes, sir.

DW - P. TACKETT - CROSS

1 Q And they called you?

2 A Yes, sir.

3 Q You didn't call them?

4 A No, sir, I didn't.

5 Q And that -- where were you at? Where were
6 you at when you got the call?

7 A I was in the median between the northbound
8 and southbound lanes.

9 Q In the driver's seat?

10 A Yes, sir.

11 Q No doubt you were driving the vehicle.

12 A Yes, sir.

13 Q You're the driver of the vehicle, all
14 right. And then Kara was still in the back?

15 A Yes, sir.

16 Q What was the conversation with OnStar?

17 A They asked me if I was okay, if I knew
18 what had happened. I tried to explain to them that
19 I didn't.

20 Q You remember that?

21 A Yes, sir.

22 Q You remember that conversation?

23 A Yes, sir.

24 Q Well, tell me what you were observing
25 around you.

DW - P. TACKETT - CROSS

1 A I'd seen somebody laying in the road or
2 somebody laying in the road. I couldn't tell what
3 it was.

4 Q You seen somebody or something laying in
5 the road, the road being 385?

6 A Yes, sir. And I heard somebody screaming
7 and I didn't know what had happened.

8 Q Don't know what?

9 A I didn't know what had happened.

10 Q Now, your air bags deployed?

11 A Yes, sir.

12 Q And tell me where, how were you, how did
13 you come to see somebody or something laying in the
14 road.

15 A When I turned around to tell Kara to sit
16 still and don't take her seatbelt off, I seen
17 somebody laying in the road.

18 Q And where in the road?

19 A On the northbound lane.

20 Q And were you able to process all that and
21 turn around look at Kara and see somebody or
22 something laying in the northbound lane going
23 towards 385?

24 A Yes, sir.

25 Q All right. And that was before -- or do

DW - P. TACKETT - CROSS

1 you remember anybody coming up to your vehicle
2 before Trooper Gabriele?

3 A I remember an Officer Brown.

4 Q Another officer?

5 A And one of the first responders.

6 Q One of the first responders. And they
7 were before Gabriele?

8 A Yes, sir.

9 Q Do you remember Ms. Abercrombie that
10 testified?

11 A No, sir.

12 Q You do not. Do you remember Mr. Glodz?

13 A No, sir.

14 Q Did you have a conversation with this
15 first responder, the other officer?

16 A They asked if I was okay and I said I
17 think so.

18 Q Now you made a phone call from your
19 vehicle to someone else while you were still sitting
20 there.

21 A I was trying to get a hold of my husband.

22 Q And then you called a friend.

23 A I tried to get a hold of Kara's mother.

24 Q What was her name?

25 A Kara.

DW - P. TACKETT - CROSS

1 Q No, her mother?

2 A Kara's mother?

3 Q Yes.

4 A Marsha.

5 Q Marsha. So you were in the vehicle. You
6 made those calls before Officer Gabriele came up
7 next to you?

8 A Yes, sir.

9 Q So you were in the vehicle and you're
10 making phone calls; is that right?

11 A I wasn't using my phone. I was using the
12 screen on my car.

13 Q I'm sorry?

14 A I was using the blue-tooth.

15 Q Okay, all right. But this was right after
16 the wreck happened, correct?

17 A While I was on the phone with OnStar.

18 Q Then you went to your own phone?

19 A Yes, sir.

20 Q And made the call?

21 A My husband.

22 Q You talked with him?

23 A Nobody would answer the phone, but Marsha.

24 Q Because everybody's at the house asleep?

25 A Yes, sir.

DW - P. TACKETT - CROSS

1 Q Is this 9:30 or so in the morning?

2 A Yes, sir.

3 Q All right. Now Trooper Gabriele came up
4 and talked with you. Do you remember that?

5 A Yes, sir.

6 Q And asked you to step out the vehicle?

7 A Yes, sir.

8 Q And we've seen the tape.

9 A Yes, sir.

10 Q And, you know, as far as the body cam we
11 see you getting out. He's advising you what he's
12 going to do. You go down to an area, and he
13 administers three field sobriety tests as he calls
14 them; is that right?

15 A Yes, sir.

16 Q And how did you perform on those tests?

17 A He said that I failed them.

18 Q No, how did you perform?

19 A I was distracted. I wanted to be with
20 Kara, not over there doing those tests.

21 Q So you were distracted, you wanted to be
22 with Kara. Do I interpret that by saying you're
23 telling me you failed, but this is why I failed
24 them, Kara and I were distracted?

25 A No, I told him before he began the tests

DW - P. TACKETT - CROSS

1 that I had bad balance and weak ankles.

2 Q That's because of your ankles, right?

3 A Yes, sir.

4 Q You go to the doctor for your ankles?

5 A I had been.

6 Q When was the last time -- was that an
7 orthopedist?

8 A No, I was going to my family doctor.

9 Q Dr. Kelly?

10 A Yes, sir.

11 Q You go to the family doctor for your ankle
12 problems?

13 A Yes, sir.

14 Q What medications did you get?

15 A Nothing.

16 Q What treatment were you advised to get?

17 A I had physical therapy.

18 Q Have you gotten this physical therapy?

19 A I had physical therapy, yes, sir.

20 Q When is the last time you've been to
21 physical therapy?

22 A It's been a while.

23 Q Well, everybody's got a different
24 perception of whatever the time is. When is the
25 last time you've been to physical therapy for your

DW - P. TACKETT - CROSS

1 ankles?

2 A It was three or four years before the
3 wreck.

4 Q So it wasn't such a pressing problem that
5 you were running back and forth. You've got
6 problems with your ankles, but you weren't going
7 back and forth to no physical therapy for your ankle
8 for three or four years before this wreck happened;
9 is that right?

10 A Yes, sir.

11 Q Tell me again how old are you?

12 A 32.

13 Q All right. But at the end of the day,
14 your ankles, distraction, what other reasons you
15 have for failing those tests, those field sobriety
16 tests?

17 A That's what was going on.

18 Q Ma'am?

19 A My balance and Kara.

20 Q And did you say you didn't know what was
21 going on?

22 A Yeah, I had no idea what was going on.

23 Q Well, before you got out of the vehicle
24 you saw a person or something laying in the road and
25 you thought it was a person; didn't you?

DW - P. TACKETT - CROSS

1 A I thought it was.

2 Q And you thought it was an individual that
3 you had struck, the vehicle you were driving struck
4 that individual. That's what you thought?

5 A Yes, sir.

6 Q And you heard the screaming. And if I
7 could get him to scream now, it was him yelling.
8 That's what you thought?

9 A I only thought that I hit one person.

10 Q But you saw one that wasn't him.

11 A I thought the yells were coming from him.

12 Q You thought the yells was coming from the
13 one that you saw?

14 A Yes, sir.

15 Q And you only saw one person?

16 A Yes, sir.

17 Q And you thought that was Zack laying on
18 the ground?

19 A Found out that it was Zack.

20 Q That was Zack laying over by the truck.
21 You learned about that?

22 A Yes, sir.

23 Q And you thought that you had hit a
24 pedestrian, one pedestrian, before you even got out
25 of your vehicle, correct?

DW - P. TACKETT - CROSS

1 A Yes, sir.

2 Q Because of what you had seen?

3 A Yes, sir.

4 Q Is that right? And I take it when you got
5 out of the vehicle and went with the officer,
6 Officer Gabriele, you saw the individual laying in
7 the road at that time?

8 A No, sir.

9 Q You didn't see him?

10 A No, sir.

11 Q Did you ever see him after you got out the
12 vehicle?

13 A No, sir.

14 Q Did you ever hear any screams after you
15 got out the vehicle?

16 A I thought I heard Kara screaming.

17 Q Kara?

18 A Kara.

19 Q I apologize for that, getting the name
20 wrong. All right, there were three or four field
21 sobriety tests. And that video that was put in an
22 accurate representation of what occurred during the
23 field sobriety tests; is that correct?

24 A Yes, sir.

25 Q Okay. All right. And as a result of

DW - P. TACKETT - CROSS

1 those or right after those, officer, Trooper
2 Gabriele informed you you were being placed under
3 arrest for DUI; is that right?

4 A Yes, sir.

5 Q And you were handcuffed?

6 A Yes, sir.

7 Q And placed under arrest, fixing to be put
8 in a patrol car, and taken to Laurens County
9 Detention Center; is that right?

10 A That's what he said, yes, sir.

11 Q All right. What occurred at that point?

12 A EMS come over and said they needed to take
13 g me.

14 Q What did that officer do?

15 A He let me go so I could go with EMS.

16 Q You were already handcuffed?

17 A Yes, sir.

18 Q Behind your back?

19 A Yes, sir.

20 Q Officer released you from your handcuffs?

21 A Yes, sir.

22 Q Turned you over to EMS so you could go to
23 the hospital?

24 A Yes, sir.

25 Q Is that right? And who else was in that

DW - P. TACKETT - CROSS

1 ambulance with you?

2 A Kara.

3 Q Were y'all side by side?

4 A Yes, sir.

5 Q And your balance was still off?

6 A Yes, sir.

7 Q And it might have been hard to process all
8 what was going on?

9 A It was, yes, sir.

10 Q You didn't want to go to jail.

11 A I didn't understand why I was getting a
12 DUI.

13 Q I mean, I wouldn't want to go jail. You
14 didn't want to go to jail, right?

15 A No, sir.

16 Q You don't understand why you're going to
17 jail?

18 A No, sir.

19 Q Actually at that point you're going to the
20 hospital?

21 A Yes, sir.

22 Q And you've seen things on that video,
23 Ms. Tackett. You're moving very slowly at the time,
24 is that right?

25 A Yes, sir.

DW - P. TACKETT - CROSS

1 Q Very sluggish?

2 A Yes, sir.

3 Q Very deliberate to try and find, we'll
4 call it your credentials, driver's license and
5 registration, proof of insurance; is that a fair
6 statement?

7 A I was trying not to bend too much or move
8 around too much.

9 Q Because of your neck?

10 A Yes, sir.

11 Q And because of the back?

12 A And my chest.

13 Q And then your chest pains?

14 A Yes, sir.

15 Q The chest pains, that was when officer,
16 Trooper Gabriele turned you over so he allowed you
17 to go with EMS to Greenville Hospital, correct?

18 A I had chest pains before I got out of the
19 car.

20 Q Okay. But you hadn't talked to Trooper
21 Gabriele before you got out the car, right?

22 A He come up and asked if I was okay, and I
23 don't remember what I said to him, but then he
24 walked away.

25 Q Were you about to fall out the door of the

DW - P. TACKETT - CROSS

1 car? It kind of looked like you had to grab
2 yourself when you got out the driver's door.

3 A The ground was uneasy. Not uneasy, but
4 unlevel.

5 Q So the ground was unlevel?

6 A Yes, sir.

7 Q Now what happened in the ambulance on the
8 way to the hospital?

9 A They hooked up an IV and ran a bag of
10 fluids and took vital signs.

11 Q And did any other incident occur in the
12 back of the ambulance on the way to Greenville
13 Hospital?

14 A They took a curve and Kara almost fell off
15 the seat.

16 Q So the ambulance hit a curve?

17 A Yes, sir.

18 Q And the child almost fell off?

19 A The bench seat that they have in the back
20 of the truck ---

21 Q Right.

22 A ---they had her on a smaller back sitting
23 on that seat.

24 Q So you were on the backboard?

25 A On the stretcher in the port.

DW - P. TACKETT - CROSS

1 Q Have a C-collar on?

2 A Yes, sir.

3 Q And she was on a backboard?

4 A Yes, sir.

5 Q She have a C-collar on?

6 A I do believe so.

7 Q She was about to fall in the back of the
8 ambulance?

9 A Yes, sir.

10 Q What were you able to do?

11 A I grabbed a hold of the backboard as the
12 EMT reached over to grab it too.

13 Q So you and the EMT kind of saved the child
14 from falling?

15 A Yes, sir.

16 Q Okay. All right. And then you go to the
17 hospital -- by the way, you gave them consent to
18 take blood?

19 A I had nothing to hide.

20 Q Yes, ma'am. Yes or no, you gave them
21 consent, Ms. Tackett?

22 A Yes.

23 Q All right. You say you had nothing to
24 hide. Let me refer you to State's Exhibit Number
25 50. That was a specimen of your blood. Your heard

DW - P. TACKETT - CROSS

1 the testimony of the trooper, officer rev frit rare
2 their went to SLED. What other medications have you
3 taken that morning besides you someones so having
4 smoked marijuana the night before?

5 A I don't remember.

6 Q You don't remember?

7 A My medications have changed.

8 Q Well, I think this is your Klonopin. This
9 is your blood, right, the test? And this is what it
10 contained. Klonopin, is that what you took that
11 morning?

12 A Yes, sir.

13 Q There's also metabolite of that same drug,
14 which means it was taken regular. Gabapentin which
15 is Neurontin, which you never mentioned to us. You
16 take that that morning?

17 A I don't remember taking it that morning,
18 but I took it at night.

19 Q Well, now if you already told the jury
20 that night you took the Geodon, you smoked
21 marijuana, you didn't say anything about Gabapentin;
22 Neurontin. Did you take it that night with the
23 marijuana which isn't prescribed by the way, right?

24 A Right.

25 Q And your Geodon, or did you take that

DW - P. TACKETT - CROSS

1 Gabapentin that morning also, which is a central
2 nervous system, or depressant of the central nervous
3 system?

4 A I don't remember taking it in the morning,
5 but I remember taking it that night.

6 Q Well, why didn't you tell us that earlier?

7 A It just slipped my mind.

8 Q You took Klonopin, Effexor, correct?

9 A Yes, sir.

10 Q And what else? Wellbutrin.

11 A Yes, sir.

12 Q An antidepressant?

13 A Yes, sir.

14 Q When you say you don't remember taking
15 this Neurontin that morning, but it's in your blood,
16 right?

17 A Yes, sir.

18 Q So you got the three from the morning you
19 took clearly in there. Then you got this fourth
20 one, I'm not trying to confuse you or -- telling you
21 to take the night before or take it that morning?

22 A The Gabapentin?

23 Q Yes, ma'am.

24 A I don't remember taking it that morning,
25 but I remember taking it that night.

DW - P. TACKETT - CROSS

1 Q And when you tell me you don't remember,
2 that interprets to me like you could have or you
3 couldn't have, I just don't remember?

4 A Yes, sir, my prescription had changed
5 since then. I don't remember if this was once a day
6 or twice a day.

7 Q So back then you would take Gabapentin.
8 You're not sure if you took it once a day or twice a
9 day?

10 A Right.

11 Q And it's changed since when this happened
12 last March, a year ago?

13 A Yes, sir.

14 Q Well, you take it now?

15 A Twice a day.

16 Q Twice a day?

17 A Yes, sir.

18 Q So you take more Gabapentin now than you
19 did in March of '18?

20 A Yes, sir.

21 Q And when you were taking it in March of
22 '18 were you supposed to take it once a day at night
23 or once a day in the mornings with your other pills?

24 A I think it was just once a day at night.

25 Q You just don't remember?

DW - P. TACKETT - CROSS

1 A I don't remember.

2 Q Now you take them twice a day, once in the
3 morning and once at night?

4 A Yes, sir.

5 Q At any rate, it's in your blood. Then the
6 Effexor is in your blood, and all of them have
7 different names, Venlafaxine, Pristiq.

8 A I don't take Pristiq.

9 Q Well, that's not what your blood says.
10 There are several other names, synonyms.

11 A Venlafaxine.

12 Q Yes. You see that?

13 A Venlafaxine is what I was on.

14 Q You see right there a Pristiq?

15 A I've never taken Pristiq before.

16 Q I think it's the same drug ---

17 A I'm not sure.

18 Q And in fairness, I'm not sure we -- I
19 think we did. The way it was written it's a
20 synonym. That's a long -- and when did you take
21 that?

22 A That morning.

23 Q So now you've got four you took that
24 morning, right?

25 A Three.

DW - P. TACKETT - CROSS

1 Q Well, Klonopin, you've got Neurontin,
2 Effexor, and the Gabapentin.

3 A I'm not sure if I took the Gabapentin.

4 Q And then Hydroxypropion, that's the
5 Wellbutrin?

6 A Yes, sir.

7 Q When did you take that again? You take it
8 that morning?

9 A That morning.

10 Q How many times you take that a day?

11 A Once.

12 Q And of course, you know yourself better
13 than anybody else in the courtroom. If I go three
14 years and I smoke, somebody tells me, well I smoke a
15 whole bowl or half bowl of marijuana every night for
16 the last three years, multiply it -- I'm not gonna
17 try to degree the figure 365 but multiply it by 300
18 days in a year for three years, that's 900 nights of
19 smoking dope. How much dope you think you smoked in
20 those three years, Ms. Tackett?

21 A I smoke marijuana.

22 Q Marijuana, I called it dope. Marijuana.
23 How much you think you smoked in those 900 some odd
24 nights?

25 A I'm not sure.

DW - P. TACKETT - CROSS

1 Q Well, you know how much. You're the one
2 that packs your bowl.

3 A Yes, sir.

4 Q Ma'am?

5 A Yes, sir.

6 Q And you're up here saying you think all
7 marijuana does to you is help you?

8 A It helps me with my pain and my sleep and
9 my night terrors.

10 Q Now that's a non-prescription illegal
11 drug.

12 A Yes, sir.

13 Q You got all these prescription drugs that
14 all have these serious side effects. Doesn't the
15 doctor explain those things to you?

16 A They didn't explain side effects before
17 the wreck.

18 Q The doctors have never told you the side
19 effect of Klonopin?

20 A No, sir.

21 Q No. Or Gabapentin?

22 A No, sir.

23 Q Or Effexor?

24 A No, sir.

25 Q Or Wellbutrin?

DW - P. TACKETT - CROSS

1 A No, sir. The length of time that comes
2 with the medication.

3 Q And you've read all those levels?

4 A Yes, sir.

5 Q And you know they have side effects.

6 A Yes, sir.

7 Q And you know some people they wouldn't
8 give them to us, right, that's what we think?

9 A Right.

10 Q Right. Doctor tells you take that, that
11 medication, take it like you say, take it with
12 water, take it with food; but you realize those
13 lawful prescribed drugs, all of them, have negative
14 side effects. You know that?

15 A Every prescription has a negative side
16 effect.

17 Q Exactly, that's my point. Every
18 prescription has a negative side effect. All of
19 them don't have, all of them aren't controlled and
20 all of them don't have those warnings on them
21 either, right?

22 A Right.

23 Q But many of them do?

24 A Yes, sir.

25 Q And it's to put you on alert, you

DW - P. TACKETT - CROSS

1 understand that, hey, I better be careful with this
2 one, right?

3 A Yes, sir.

4 Q Just like those warning signs right there,
5 caution, watch your step. They're conveying
6 information to you?

7 A Yes, sir.

8 Q All right. So you don't get that
9 printout, the brochure or whatever on the drug.
10 There ain't no printout on the marijuana, correct?

11 A No, sir.

12 Q But you know that.

13 A Yes, sir.

14 Q And you know it's got negative side
15 effects.

16 A Yes, sir.

17 Q By the way, I think there was a question
18 about Claritin. Did you get some Claritin?

19 A I was taking Zyrtec or Claritin.

20 Q Say again?

21 A I have bad allergies. I was taking Zyrtec
22 or Claritin one.

23 Q And it's for allergies?

24 A Yes, sir.

25 Q It's over the counter?

DW - P. TACKETT - CROSS

1 A You buy it off the shelves, yes, sir.

2 Q It's just where we all roam around and try
3 to look for medication?

4 A Yes, sir.

5 Q You don't have to get it from behind the
6 pharmacy?

7 A Right.

8 Q And there was another one I thought they
9 was talking about, that drugstore, is that, wasn't
10 over the counter. That was that other one. Wasn't
11 it something with allergies?

12 A Both my allergy medications I buy off the
13 shelf.

14 Q And what is the other one?

15 A Zyrtec and Claritin.

16 Q Zyrtec. Did you take those two that
17 morning?

18 A Say that again.

19 Q Did you take those two also that morning?

20 A I take one in the morning and one at
21 night.

22 Q I got you. All right, I want to show you
23 a couple photographs and I want you to tell me
24 precisely where in your vehicle you were at when you
25 saw what you thought was a person or something in

DW - P. TACKETT - CROSS

1 the lane on 395, thought it was a person.

2 THE COURT: Before you start down that
3 line of questioning I'm going to take a short.

4 MR. MCMAHON: Yes, sir.

5 THE COURT: All right. I'm gonna ask you
6 to step back to the jury room. Don't discuss
7 anything about the case at this point in time.
8 Thank you very much. You can step down.

9 (WHEREUPON, the jury was removed from the
10 courtroom at approximately 4:02 p.m.)

11 THE COURT: We'll be in recess for about
12 five to ten minutes.

13 MR. MCMAHON: Your Honor, can the witness
14 step down?

15 THE COURT: Yes. Ma'am, you can step
16 down. Just don't discuss your testimony with
17 anybody while you're moving around.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: State ready?

23 MR. MCMAHON: Yes, sir.

24 THE COURT: Defense ready?

25 MR. STODDARD: Yes, sir.

DW - P. TACKETT - CROSS

1 THE COURT: Bring the jury in.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 4:13 p.m. and
4 the following proceedings commenced in
5 court.)

6 THE COURT: You were in the process of
7 examining your witness. Mr. McMahon, I'll allow you
8 to continue now.

9 MR. MCMAHON: Thank you, you know.

10 THE COURT: Yes, sir.

11 BY MR. MCMAHON:

12 Q Well, I think I left off to ask you the
13 precise position you were in in the vehicle when you
14 turned and saw this object, which we now know was
15 the victim Mr. Ivey in that roadway.

16 A I was in the driver's seat.

17 Q You were in the driver's seat.

18 A Yes, sir.

19 Q And you didn't look to your left?

20 A No, sir. I looked to my right to see
21 Kara.

22 Q The left would have been to the grassy
23 area near the cables. You say you looked to your
24 right?

25 A Yes, sir.

DW - P. TACKETT - CROSS

1 Q And where on your right, the right window?

2 A It was the back right.

3 Q Out of the back right window.

4 A Yes, sir.

5 Q That's when you saw Mr. Ivey?

6 A Yes, sir.

7 Q When you say the back, would that have
8 been the passenger, the window, the passenger's
9 window in the back or far back?

10 A The passenger window in the back.

11 Q All right. Show the jury in the chair how
12 you had to turn to look.

13 A I turned like this.

14 Q You're in the driver's seat. Show them.
15 I know that's got arms on it. I don't know if the
16 seat did or not.

17 A I turned to the side as far as I could and
18 looked back like this.

19 Q All right. And so you were able to -- you
20 were in the driver's seat. You would have looked
21 out of this window and been able to see him right
22 here?

23 A Yes, sir.

24 Q Is that what you're telling us?

25 A Yes.

DW - P. TACKETT - CROSS

1 Q And was anything obstructing your view?

2 A. The air bags.

3 Q The air bags? What about the curtains?

4 A The air bag curtains.

5 Q Could you see outside those curtains?

6 A I can see a little between the curtains.

7 Q So it would have been from this side of
8 the vehicle out here and over in this area right
9 here?

10 A Yes, sir.

11 Q And you sure you didn't see that object,
12 that person, in fact, before he landed there?

13 A No, sir.

14 Q You sure you didn't?

15 A I'm a hundred percent positive.

16 Q Why are you so positive on that when you
17 can't remember? Why don't you not remember that?

18 A I don't remember seeing anybody.

19 Q You remember singing and talking.

20 A Before the wreck.

21 Q Let me ask you this, you had medication
22 for migraines.

23 A Yes, sir.

24 Q You had a migraine that morning; is that
25 right?

DW - P. TACKETT - CROSS

1 A Yes, sir.

2 Q Was it a bad migraine?

3 A Yes, sir.

4 Q Was it -- I don't know if they use these
5 scales one to ten, one being the least, ten being
6 the most, where would it fall on the scale?

7 A Eight.

8 Q And eight out of ten. And you were
9 experiencing that before you left or before you
10 entered on 385?

11 A Yes, sir.

12 Q You remember that.

13 A I remember having the migraine?

14 Q Yes, ma'am.

15 A Yes, sir.

16 Q And it was a severe migraine?

17 A It was an eight, yes, sir.

18 Q Eight out of -- wee, that's not light, is
19 it?

20 A No, sir.

21 Q In fact, is it correct to characterize it
22 as a severe migraine?

23 A You can.

24 Q Okay. Is that how you would describe it?

25 A I would say it was a severe one when I had

DW - P. TACKETT - CROSS

1 to go to the emergency room.

2 Q When what?

3 A When I have to go to the emergency room.

4 Q All right. And did you have any
5 medication?

6 A I didn't take any medication for it.

7 Q Did you have any?

8 A Yes, sir.

9 Q All right. When did -- you had
10 medications that you could have taken the morning of
11 the 28th that assist you or treat symptoms of having
12 a migraine; is that correct?

13 A If I would have took it I wouldn't have
14 been able to leave the house.

15 Q Okay. Now why wouldn't you have been able
16 to leave the house?

17 A Because the Maxalt made me tired after I
18 took it.

19 Q So have there been times -- I'll try the
20 phrase this question responsibly. Haven't their
21 been times in your life that your migraines were so
22 bad that you wouldn't drive?

23 A Yes, sir.

24 Q And you made that choice?

25 A Yes, sir.

DW - P. TACKETT - CROSS

1 Q And you chose not to have take the
2 medication?

3 A Yes, sir.

4 Q Because of the side effects?

5 A Right, yes, sir.

6 Q Because then you wouldn't be able to
7 drive?

8 A Right.

9 Q And there are other causes or conditions
10 you were in?

11 A Yes, sir.

12 Q And it would affect your mental state
13 negatively?

14 A Yes, sir.

15 Q And it would affect your tracking?

16 A Yes, sir.

17 Q I mean, you have to process -- you heard
18 that doctor testify. You know that you're an
19 intelligent young lady. There's a lot of moving
20 parts in operating a motor vehicle; isn't there?

21 A Yes, sir.

22 Q It's not like mindlessly getting in a car
23 motoring down the highway, is it?

24 A No, sir.

25 Q And it's kind of added on when you have a

DW - P. TACKETT - CROSS

1 child.

2 A Yes, sir.

3 Q And you got a, I mean, you got to make
4 decisions and you got to make those decisions
5 timely, time kind of compressed getting on a high
6 speed interstate; isn't it?

7 A Yes, sir.

8 Q It's different than maybe I ain't never
9 been on Curry Road. I've been on Highway 49 to my
10 grandmama's across Lancaster, but I've never been on
11 Curry Road. It's different driving on Curry Road
12 than it is on interstate?

13 A Yes, sir.

14 Q You've got to have all your abilities
15 clicking just like that eight cylinder engine or
16 however many cylinders they have nowadays. You got
17 to be on your game?

18 A Yes, sir.

19 Q And you weren't on your game?

20 A I felt like I was.

21 Q Well, you felt like you needed to take
22 your migraine medicine; didn't you?

23 A Yes, sir.

24 Q And you didn't want to take it because of
25 side effects?

DW - P. TACKETT - CROSS

1 A Well, I had a doctor appointment and I
2 didn't have anybody else to take me.

3 Q That's that was important to you?

4 A The doctor's appointment, yes, sir.

5 Q Not the safety of other members or
6 motoring public?

7 A I felt fine that morning.

8 Q You said you felt great.

9 A I felt great.

10 Q And is that how you describe the way you
11 feel on a eight-to-ten scale migraine, I feel great?

12 A Besides the migraine I felt great.

13 Q So you got to take the migraine out of the
14 mix, right?

15 A I did, yes, sir.

16 Q You did? You made that choice?

17 A Yes, sir.

18 Q Okay. Just like you made those choices to
19 take those medications in combination to each other?

20 A That's how they're prescribed, yes, sir.

21 Q Ma'am?

22 A That's how they were prescribed.

23 Q And that's what you did?

24 A Yes, sir.

25 Q Well -- I need some magnifying glasses.

DW - P. TACKETT - CROSS

1 What is E-R-A-Z-O-S-I-E?

2 A Erazosie.

3 Q Say that again?

4 A Erazosie.

5 Q Are you prescribed that medication?

6 A I was, yes, sir.

7 Q Were you prescribed it back in 2018?

8 A Yes, sir.

9 Q And what is that medication for?

10 A For my paranoid night terror.

11 Q That's also a blood pressure medication,
12 right?

13 A Yes, sir.

14 Q And how does it affect your blood pressure
15 to take this medication?

16 A I just have low blood pressure.

17 Q Low blood pressure?

18 A Yes, sir.

19 Q As a result of that medication?

20 A Yes, sir.

21 Q So when attorney Mr. Stoddard was talking
22 with you about that low blood pressure ---

23 A I didn't know that it was coming from that
24 medication until just recently.

25 Q Until what?

DW - P. TACKETT - CROSS

1 A Until just recently.

2 Q Okay. And it's, that's one that lowered
3 your blood pressure?

4 A Yes, sir, but I didn't know that it was
5 lowering my blood pressure like that.

6 Q And that's, that lower blood pressure is
7 normal for you?

8 A Yes, sir.

9 Q That's what basically your testimony is,
10 correct?

11 A Yes, sir.

12 Q And you've adjusted to that low blood
13 pressure?

14 A Yes, sir.

15 Q And you didn't even know it, didn't read
16 the brochure. Did it come with a brochure?

17 A I know it would lower blood pressure, but
18 I didn't know that it was lowering mine.

19 Q Okay. All right. And as a matter of
20 fact, on your migraine medication, you filled it the
21 day before the accident happened. Do you realize
22 that?

23 A I may have filled it, but I hadn't picked
24 it up yet.

25 Q So it's still sitting there put back in

DW - P. TACKETT - CROSS

1 inventory 3/27/18?

2 A I picked it up after the wreck and
3 everything.

4 Q You got it after the wreck. Are you still
5 on these medications?

6 A Some of them.

7 Q What medication are you on now?

8 A I'm on Klonopin and Prozac and the Geodon
9 and the Gabapentin.

10 Q Now, Prozac, that's typically prescribed
11 by a psychiatrist.

12 A Yes, sir.

13 Q What's the Prozac for?

14 A My depression.

15 Q You still take the Wellbutrin?

16 A No, sir.

17 Q And Prozac is kind of a step up from
18 Wellbutrin; isn't it?

19 A Yes, sir.

20 Q You take that everyday, twice a day?

21 A Once a day.

22 Q You take Klonopin?

23 A Twice a day.

24 Q Twice a day?

25 A Once in the morning and one at night.

DW - P. TACKETT - CROSS

1 Q According to your prescription?

2 A Yes, sir.

3 Q When did you get that most current
4 prescription?

5 A Just a couple of days ago.

6 Q A couple of days ago?

7 A Yes, sir.

8 Q And you take two Klonopins, one Klonopin
9 twice a day?

10 A Yes, sir.

11 Q And you also take Prozac?

12 A Yes, sir.

13 Q Once a day or twice a day?

14 A Once a day.

15 Q And wasn't there a time this year that
16 your Klonopin was reduced to just once a day?

17 A No, sir.

18 Q It was not?

19 A No, sir. It was reduced from three times
20 a day to once a day -- twice a day, sorry.

21 Q Three times a day to once a day on
22 Klonopin?

23 A Twice a day.

24 Q Twice a day. Do you take all that now?

25 A Yes, sir.

DW - P. TACKETT - CROSS

1 Q And do you still take or have your nightly
2 routine?

3 A Yes, sir.

4 Q Geodon?

5 A Yes, sir.

6 Q Or Geodon, I pronounce it both ways. And
7 a bowl or half bowl of marijuana?

8 A Not that much anymore.

9 Q Is it still every day?

10 A Yes, sir.

11 Q It's everyday, but just a reduced amount?

12 A Yes, sir.

13 Q So Ms. Tackett, you couldn't pass a drug
14 test today?

15 A No, sir.

16 Q Are you driving now?

17 A No, sir.

18 Q And those other tests, and I'm not going
19 to belabor the point, Ms. Tackett. Those other
20 tests that were administered to you by Trooper
21 Terry, you didn't do well on those tests, did you?

22 A They say I didn't.

23 Q Ma'am?

24 A They said I didn't?

25 Q Well, you know yourself. We all know

DW - P. TACKETT - CROSS

1 ourselves the best, or we should. I should know
2 myself better than anybody else on either. You
3 should know yourself.

4 A I thought I knew myself that morning.

5 Q And you thought -- and this a just a
6 marker, just a sign, you understand? You thought 42
7 seconds was 30 seconds?

8 A It depends on the way you count one
9 Mississippi, two Mississippi.

10 Q Well, that may be another excuse; but the
11 bottom line is you thought 42 seconds was 30
12 seconds, correct? You don't question that?

13 A No, sir, that's the way I counted it.

14 Q And that's slow. That's an indicator,
15 correct?

16 A That's what they said, yes, sir.

17 Q Well, that can be a sign for that. Your
18 medications can cause that. Do you understand?

19 A I understand that now.

20 Q Yes, ma'am. And you had some familiarity
21 with your medications. You testified you'd been
22 taking them for five years?

23 A And I haven't had any problems.

24 Q Yes, ma'am. And when you have problems
25 like even with the simple things, and I'm not

DW - P. TACKETT - REDIRECT

1 diminishing the migraine or anything like that; but
2 even on something like that, even on something like
3 that you made choices not to drive, correct?

4 A Yes, sir.

5 Q You heard the doctor testify the worst
6 person to make a decision whether they should drive
7 or not whether they're taking drugs or taking
8 alcohol is the person that's got the keys in their
9 pocket and knows where the car is parked. You
10 understand that; don't you?

11 A Yes, sir.

12 Q And that would have been you that day
13 operating that car?

14 A Yes, sir.

15 Q You shouldn't have been driving, should
16 you?

17 A I thought I was fine.

18 Q Ma'am?

19 A I thought I was fine. I thought I was
20 great.

21 Q And you've seen the test, you've taken the
22 tests, seen what blood, your blood?

23 A Yes, sir.

24 Q And all that says otherwise.

25 A Yes, sir.

1 Q Thank you very much.

2 THE COURT: Redirect.

3 MR. STODDARD: Just a few things.

4 **REDIRECT EXAMINATION**

5 BY MR. STODDARD:

6 Q Do you know whether or not -- I think he
7 asked you about Pristiq. Is that something that
8 came up?

9 A Yes, sir.

10 Q Is that -- do you know whether Effexor
11 metabolizes into Pristiq?

12 A I'm not sure.

13 Q Okay. Do you think is it possible that's
14 not a separate medicine on this report, it's just a
15 metabolite of Effexor?

16 A It could be; I'm not sure.

17 Q All right. One thing too, I just -- and
18 Kara's mother, what was her name?

19 A Sara.

20 Q Sara. She lives, she's gone somewhere.
21 Do you know where she's living now?

22 A Spartanburg.

23 Q Okay. I was thinking...

24 MR. STODDARD: Give me just a minute, Your
25 Honor. Your Honor, I don't think I have anything

1 further.

2 THE COURT: Anything further?

3 MR. MCMAHON: No, sir. Thank you, Your
4 Honor.

5 THE COURT: You may step down, ma'am.

6 THE WITNESS: Thank you.

7 THE COURT: Defense may call its next
8 witness.

9 MR. STODDARD: I don't have anymore
10 witnesses. Before I rest, Exhibit 1, there's been
11 some testimony about it. I would offer it only for
12 the warning. I think there's some testimony from
13 their expert that this is a typical warning for this
14 type of drug. So I do think there'd need to be some
15 redactions, but that would be my purpose for
16 offering this into evidence at this time.

17 MR. MCMAHON: Judge, we have no objection
18 along with completing, the rules with respect to
19 State versus Jackson. We'd like it in and have no
20 objection whatsoever.

21 THE COURT: Say that again.

22 MR. MCMAHON: Yes, sir. I have no
23 objections to it coming in as long as it's in its
24 totality.

25 THE COURT: So you have no objection to

1 the whole bottle coming in?

2 MR. MCMAHON: Yes, sir, that's all I'm
3 saying. I'm sorry I didn't say it properly or
4 precisely.

5 THE COURT: And whatever is on it. That
6 bottle is for a prescription recently filled.

7 MR. MCMAHON: This year, and it's for one
8 of her medications that was associated with this
9 trial, and one of them that she has testified to
10 that she's still on.

11 Is that correct, Mr. Stoddard?

12 MR. STODDARD: I believe so.

13 THE COURT: Well, the Court would be
14 concerned about any confusion it may cause the jury.
15 I will allow it to come in for the purposes he's
16 offering it so that any warnings on the label will
17 be available to the jury, but it is for a
18 prescription that has been filled after the
19 accident.

20 MR. MCMAHON: Yes, sir.

21 THE COURT: And not for a drug that was
22 being taken -- maybe for the drug, but not pills of
23 that bottle.

24 MR. STODDARD: And it's got ---

25 MR. MCMAHON: The directions of how one

1 should take it. I don't have any objection.

2 THE COURT: Okay. Well, I'll admit it for
3 that purpose only.

4 All right, I'd ask the attorneys to
5 approach briefly.

6 (WHEREUPON, Defense Exhibit No. 1 was
7 admitted into evidence and counsel
8 approached the Bench for an
9 off-the-record discussion.)

10 THE COURT: All right, ladies and
11 gentlemen of the jury, we're gonna stop at this
12 point in time for the afternoon. We expect to
13 probably be in a position to move on with the trial
14 and get the case into your hands sometime probably
15 in the morning is what I'm thinking so I'll just
16 make you aware that that could happen so you will be
17 aware of that when you to back. We'll start back at
18 9:00 in the morning. I'll ask you -- I know I'm
19 changing the times, but it depends on when people
20 can get here and how fast we can get started so we
21 are starting at nine in the morning. Remember that.
22 Be back in the jury room at that time.

23 You know my instructions now when you
24 leave the courthouse. I told you enough; I'm not
25 gonna repeat them. I'll check on them in the

1 morning. Hope you have a great evening. You're
2 free to go at this time.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 4:36 p.m.)

5 THE COURT: All right, I am gonna put on
6 the record the Defense had notified me that they
7 were having some difficulty with a witness they
8 expected to present. Originally thought perhaps
9 that witness could be here in the morning. Now it
10 appears it's gonna be difficult getting that witness
11 at all. However, I decided to go ahead and stop at
12 about 4:30 this morning to give you a chance to try
13 to make arrangements with that witness. If that
14 witness can appear in the morning certainly we'll
15 take that witness up. Otherwise, we probably would
16 be in a position to close the case and begin closing
17 arguments and charge the jury in the morning.

18 Now, ma'am, I'm going to caution you again
19 like I do every time we take a break. I'm allowing
20 you not to be incarcerated during the trial. We
21 will start in the morning at 9:00. If you fail to
22 appear we'll continue the trial in your absence.
23 You understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And if you do fail to appear

1 without adequate excuse I will issue a bench warrant
2 for your arrest. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right, we'll start in the
5 morning at 9:00. Is there something you want to
6 take up, Mr. McMahon?

7 MR. MCMAHON: Yes, sir. For the record,
8 if I could ask who the witness is, -- and I've
9 already talked to Mr. Stoddard about it -- if he'd
10 notify me.

11 THE COURT: At the Bench he did indicate
12 that if that witness became available he would
13 notify you as soon as possible.

14 MR. MCMAHON: And I don't need that on the
15 record from him. I don't mean to nitpick about
16 that, I just ---

17 THE COURT: Y'all talk about it and get
18 that information.

19 MR. MOWRY: Your Honor, just a
20 housekeeping matter on closing argument.

21 THE COURT: Yes, sir.

22 MR. MOWRY: I'm assuming that the State
23 will open and the Defense will follow.

24 THE COURT: Follow by the Defense and then
25 you get ---

1 MR. MOWRY: A rebuttal.

2 THE COURT: ---a rebuttal.

3 MR. MOWRY: Thank you, sir.

4 THE COURT: All right, we'll be in recess
5 until 9:00. Hope everyone has a good evening.

6 (Court was adjourned and resumed on July 18, 2019.)

7 THE COURT: All right, the State ready to
8 proceed?

9 MR. MOWRY: Yes, sir Your Honor.

10 THE COURT: Defense ready?

11 MR. STODDARD: Yes, sir.

12 THE COURT: Did you locate your witness?

13 MR. STODDARD: Well, no, sir, but I have a
14 motion to make ---

15 THE COURT: All right.

16 MR. STODDARD: ---in that regard.

17 THE COURT: That'd be fine.

18 MR. STODDARD: I would move that
19 Doctor Goodbar who is an expert, who I brought in as
20 an expert in the last trial, we have a transcript of
21 her testimony, that it be allowed under rule 804.
22 In fact, I think I wrote down the subparts of that
23 rule, but's it's a rule that allows for prior
24 testimony that's been subject to cross-examination
25 if the witness is unavailable. There are several

1 definitions available, of unavailability, including
2 death or medical emergency. The one I will be
3 relying on is that I've been unable to secure her
4 attendance by process or other reasonable means, I
5 think is what it says.

6 THE COURT: State?

7 MR. MOWRY: Your Honor, I don't even think
8 he attempted to serve process on her; that's one
9 thing. We used the same rule for Mr. Glodz; that
10 was done by consent. And quiet frankly, Mr. Glodz
11 was not responding to us. He lives out of state so
12 you know there's a rather complicated process to
13 secure out of state witnesses. And more to the
14 point from everything we can gather, he's out of the
15 country this summer so he wouldn't have been
16 available anyway. But Doctor Goodbar is eight miles
17 down the road in Clinton, South Carolina, so I don't
18 see how she is unavailable for that purpose. He
19 could have served a subpoena on her and that would
20 have taken care of the problem; she would have been
21 compelled to appear in court.

22 Quiet frankly, Your Honor, the State would
23 be prejudiced by the use of her transcript because,
24 quiet frankly, we would have cross-examined her
25 differently given Doctor Garvin's testimony which we

1 did not have in the trial back in March. That
2 changed the landscape considerably, and we would
3 cross-examine Doctor Goodbar on that using that as a
4 template, rather than the testimony from Doctor
5 Fincham who we had before.

6 THE COURT: Well, let me ask Mr. Stoddard.
7 What efforts were made to obtain her attendance?

8 MR. STODDARD: Thank you. Thank you, Your
9 Honor. So she was a retained expert prior to the
10 last trial and I paid her a retainer, a deposit. Of
11 course she's charging an hourly rate. I had no
12 reason to believe that she would be uncooperative.
13 I will say this, Your Honor, unfortunately, I missed
14 the notice that I was given that this was going to
15 be tried this week. Mr. Mowry -- and he may
16 remember this -- he brought up an issue of wanting
17 some documents from me and I said let me talk to my
18 client. And I asked when is this gonna to be tried
19 and I even missed his response. He sent me several
20 emails and I have no explanation. Somehow I missed
21 them. That happens. I get like 50 emails a day;
22 sometimes I'll miss one or two. It was about the
23 week of July 4th that I realized that it's on this
24 docket for this week so I immediately tried to call
25 -- Doctor Goodbar is one of the first people I

1 reached out to. Give me a moment. On July 5th, and
2 I think I tried to call her prior to this, but I
3 texted her are you available this week? And her
4 response was, let me check. Well, I waited on
5 response. On July 11th I still haven't got
6 response. I asked her that again, and her response
7 then was I doubt I will be available, perhaps I can
8 refer you to someone else. And I said, please let
9 me talk to you, and on that day we talked and I
10 explained ---

11 THE COURT: What day was that?

12 MR. STODDARD: July 12th.

13 THE COURT: All right.

14 MR. STODDARD: And I explained, I've
15 either got to ask for a continuance or go without
16 you and I've got to make a quick decision. And she
17 was telling me her problem is she's between here and
18 she described a mountain house. But when I told her
19 how important it is she said, well, I'll make it
20 work and I've got somebody else I might can get for
21 you instead, but I will make this work. I did not
22 subpoena her. And about that same day she said,
23 I've got somebody that can do this. And I talked to
24 that person between the 12th and 15th, and she said,
25 I'm reviewing materials and I will be available.

1 And that person, Wednesday afternoon about 4:00 told
2 me, I can't do this, with very little explanation.
3 And when I asked her if there's any way you can do
4 it, she says, I'm not, I won't even be in the state.
5 I went, I didn't even think about rule 804 by then.
6 And I'd been talking to Doctor Goodbar and she says,
7 we will not be back until Friday. I don't know
8 where she is. I assume she's at a mountain house.
9 That normally means to me North Carolina, but I
10 don't know that she's in the state right now. But I
11 will say this, when she said we won't be back until
12 Friday, she had mentioned something about a mountain
13 house doing some work.

14 MR. MOWRY: I will tell the Court -- I
15 don't have the exact dates, but I know it was back
16 in May that I notified Mr. Stoddard that this case
17 was gonna be tried this week.

18 MR. STODDARD: And I don't disagree with
19 that. And again, when we started conversing about
20 those documents which was about three weeks ago, I
21 think he'd agree I asked him when is this going to
22 be tried, and he said, are you not getting my
23 emails. And I got 'em, somehow I missed them
24 though.

25 THE COURT: All right, let's take a brief

1 recess. I want to see the attorneys in my office.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 THE COURT: All right, after meeting with
5 counsel in chambers I believe we've come to an
6 agreement on the introduction of -- who is the
7 witness that you're ---

8 MR. STODDARD: Nancy Goodbar, Doctor Nancy
9 Goodbar.

10 THE COURT: Okay, all right. Have we
11 reached an agreement as to what can be presented to
12 the jury from the State's perspective?

13 MR. MCMAHON: Yes, sir.

14 THE COURT: And from the Defense's
15 perspective?

16 MR. STODDARD: Yes, sir.

17 THE COURT: Okay. So we're ready for the
18 jury?

19 MR. MOWRY: Yes, sir.

20 THE COURT: Bring the jury in.

21 The name is Goodbar?

22 MR. STODDARD: Yes, sir.

23 THE COURT: Okay.

24 MR. STODDARD: Nancy.

25 THE COURT: Thank you.

DW - N. GOODBAR - DIRECT

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 10:34 a.m. and
3 the following proceedings commenced in
4 open court.)

5 THE COURT: Ladies and gentlemen of the
6 jury, I hope everyone had a good evening. I haven't
7 seen you yet this morning. If any of you had any
8 difficulty in complying with my instructions
9 concerning your behavior while you were away from
10 the courthouse, if any of you had any problems
11 please stand.

12 (There was no response.)

13 THE COURT: It appears that all of you
14 have been able to follow my instructions thus far.
15 I want to thank you for your patience with us this
16 morning. You may recall earlier in the trial there
17 was a witness who was unavailable, and we presented
18 that witness' testimony in the form of previously
19 sworn testimony; and we are about to do the same
20 thing in this case for a Doctor Goodbar. We have
21 gone over that transcript and we were working on
22 that this morning, and it took a while this morning
23 so. We have come to the point where we're ready to
24 present that testimony to you. We'll do it in the
25 same fashion that we did earlier.

DW - N. GOODBAR - DIRECT

1 Sir, I believe you're going to be our
2 reader so if you'll come up to the stand, please.
3 The Defense is in the process of calling witnesses
4 so the Defense can proceed.

5 MR. STODDARD: Thank you.

6 **DIRECT EXAMINATION**

7 BY MR. STODDARD:

8 Q Would you state your name.

9 A Nancy Goodbar.

10 Q And tell me what you do or what's your
11 profession.

12 A I'm a pharmacist.

13 Q And what kind of education did you get to
14 be a pharmacist?

15 A I received my doctrine in pharmacy degree.
16 I've had two years of clinical residency training in
17 the inpatient and outpatient training setting, and
18 I've had ten years of practicing experience.

19 Q And what do you do now?

20 A I'm currently on the faculty of
21 Presbyterian College School of Pharmacy.

22 Q And what is your position there?

23 A Associate professor of pharmacy practice
24 and assistant dean.

25 Q And so you teach pharmacy at PC?

DW - N. GOODBAR - DIRECT

1 A I do.

2 Q Have you ever been qualified as an expert
3 before?

4 A Yes.

5 Q Can you tell me how many times?

6 A Seven cases.

7 Q Have you ever been reviewed as an expert
8 by any court?

9 A No, sir.

10 Q I would offer, is it Doctor Goodbar or
11 Nancy?

12 A (No verbal response.)

13 MR. STODDARD: Doctor Goodbar as an expert
14 in toxicology.

15 THE COURT: Any objection from the State
16 to her being allowed to testify as an expert?

17 MR. MCMAHON: No objection, Your Honor.

18 THE COURT: All right, so she'll be
19 qualified as an expert within that field.

20 You may proceed, Mr. Stoddard.

21 BY MR. STODDARD:

22 Q All right. I handed you, I handed you
23 what's been marked as Defendant's Exhibit Number 1.
24 That is, does it appear to be, and I think Pamela
25 Tackett's toxicology report and that may -- make

DW - N. GOODBAR - DIRECT

1 sure it's the same. State's Exhibit 5-B.

2 A Yes, it does.

3 Q All right, have you reviewed that before
4 coming to court?

5 A Yes, I have.

6 Q All right. And for purposes of this let's
7 assume that the drugs that are in her system in that
8 report that are in Pamela Tackett's system, that she
9 had been using all these drugs as early as
10 August 2017.

11 A (No verbal response.)

12 Q And what drugs are in -- first of all, do
13 you from information we gave you, do you know what
14 medicines Ms. Tackett was on?

15 A Yes, I do, and as they are presented here
16 as well.

17 Q I know there's other medicines that don't,
18 that there's no toxicology on because they don't
19 affect the central nervous system, but ---

20 MR. MCMAHON: No, sir, I object to the
21 form of the question.

22 BY MR. STODDARD:

23 Q Did I ask you to focus on drugs that have
24 effect that would affect her ability to drive?

25 A Yes, sir.

DW - N. GOODBAR - DIRECT

1 Q Okay. You became familiar with all of her
2 medicines, even those that don't affect that
3 ability?

4 A (No verbal response.)

5 Q All right. But just the ones that -- I
6 just want you to list the ones that affect the
7 ability, that affect her ability to drive.

8 A Well, specifically, the ones that are
9 presented before me here are the list of her
10 medications that show up. There's THC, Clonazepam
11 Gabapentin and Venlafaxine, and Hydroxypropine (ph)
12 which is with propine. All of them have side
13 effects that could cause things like dizziness,
14 sedation, and fatigue. Any normal length of time
15 the patient has been on these medications can
16 significantly be different or her response would be
17 different the longer she's been on these medications
18 as far as developing a tolerance.

19 Q So let me ask you this, given the levels
20 that you see in the report of these drugs, based on
21 that alone can you say whether or not she could be
22 too impaired to drive?

23 A Based on looking at the levels and also
24 recognizing the facts that she's been ---

25 Q But what I'm asking, I just want you to

DW - N. GOODBAR - DIRECT

1 just the levels.

2 A Just the levels?

3 Q Just the levels and nothing, knowing
4 nothing else.

5 A Based on the levels all of them are
6 therapeutic, but are all very low end of
7 therapeutic.

8 Q And I would -- and would you know whether
9 she would, her ability to drive would be impaired
10 based on that?

11 A When I first ---

12 MR. MCMAHON: Objection. I don't know if,
13 if that -- objection, Your Honor. May I approach
14 the Bench.

15 THE COURT: Sure.

16 MR. MCMAHON: I'm answering for the Court
17 in making argument. "Whereupon, a Bench conference
18 was held out of the hearing of the jury at this
19 time." The Court directs to Mr. Stoddard. "You
20 want, you want to state the question again and
21 then..."

22 MR. STODDARD: Yes, sir.

23 BY MR. STODDARD:

24 Q Let me state the question again. On a
25 hypothetical person with the levels that you see in

DW - N. GOODBAR - DIRECT

1 this report, can you tell just from the levels alone
2 whether a person's ability to drive a vehicle,
3 whether the person would be too impaired to drive?

4 A Based on the levels that the likelihood of
5 impairment would be low.

6 Q And so is it possible that a person can be
7 too impaired though?

8 A It is possible.

9 Q What kind of factors would you want to
10 consider in determining whether a person was too
11 impaired?

12 A They're quite a few factors. One of them
13 is the importance of appropriate dosage, triation
14 [sic] by a medical professional, the length of time
15 a person would have been on these drug therapies
16 because as a -- as drugs are, are triarated up to
17 therapeutic dose, that is one of the major things
18 that a medical professional would review is the
19 ability for the patient to tolerate the medications.

20 Q Did you actually look at a history, a list
21 of Pamela Tackett's drugs, and are these drugs in
22 particular and how the dosages have been titrated?

23 A I did, yes, sir. And it -- from what I
24 saw, I saw medication history from 2017 forward.
25 And based on my evaluation of the drugs that we have

DW - N. GOODBAR - DIRECT

1 levels on, they were all overseen by the same
2 physician which is also very important. That he was
3 prescribing each one of these medications, had a
4 clear watch on how she responded to these
5 medications or a patient would respond to these
6 medications. And so, with the triaration it was
7 done very appropriately.

8 Q If I could, I think that was titration.

9 A Titration.

10 Q And so knowing, is there particular
11 anything, is there anything about these levels that
12 stands out as being or is there anything that would
13 cause you to believe that she would be too impaired
14 to drive from what you're seeing in that report?

15 A From what I'm seeing in this report I
16 can't conclusively say.

17 Q All right, then, let me talk about
18 marijuana. So the level of marijuana, what was the
19 level of marijuana there?

20 A 2.9.

21 Q Okay. Is that high, low, or where is that
22 on the spectrum?

23 A That is low on the spectrum.

24 Q Based on the drugs that you see -- the
25 other drugs that you see and the levels you see, do

DW - N. GOODBAR - DIRECT

1 you have an opinion about whether the marijuana
2 combined with those drugs would cause a person to be
3 too impaired to drive?

4 A No, sir, that interaction would be, would
5 be very low.

6 Q I notice that on the report, I think it's
7 called a threshold of 2.0 where you say it's 2.9.

8 A Yes, sir.

9 Q What's the purpose of a threshold holding,
10 what does it mean?

11 A The threshold would be there to basically
12 be the cutoff so if that level fell below two it
13 would result negative. So, it would, it would show
14 no marijuana was present.

15 Q If you detected -- that doesn't mean that
16 none was detected, right? It just means that it's
17 below the threshold?

18 A Correct, correct.

19 Q If you detected marijuana, a marijuana
20 that's below the threshold, why wouldn't you report
21 it in a report like this?

22 A Because it would have minimal effects on
23 the patient at that point.

24 Q Is it fair to say that it would have zero
25 effect?

DW - N. GOODBAR - DIRECT

1 A I don't know that. It would be fair -- I
2 don't that it would be fair to say zero.

3 Q Okay. But the reason that thresholds are
4 in place is because of what we know that the
5 evidence and literature shows below certain
6 thresholds. There's minimal effects on patients?

7 A Do you know of some places, some other
8 states ---

9 Q I've got -- let me back up. Okay. Number
10 12 is an answer; I made it a question.

11 A But the reason the thresholds are in place
12 is because of what we know and that the evidence and
13 literature shows below certain thresholds. There's
14 minimal effect on patients.

15 Q Do you know of some places, some other
16 states that have a higher, have a threshold that's
17 even higher than 2.9?

18 MR. MCMAHON: Objection, Your Honor. And
19 the Court directs, "Okay. And the nature of your
20 objection?" And my response, "Other states."

21 THE COURT: I ask the attorneys to
22 approach just a second.

23 (WHEREUPON, counsel approached the
24 Bench for an off-the-record discussion.)

25 THE COURT: All right, you may proceed,

DW - N. GOODBAR - DIRECT

1 Mr. Stoddard.

2 MR. STODDARD: One other thing I just want
3 to make sure.

4 MR. MCMAHON: Judge, may we approach the
5 Bench?

6 THE COURT: Come on up.

7 (WHEREUPON, counsel approached the
8 Bench for an off-the-record discussion.)

9 BY MR. STODDARD:

10 Q Okay, but the 2.0 threshold would be,
11 Doctor Goodbar, would be relevant to acceptable
12 practices in South Carolina? Is that -- and I was
13 starting with line 9 on page 130.

14 A (There was no response.)

15 Q Going to page 131, 134. All right, let me
16 ask you another thing. So there I think there's
17 testimony that there are five -- or well, do you
18 know when you, when you've testified just now about
19 the different drugs, you were testifying about the
20 things, the metabolites or whatever was found in her
21 blood; is that right?

22 A Yes.

23 Q So there's names of the ---

24 A Based on what's in front of me.

25 Q Do you know that -- of the drugs that got

DW - N. GOODBAR - DIRECT

1 in her system did you review that?

2 A The names of the drugs that, that we have
3 recorded levels for.

4 Q Yes.

5 A Klonopin, Gabapentin, Effexor, and
6 Wellbutrin.

7 Q By the way, on the Klonopin, that level,
8 could you describe what the level as far as it being
9 high, low, or medium?

10 A It is, it is therapeutic, but it is on the
11 low end of the therapeutic level.

12 Q And I think they're more -- the list you
13 have in front of you is more, there's more and more
14 metabolites, more metabolites than you have drugs;
15 is that right?

16 A Correct. There's a metabolite of
17 Clonazepam that was tested for. Again, it's on the
18 low end of therapeutic as well.

19 Q But does one more of the drugs you listed
20 break down into two separate metabolites?

21 A Yes, sir, the Clonazepam does and the
22 Effexor does.

23 Q So why would we have more metabolites on
24 the report than we have actual medicines?

25 A Correct.

DW - N. GOODBAR - DIRECT

1 Q Now let me ask you this. In analyzing how
2 these drugs would impair someone does it make, what
3 kind of difference does it make whether you have
4 one, two, or in this case four different drugs that
5 impair?

6 A Each medication has side effects that are
7 listed clinically. When you look at the mechanism
8 of action of these medications they're still,
9 they're all different. They all affect the central
10 nervous system differently. When you run a drug
11 interaction check there's only one interaction that
12 comes up and that is to monitor the patient how a
13 patient could be affected by the combination of only
14 two of these listed drugs.

15 Q And so which two are those?

16 A Klonopin and Gabapentin.

17 Q Okay so, are you telling me that the other
18 ones, that there's no different effect of the
19 combination doesn't change how it affects you?

20 A The combination should not.

21 Q Okay.

22 A Based on, based on evidence and, and
23 researching true drug interactions.

24 Q So do you have an opinion as to whether
25 the person with those in their -- a person with

DW - N. GOODBAR - DIRECT

1 those in their system, let me make it this way.
2 Would marijuana affect your answer that only two of
3 them interact? Does it affect that at all of the
4 level of marijuana -- let me see. The level of
5 marijuana in this report, does it affect that
6 analysis?

7 A It, it, it could lead to because it is
8 considered a CNS depressant. So in combination with
9 Clonazepam and the Gabapentin, it could, it could
10 have exasperated.

11 Q What is the ---

12 A So ---

13 Q When you say that there's a, the two
14 interact, what are some of the things that you would
15 be looking for that could happen as far as side
16 effects?

17 A Yes.

18 Q Wait a minute. I've read your answer.
19 Line 1 is an answer.

20 A As far as side effects?

21 Q Yes.

22 A You could just see basically the
23 synergistic effect of the Clonazepam and the
24 Gabapentin being used together. The common adverse
25 side effect -- excuse me. The common adverse effect

DW - N. GOODBAR - DIRECT

1 would be drowsiness, fatigue, dizziness are some of
2 the more, more common central nervous system ---

3 Q And ---

4 A ---side effects.

5 Q Sorry. And are those side effects of
6 those two drugs even acting -- even taken alone?

7 A Yes, sir.

8 Q Now tell me, each of these drugs has
9 something that does, it's supposed to do to the
10 central nervous system, that's its purpose. Is that
11 right?

12 A Correct.

13 Q And what's the difference between that and
14 a side effect?

15 A Well, a side effect is, it's a wanted
16 effect that you would get from drug therapy. The --
17 each, each drug is there for a certain purpose for
18 whatever the medical reason may be. And so what we
19 want to see is, is obviously a good outcome to help
20 control the disease state that the patient has. The
21 adverse or side effects would be those unwanted, ---

22 Q Okay.

23 A ---unwanted effects that are not helping
24 the underlying disease state.

25 Q Now, hypothetically, if someone's taking

DW - N. GOODBAR - DIRECT

1 all of these drugs that's on the list -- let me back
2 up and ask another question. Do the side effects
3 occur in every patient?

4 A No, sir.

5 Q Okay. So it's possible -- well, I guess
6 the intent is you take it, you take it and it does
7 what it's supposed to do with no side effects?

8 A That's, that would be the ideal in an
9 ideal world, yes.

10 Q And if you had with this list of drugs a
11 patient with no side effects, there'd be -- what
12 would be, what would the effect be on your ability
13 to drive?

14 A With no side effects there would be zero.

15 Q Even though it is doing something to the
16 nervous system it wouldn't effect, it wouldn't have
17 that effect on your ability to drive?

18 A Correct.

19 Q So when you talked about titrating drugs,
20 is that one of the things that we're doing is trying
21 to see what side effects there are?

22 A Well, the goal as a health care provider
23 is to initiate patients on medications at, first of
24 all, the lowest dose possible.

25 Q Uh-huh.

DW - N. GOODBAR - DIRECT

1 A The titrate is to ensure that the patient
2 can tolerate the medication and we are minimizing
3 the side effects as we slowly titrate those
4 medications to a therapeutic level.

5 Q I had another question, give me just a
6 minute. If when you're titrating a patient like
7 that and let's say you get them to a level where
8 side effects are none, but very minimal, and they
9 stay on this drug over time -- I guess what I'm
10 gonna ask is this. Would side effects appear later,
11 likely appear later or do the opposite, get less
12 over time?

13 A As you titrate up, again, the goal is to
14 make sure that we are adequately treating the
15 patient's disease state while minimizing the
16 presence of side effects. Over the course of time a
17 lot of the side effects are dose dependent. So
18 that's why we, why we step wise, increase doses to
19 allow for the patient's body to get used to having a
20 new drug onboard or a higher dose of that drug
21 onboard. So based on your question the longer that
22 a patient is on a medication, the less likely that
23 they are, the less likely they are for a side effect
24 to appear, but also tolerance can occur. So the
25 longer patients are on certain medications you will

DW - N. GOODBAR - CROSS

1 definitely see less fatigue, less drowsiness, less
2 of anything they may have experienced upon
3 initiation of therapy.

4 Q Page 141. What is your background?

5 A My background is clinical pharmacy. So I
6 have been trained to manage patients directly and
7 work with physicians directly to make appropriate
8 therapeutic choices based on medical diagnoses.

9 MR. STODDARD: I've got no further
10 questions.

11 MR. MCMAHON: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. MCMAHON: This is cross-examination by
14 the Solicitor.

15 **CROSS-EXAMINATION**

16 BY MR. MCMAHON:

17 Q Good morning, Doctor.

18 A Good morning.

19 Q I want to ask you about some of these
20 medications -- well, all of them on the toxicology I
21 guess I should say. Klonopin, you're familiar with
22 the medication Klonopin?

23 A Yes, sir.

24 Q And what, what reason would a doctor
25 prescribe Klonopin?

DW - N. GOODBAR - CROSS

1 A Klonopin is an antianxiety medication. So
2 typically, in patients who have anxiety is where we
3 would see Klonopin be used.

4 Q Are there other areas in which you, in
5 which Klonopin would be prescribed?

6 A There are some off-label indications, but
7 the FDA label indication that it's most likely
8 prescribed is for anxiety.

9 Q And what, if any, are the side effects of
10 Klonopin?

11 A They can range from fatigue, drowsiness,
12 blood pressure can go down with Klonopin.

13 Q Can go down?

14 A Klonopin---

15 Q Blood pressure?

16 A Initiation, uh-huh.

17 Q All right.

18 A There are, the big ones of Klonopin are
19 CNS related.

20 Q Okay. And CNS, what, what does that stand
21 for?

22 A Central nervous system.

23 Q The doctor says I'm sorry, and then I
24 respond, no, no, that's quite alright, Doctor. I
25 appreciate your educating me as we go along. And

DW - N. GOODBAR - CROSS

1 they're central nervous system, is that correct,
2 stimulants and depressants?

3 A Yes, sir.

4 Q And what is Klonopin?

5 A Klonopin would be a central nervous system
6 depressant.

7 Q And how, how does that act on the body?
8 What does that do?

9 A So Klonopin is considered a
10 Benzodiazepine, a longer acting Benzodiazepine,
11 which produces a more steady drug level. It acts on
12 what we call a G-A-B-A, which is inhibitory
13 neurotransmitter so it's acting on the
14 neurotransmitter of the brain to, to basically
15 increase the amounts of G-A-B-A. And so the thought
16 is, in somebody with anxiety who may have an
17 overactive excitatory system, we're trying to
18 balance out by increasing the patient's response to
19 inhibitory neurotransmitter.

20 Q Thank you, Doctor. Now is there any
21 warning attached to Klonopin? A warning, what, like
22 when if I go pick my scripts up ---

23 A Yes, sir.

24 Q Sometimes they may -- some scripts may say
25 or may have a warning on them.

DW - N. GOODBAR - CROSS

1 A Yes, sir.

2 Q Is there a warning on Klonopin?

3 A Typically, yes. So when you pick up your
4 prescriptions up you would likely see one of the
5 most common is not to operate machinery while --
6 until you know how the drug will affect you.

7 Q Is that a mandatory warning from the FDA?

8 A It's not a mandatory warning ---

9 Q And can that ---

10 A ---concerning---

11 Q Well, ---

12 A And I'm, I'm considering mandatory being
13 black box warnings.

14 Q What, what's a black box warning?

15 A Black box warnings are in the package
16 inserts and those black box warnings are the ones
17 that require significant discussions, significant
18 follow-up with patients.

19 Q So, and is this the type of warning that
20 would be on the drug Klonopin?

21 A Yes, sir.

22 Q But it's not mandatory, not mandatory, not
23 required by the FDA, that warning? I think we're at
24 line 14, 145.

25 A No, sir.

DW - N. GOODBAR - CROSS

1 Q Okay, all right. And then the next drug
2 Clonazepam, what is that?

3 A That is ---

4 Q What is that?

5 A That is the generic form of Klonopin.

6 Q All right. So that, that's just a cheaper
7 model? When they say generic I usually think
8 cheaper.

9 A It's, it's not necessarily -- well, yes,
10 it's -- yes, it could be cheaper, but every drug has
11 a brand name and a generic name associated with it.
12 And so in medical documents we always refer to the
13 drug by their generic name.

14 Q So why would there be two results there,
15 one for Klonopin and one for Clonazepam if, if
16 they're the same drug just called by a different
17 names?

18 A The Clonazepam result is the Klonopin
19 result. There's a result that is the metabolite of
20 Clonazepam.

21 Q All right. And, and so you've got active
22 Clonazepam, Klonopin. That's just an active result?

23 A Yes, sir.

24 Q And then you have the metabolite positive
25 result; and the metabolite is, I don't know if it's

DW - N. GOODBAR - CROSS

1 a good term or not. It's kind of what lingers, if
2 you will, in the body, what has not yet been removed
3 from the body.

4 A It depends on the drug.

5 Q Well, tell me, tell me about it with
6 Clonazepam.

7 A With Clonazepam the metabolite is not as
8 active as its parent drug, so of course, when you
9 take a medication your body's gonna start breaking
10 it down. And a lot of times, most of these
11 metabolites as your body breaks it down are inactive
12 in the way of, of the body removing it from the
13 system. This, this particular one has minimal
14 activity, but can still be contributed to having
15 some.

16 Q All right. And then the -- thank you,
17 Doctor. And then the third one, Neurontin.

18 A Yes, sir.

19 Q What type of drug is Neurontin?

20 A That is, and it's considered, its
21 pharmacological category is antiseizure medication.

22 Q All right. An antiseizure medication, all
23 right.

24 A Antiseizure. It is, is its category.

25 Q And, and so that is or is not, does or

DW - N. GOODBAR - CROSS

1 does not have affect on the central nervous system?

2 A It does.

3 Q As a depressant or as a stimulant?

4 A As a depressant.

5 Q As a depressant? All right, and how, how
6 does it work generally and briefly?

7 A So it also works on G-A-B-A, which is the,
8 our inhibitory neurotransmitters. So the reason
9 it's classified as an antiepileptic is, in patients
10 who have seizures that excitatory neurotransmitter
11 is overtaking and when we're trying to balance that
12 out with the presence of an inhibitory
13 neurotransmitter.

14 Q So we now have two central nervous system
15 depressants ---

16 A Correct.

17 Q ---onboard?

18 A Yes, sir.

19 Q All right. With positive results of their
20 presence?

21 A Yes, sir.

22 Q And -- all right. One antianxiety and the
23 other seizure?

24 A Yes, sir.

25 Q Correct?

DW - N. GOODBAR - CROSS

1 A Yes, sir.

2 Q Then the third, it looks like Effexor.

3 A Yes, sir.

4 Q What type of drug is that?

5 A It's an antidepressant medication that is
6 used to manage a patient's depression symptoms.

7 Q So they're kind of a lot of moving parts
8 in the body?

9 A Correct.

10 Q And you got, you got a depressant for
11 anxiety?

12 A Correct.

13 Q You got a depressant for seizures?

14 A Yes.

15 Q And then you got another depressant,
16 depressant to manage the other drugs in the body?
17 Is that, is that what you're saying?

18 A No, sir.

19 Q All right.

20 A Effexor ---

21 Q Explain what you're saying.

22 A Effexor is a drug that we utilize for
23 symptoms of depression. So mood, sadness, feelings
24 of hopelessness, that is what we would use a drug
25 like Effexor for, and it works on a completely

DW - N. GOODBAR - CROSS

1 different set of neurotransmitters than Clonazepam
2 and Gabapentin do.

3 Q And if you have a person in an automobile
4 with these prescription drugs on board, you then got
5 a person that's anxious, depressed, and subject to
6 seizures. Is that a fair statement? Or they
7 wouldn't be taking these medications.

8 A I can't speak to the reason that, the
9 medical reason that the patient may be on these.
10 Gabapentin has other indications that you can use it
11 for. But being on all three, I can say that there
12 are two CNS depressants and then a drug to treat
13 depression.

14 Q And they're in the system of -- if the
15 person's driving they have them in their system?

16 A Yes, sir.

17 Q That's, that's the only point. Not only
18 if they are on board driving, those drugs are on
19 board also, correct?

20 MR. MOWRY: No, sir, that's your answer.

21 THE WITNESS: Correct.

22 BY MR. MCMAHON:

23 Q Okay, all right. And then the other, the
24 toxicology, and I didn't -- and maybe I can't see no
25 better than I can hear. I should have said that at

DW - N. GOODBAR - CROSS

1 the beginning of my reading. So maybe I said it.
2 What about Pristiq? I'm not sure I heard you
3 mention that with Mr. Stoddard initially; you may
4 have. But you see it on the report?

5 A Yes, sir.

6 Q Tell me about Pristiq.

7 A Pristiq is a new drug on the market that
8 is -- it's marketed as a Venlafaxine metabolite. So
9 the patient was on Effexor, obviously based on the
10 level. But Pristiq, if a patient was taking that
11 medication, then a toxicology test would be done
12 for, for O-Desmevenlafaxine [ph] because that is a
13 metabolite of Effexor.

14 Q So the Pristiq is a prescribed medication?

15 A Yes, sir.

16 Q A depressant?

17 A It is, and it's not a separate med. It's
18 not a separate medication than what the patient was
19 taking.

20 Q Well, why would she be given just a new
21 medication?

22 A It's not my understanding that, that the
23 patient was on Pristiq. The patient was on Effexor
24 and Effexor metabolizes into O-Desmevenlafaxine.
25 The reason Pristiq shows up there is because that

DW - N. GOODBAR - CROSS

1 medication purely is that metabolite.

2 Q And it's in her system?

3 A Yes, sir.

4 Q And are those both Effexor and Pristiq,
5 depressants?

6 A They are, they are antidepressants.

7 Q Antidepressants?

8 A Yes, sir.

9 Q Central nervous system depressants? Do
10 they affect the central nervous system?

11 A They do, but they are not, they are not
12 considered CNS depressants.

13 Q What are they considered?

14 A They act on, they're considered, their
15 pharmacologic category is an antidepressant.

16 Q Antidepressant?

17 A Antidepressant.

18 Q Okay.

19 A Yes, sir.

20 Q And do you change those types of drugs --
21 would a doctor change that prescription because
22 maybe the Effexor having side effect wasn't working
23 and say, well, let's try, let's try this one, let's
24 try this new drug Pristiq? I mean, why, why the
25 change if they've been, if they're the same thing?

DW - N. GOODBAR - CROSS

1 That's what I'm trying to ---

2 A There's not ---

3 Q Question -- well, my response is gasp.

4 A There's not a change so let me try to
5 explain this in another way. Effexor is an active
6 drug that is being tested for. Effexor, that
7 medication metabolizes to O-Desmethylvenlafaxine, which
8 we also have a level for. Okay, Pristiq is the
9 reason that it's there is, is purely a synonym
10 because Pristiq is synonymous with the Venlafaxine
11 metabolite. So she wasn't on, or a patient that
12 would have been, would not be on both Effexor and
13 Pristiq. If the patient was on Pristiq we would
14 only ---

15 Q Okay.

16 A ---have tested for the O-Desmethylvenlafaxine.

17 Q But they all report out on the toxicology?

18 A Right.

19 Q And you're not, I mean, you're not an
20 expert in the field -- I mean, you're an expert in
21 the field of pharmacology as a Doctor of Pharmacy,
22 but not a toxicologist?

23 A I'm not a toxicologist, but I review
24 toxicology reports on a lot of patients.

25 Q I understand that, but you weren't offered

DW - N. GOODBAR - CROSS

1 as an expert in toxicology.

2 A That's right. I'm an expert in pharmacy.

3 Q And ma'am, and I certainly accept that.

4 And finally, Bupropion?

5 A Yes, sir.

6 Q What is that?

7 A That is considered an antidepressant.

8 It's a pharmacological category. Sometimes it needs
9 to be utilized in combination with other
10 antidepressants to manage underlying symptoms, and
11 it can be used as a smoking cessation aid also.

12 Q And all of these drugs and/or metabolites
13 were present in Mrs. Tackett's blood taken on
14 3/28/18 and thereafter tested?

15 A Based on the report that I'm seeing, yes,
16 sir.

17 Q They were present, correct?

18 A Yes, sir. Based on the report I'm seeing,
19 yes, sir.

20 Q Well, you, you base your opinions on that
21 report.

22 A Correct, I did.

23 Q All right.

24 A Yes, I do.

25 Q Okay, and so that -- let me see if I'm

DW - N. GOODBAR - CROSS

1 tracking right. Two antidepressants, antiseizure,
2 and, and two, whether they're metabolites or not --
3 let's see, two antidepressants, antiseizure. What
4 were the last two, Doctor?

5 A There's two antidepressants onboard.
6 There is a Benzodiazepine, which is a CNS depressant
7 and Gabapentin is our antiseizure, but it also acts
8 as being a CNS depressant.

9 Q And there's one for anxiety, antianxiety.

10 A There's four total medications.

11 Q All right. All right, thank you. And
12 then marijuana. In your testimony marijuana, this,
13 this is like a cocktail given by psychiatrists,
14 these, these prescribed medications?

15 A These prescribed medications are very, are
16 very common and conglomeration of medicines that we
17 would see in the patient, yes, sir.

18 Q Generally by a doctor of psychiatry?

19 A A, a doctor of psychiatry would definitely
20 have, have the training and knowledge; but also a
21 general internal medicine or general family practice
22 physician would be able to oversee the prescribing
23 of, of this ---

24 Q Do you ---

25 A ---medication profile too.

DW - N. GOODBAR - CROSS

1 Q Did you review Doctor O'Kelly's records?

2 A No, sir.

3 Q You did not review Doctor O'Kelly's
4 records?

5 A No, sir.

6 Q Who, whose records did you review,
7 doctors' records did you review?

8 A I have not reviewed any doctor records.

9 Q You haven't reviewed Ms. Tackett's
10 psychiatric records or pulmonology or ---

11 A No, no, sir.

12 Q ---neurologist?

13 A No, sir.

14 Q Well, where did, where did you get your
15 information to form your opinions? What did you
16 review?

17 A I was able to look at her prescriptions
18 and the report from this toxicology report.

19 Q You -- looked at her prescriptions? What,
20 explain that to me. What do you mean somebody
21 brought you -- I'm not being disrespectful at all.
22 Did somebody bring you her prescriptions?

23 A No, sir, that was provided to me with
24 the -- so that I would know that the doses of the
25 medications that she was on.

DW - N. GOODBAR - CROSS

1 Q All right. And how was that provided?

2 A Via report together with ---

3 Q What report?

4 A ---with ---

5 Q Well what, what -- I'm just asking you,
6 Doctor. What ---

7 A The report from the pharmacy.

8 Q The report from the pharmacy? So you, you
9 just looked at, and I take it that report would have
10 the patient's name, the scripts, and the dosages?

11 A The dosages.

12 Q Is that right?

13 A Yes, sir.

14 Q Have you looked at her pharmacy reports of
15 the, of the medications from what pharmacy?

16 A I cannot recall that.

17 Q Okay. And then the toxicology report?

18 A Yes, sir.

19 Q And you, you didn't look at any doctor
20 records?

21 A I did not.

22 Q All right. And I guess my question on
23 that report, does it tell the name of the doctor or
24 anything like that, the pharmacy report records?

25 A It does, the prescribing physician.

DW - N. GOODBAR - CROSS

1 Q Okay. But none of those records?

2 A No, sir.

3 Q And you don't know if in any of those
4 records anywhere along the way there was ever any
5 indication that she reported any side effects?

6 A Correct.

7 Q You don't know that?

8 A I don't.

9 Q Okay, all right. Now, the marijuana, do
10 you have the toxicology report up there? I guess
11 that's some type of drug. Is it a central nervous
12 system depressant?

13 A Yes, sir.

14 Q So it, it also reacts on a human being's
15 nervous system?

16 A Correct.

17 Q And, and I've heard throughout the trial
18 of this case different drugs affect different people
19 different ways obviously?

20 A Yes, sir.

21 Q What in your, what in your field of
22 expertise I guess since it's not prescribed in this
23 area, what are the effects of marijuana on a human
24 being?

25 A Very similar to what you would see with a

DW - N. GOODBAR - CROSS

1 central nervous system depressant that is
2 prescribed, so fatigue, drowsiness.

3 Q Fatigue, drowsiness, dizziness?

4 A Yes, sir.

5 Q Can it slow movements, slow reaction?

6 A That could happen, yes, sir.

7 Q Okay, and can it have a -- I use the term
8 negative, but can it have a negative effect on
9 attention to details and reality so to speak, if
10 that phrase makes sense?

11 A The drug itself can, yes, sir.

12 Q Okay. And it, it can alter people, it can
13 alter people?

14 A Yes, sir.

15 Q Right?

16 A Yes, sir.

17 Q Just like, and I mean, just like there's
18 some drug that you may get and say don't drink
19 alcohol with, right?

20 A Correct.

21 Q Because it can increase the effect, maybe
22 not a negative side effect, but the natural effect
23 that the drug can have on a person. Is that a fair
24 statement?

25 A Yes, sir.

DW - N. GOODBAR - CROSS

1 Q Okay. So for example, if they tell people
2 all the time, you know, it probably wouldn't be too
3 smart to pop a bottle of Xanax and drink it with a
4 beer. That, that probably wouldn't be a good idea,
5 would it?

6 A No, sir.

7 Q No, 'cause that can negatively effect
8 someone?

9 A Yes.

10 Q Is that a fair statement?

11 A Yes, sir.

12 Q And it, it's not, I mean, it's obviously
13 not good healthcare to take antidepressants, to take
14 anxiety pills, to take seizure medication, and smoke
15 marijuana. That can't be good for you, can it,
16 Doctor?

17 A The, that question in the State of South
18 Carolina since THC is not legal, you are correct.
19 But places are prescribing marijuana now for very
20 common disease states ---

21 Q Of course. If she was in one of those
22 states, Colorado for example, she wouldn't have been
23 on 385 running over two people on March 28th of the
24 last year, would she, correct?

25 A I'm not sure I'm following your question.

DW - N. GOODBAR - CROSS

1 Q Well, if she wasn't here she wouldn't have
2 committed the act here. That's all I'm saying.

3 A Oh.

4 Q Is that correct?

5 A If -- well, if she wasn't physically
6 present in the state.

7 Q Right. Now ---

8 A I would assume that.

9 Q Doctor, you, you don't know anything
10 about -- and not, not reviewed any report, no
11 reports about individuals that either witnessed the
12 scene or investigated the scene or transported her
13 to the Greenville County Hospital about their
14 observations of her behavior that day?

15 A I have not read that report. I have
16 looked at the medications and to be able to give my
17 expertise on, on what those medications and side
18 effects could look like.

19 Q And in your field of expertise, I mean,
20 you can't say if she was or was not impaired in any
21 manner whatsoever?

22 A I can't. I can't say that with 100
23 percent certainty, no, sir.

24 Q And if you know perhaps or if that was
25 shared with you, shared with you 'cause she tests

DW - N. GOODBAR - CROSS

1 positive for all of this, a 2.9 -- if it's a 2.0 the
2 threshold of marijuana, she tested positive for
3 marijuana?

4 A It was in her system, yes, sir.

5 Q Okay. So if you had that information,
6 peoples' observations, the reports that the
7 independent people, citizens gave, the hospital
8 records from that day, the nurses' notes such as
9 that, that would give you more information that
10 perhaps within your field of expertise you would
11 say, well, that's exhibiting side effects, correct?

12 A Potentially.

13 Q Yeah. And that would provide you more
14 information to share with this Court; wouldn't it?

15 A (There was no response.)

16 Q Whether or not there was or was not
17 presence of negative -- well, I guess all side
18 effects are negative I take it, I'm not sure, but
19 negative side effects, correct?

20 A Correct.

21 Q Correct? And you wasn't, you wasn't
22 provided with any of that?

23 A I did not review that.

24 Q Okay, and that, that, that was because you
25 weren't provided with it. You were not provided

DW - N. GOODBAR - CROSS

1 with it; you never had it.

2 A Correct. I, yes, I do not believe I was
3 provided that.

4 Q All right, yes, ma'am. And you never, you
5 would have never examined for any reason, but you
6 would never examine or talk to Ms. Tackett?

7 A No, sir.

8 Q Okay, all right. So if, if a party gave
9 information that she appeared drowsy, appeared very
10 sluggish, she appeared dizzy, you know, she fell,
11 she had slow movements and such like that, that
12 would be within the range of the side effects for
13 these drugs, for these antidepressants, for these
14 anxiety, for these seizure, for marijuana? That ---

15 A It potentially could be, yes, sir.

16 Q And, and these drugs, when you take them
17 can you take this, these types of drugs, and you
18 kind of chase them with marijuana, that can't be a
19 good thing, right?

20 A It is, it is, it would not be an ideal
21 situation with the fact that we know it is also a
22 CNS depressant.

23 Q And I asked you about that Klonopin. All
24 those other, I call them psychic drugs, psycho--
25 psychotropic drugs.

DW - N. GOODBAR - CROSS

1 A Yes, sir, that's appropriate.

2 Q I mean, I just call them like that. And
3 of those that have warnings in those same and
4 similar side effects; is that correct?

5 A Correct.

6 Q All right. All right. And that
7 combination, I don't think I know the definition of
8 the word anymore, exponential, but is it correct
9 that the more drugs you take or conditions you need
10 for them -- I'm, I'm not questioning that.

11 A Right.

12 Q Isn't it a potential to amplify the, or
13 more likely to have side effects because of each --
14 you know, drug A's got a side effect, drug B's got a
15 side effect, drug C has got a -- I used to Google
16 it. I don't Google it anymore or look it up 'cause
17 if I look up my symptoms I got everything in the
18 world.

19 A You're exactly right.

20 Q I'm not sure of the context of this next
21 one, I apologize to the Court. Want to get off --
22 this is my question: Want to get off the sofa no
23 more, you know, but, it does bump it up for the
24 potential to have those side effects?

25 A It does bump it up for the potential, but

DW - N. GOODBAR - CROSS

1 there's a lot of other factors that would come into
2 play to be able to say that symptoms were amplified.

3 Q Sure. And some of those that come into
4 play could be observations of the individual, the
5 behavior of the individual, the movements of the
6 individual; but that could be some of those factors
7 you could look at, that a doctor would look at and
8 say, hey?

9 A Hey ---

10 Q I need to get this or that off this drug.

11 A To be assessed, but in reviewing and
12 looking at the appropriate triations of these
13 medications, the reasons for doing that, again, is
14 to minimize the onset of side effects over the
15 course of time. These medications that appear to
16 have been onboard for quite a while and would not
17 disappear.

18 Q So titration means what?

19 A Starting at a low dose and slowly
20 increasing the dose to half hopefully to get,
21 hopefully to get the medical condition under control
22 while minimizing side effects.

23 Q So it's no question that these drugs had
24 side effects on Ms. Tackett?

25 A I don't know if they did or not.

DW - N. GOODBAR - CROSS

1 Q Okay, 'cause you didn't look at any
2 records, any doctors, any medical records?

3 A Not the physician medical records, no,
4 sir. I focused on the medications for baseline.

5 Q And Doctor, if an individual was taking
6 all or there were nine other medications that you
7 didn't mention, some of which are over the counter,
8 some of which have side effects, and they were much
9 lower potential for side effects on those
10 medications; but if you're taking those medications,
11 would it be important for the patient to report to
12 the doctor that and that they were smoking marijuana
13 daily?

14 A It would be something that would be
15 helpful for the physician to know because it could
16 mean that one of, one of her disease states or the
17 patient's disease state isn't under control and that
18 would be a flag to try to alter medication therapy
19 so that you can appropriately manage.

20 Q All right. And Doctor, how did -- well,
21 I'll ask it this way. How did you come to be here
22 today? How did you come to be here today?

23 A I was asked.

24 Q By?

25 A By David Stoddard.

DW - N. GOODBAR - REDIRECT

1 Q All right. So you were asked?

2 A Yes, sir.

3 Q Were you employed?

4 A Was I, am I employed?

5 Q Yes, ma'am.

6 A I would.

7 Q By Mr. Stoddard?

8 A He has a copy of my expert witness rate
9 sheet, yes, sir.

10 Q And what is your rate sheet?

11 A My fee for expert testimony is 300-dollars
12 an hour.

13 Q 300-dollars an hour?

14 A Yes, sir.

15 Q And you, you have no knowledge, no
16 personal knowledge, no presence whatsoever the date
17 of this incident, 28 March '18?

18 A No, sir.

19 MR. MCMAHON: All right, thank you. Thank
20 you, Doctor, very much.

21 **REDIRECT EXAMINATION**

22 BY MR. STODDARD:

23 Q A few things, let me start with this. By
24 the way, you mentioned that marijuana is being
25 prescribed in some places and you teach

DW - N. GOODBAR - REDIRECT

1 pharmacology?

2 A Yes, sir.

3 Q I don't know, do you study or deal with
4 how marijuana can be used if it were legal, how it
5 can be used to help patients?

6 MR. MCMAHON: What line are you on?

7 MR. STODDARD: Number 10.

8 MR. MCMAHON: On 166?

9 MR. STODDARD: Yeah.

10 MR. MCMAHON: Thank you.

11 BY MR. STODDARD:

12 Q Is that part of what you study?

13 A Yes, sir, I review the literature quite
14 frequently as a pharmacist. We always have to keep
15 up with the newest forms of treatment for disease
16 states; and the two biggest disease states that
17 marijuana is currently recommended for or as an
18 indication for, are migraines and seizures.

19 Q By the way, he asked you a question of if
20 my client Ms. Tackett had taken marijuana in
21 Colorado she would not have been here on the date in
22 question. Let's just say hypothetically she was in
23 Colorado -- I know this isn't, but I'm just --
24 hypothetically in Colorado, and legally got
25 marijuana by prescription and then got in a jet

DW - N. GOODBAR - REDIRECT

1 plane and flew here so that she's, I guess, could be
2 here within 24 hours, well, I guess overnight, sleep
3 ten hours, I don't know how long; but let's say she
4 got here and had a wreck in South Carolina. What
5 would the fact that she'd taken the marijuana in a
6 legal state versus illegally here affect it, change
7 its effect on her body?

8 A No, sir, it would not change the effect on
9 her body. The thresholds in states where marijuana
10 is legal are very different though.

11 Q All right. So we've been kind of talking
12 about these four drugs she takes and putting
13 marijuana in a separate category; but let's just
14 imagine for a minute, take the illegal -- or let me
15 ask another question. Is the fact that it's illegal
16 affect her any differently then if it were legal?

17 A It's this -- whether it's legal or illegal
18 it's the same, the same drug.

19 Q Okay. Now he asked you -- well, it's been
20 pointed out, are all, are all four of the legal
21 prescriptions she's on central nervous system
22 depressants?

23 A No, sir.

24 Q One wasn't, okay.

25 A No, two weren't.

DW - N. GOODBAR - REDIRECT

1 Q Two weren't. And marijuana is a CNS
2 depressant?

3 A Yes, sir.

4 Q Is that right?

5 A Yes, sir.

6 Q So the intended effect of these drugs --
7 and by the way, marijuana, when it's prescribed has
8 an intendant effect too; doesn't it?

9 A When it's prescribed, yes, sir.

10 Q Just like, just like anything, therapeutic
11 drug?

12 A Correct.

13 Q Intendant affects of, the fact that
14 they're all -- I'm gonna -- CNS meaning central
15 nervous system?

16 A Yes, sir.

17 Q The fact that they're all CNS depressants,
18 does it multiply that intendant effect on the body
19 by the number of times, number of different drugs
20 that you're taking? I don't, does that, my question
21 may not make sense, but ---

22 A You mean it, when taken together could
23 these CNS depressants affect of those three be ---

24 Q I'm not talking about side effects now.
25 I'm talking about the intendant effects. Does it,

DW - N. GOODBAR - REDIRECT

1 are they acting on the same body systems?

2 A Yes, sir.

3 Q All right. And how it does effect as it
4 relates to your motor skills and ability to drive,
5 how does the intendant effect on those drugs, the
6 fact that they're depressants affect your body?

7 A As far as the intendant effects?

8 Q Yes.

9 A Well, the intendant effects are to
10 appropriately control the, the reason that the
11 patient is taking it. So if it's for anxiety we
12 want to be able to control a patient's anxiety.
13 There are patients that can't get out of the house
14 because they're so anxious and taking the medication
15 like Clonazepam or an antidepressant and actually
16 allows them the ability to live a normal life and
17 get out of their house and drive as long as it is
18 solidified that the patient can tolerate that dose
19 that their medical condition is being treated with
20 minimal side effects.

21 Q I guess what I mean is the fact that it's
22 a depressant -- I guess I want to make sure -- does
23 it have a, not a side effect, but does the drug
24 itself, the fact that it's a depressant do anything
25 to your body that makes it harder for you to

DW - N. GOODBAR - REDIRECT

1 function and -- wait a minute, bad question. Let
2 me, does the number of drugs that you're on that are
3 CNS depressants as the fact that there are so many
4 of them, how does it affect how it's gonna affect
5 you as far as your motor skills and the ability to
6 drive and stay awake?

7 A The more drugs that you are on likely
8 increases the chance that you could still have side
9 effects.

10 Q Okay.

11 A Definitely. I mean, the number of
12 medications is something that we always look at; but
13 if those numbers of medications are being managed
14 appropriately, then that becomes less of a concern.

15 Q Let me ask you a question. On the day in
16 question in talking, speaking, Pamela wasn't
17 slurring her words and she was asking, answering
18 questions appropriately, what would that tell you
19 about whether she was on side effects or having side
20 effects with these?

21 A It would be very possible for her to have,
22 her to have had a conversation and been completely
23 in a very good state of mind on the medications that
24 I see here.

25 Q If she, if she was having, were having

DW - N. GOODBAR - RECROSS

1 side effects reactions would it affect her ability
2 to talk? Would you expect slurred speech?

3 A It could be.

4 Q Okay, is there, is the ability to divide
5 your attention between things, is that affected?

6 A It could be.

7 Q If while she's being asked while she's
8 doing things, answering questions at the same time,
9 would that be harder for her if she's experiencing
10 side effects?

11 A It could be.

12 Q I would also like to make sure I'm clear
13 about this Pristiq and Effexor 'cause we've been
14 talking about that; but Pristiq is, while it is a
15 separate drug, Effexor turns -- Effexor is broken
16 down in your body. It turns into what's Pristiq is.

17 A Yes.

18 Q Is that right?

19 A That's correct.

20 Q So she's only taking, as far as you know,
21 Effexor?

22 A Correct.

23 MR. STODDARD: I've got no further
24 questions.

25 **RECROSS-EXAMINATION**

DW - N. GOODBAR - RECROSS

1 BY MR. MCMAHON:

2 Q Of course, you didn't look at any report,
3 didn't talk to anybody, have no knowledge of what
4 her behavior was, observations of those individuals
5 of her on the date of the incident?

6 A That is correct.

7 Q And you talk about those CNS depressants
8 and being on board and doing this, that, or the
9 other. Marijuana never helps one drive, does it?

10 A (No response.)

11 Q No response. Marijuana never assists
12 anyone in operating a motor vehicle, does it?

13 A You say never?

14 Q So there are times ---

15 A It would never assist -- I just said you
16 said never assist. I, I don't think I can say
17 never.

18 Q Well, you're an expert. What can you say
19 then, Doctor?

20 A I can say depending on the circumstance if
21 a patient had what, had marijuana in their system
22 for a medical reason, if it is treating their
23 migraine, if it is treating their seizure, it is
24 going to allow the ability for them to, like I said
25 earlier, lead a normal life and be able to drive a

1 vehicle as long as it's not in, in excessive
2 quantities.

3 Q Well, give me the name, Doctor, of one
4 doctor anywhere in South Carolina that for -- that
5 prescribes marijuana?

6 A Nobody, because it's illegal in South
7 Carolina.

8 Q Thank you, Doctor.

9 MR. MCMAHON: That's the end of the
10 transcript, Your Honor.

11 THE COURT: All right, the Defense may
12 call its next witness.

13 MR. STODDARD: The Defense rests.

14 THE COURT: The State wish to call any
15 witnesses in reply?

16 MR. MOWRY: No, sir, Your Honor.

17 THE COURT: All right, ladies and
18 gentlemen of the jury, that completes the
19 presentation of evidence in this case. I've got to
20 take a few things up with the attorneys before we
21 move to the next step. I'll ask you to step back to
22 the jury room. Don't begin any discussions about
23 the case until I ask you to do so. You may retire
24 at this time.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 11:37 a.m.)

2 (Court's Exhibits Numbers 2 and 3 were
3 marked and made a part of the record.)

4 THE COURT: Any motions?

5 MR. STODDARD: I renew my motion for
6 directed verdict.

7 THE COURT: All right, noted that the
8 motion for directed verdict has been renewed. The
9 Court makes the same decision. Motion is denied.
10 Now, you ready to proceed with closing arguments?

11 MR. MOWRY: Yes, sir.

12 THE COURT: You ready?

13 MR. STODDARD: Yes, sir.

14 THE COURT: I'm gonna go ahead and let's
15 try to get that in. I'm not sure how long that's
16 gonna take so I'll make a decision as to whether or
17 not I'm going to charge before or after lunch once
18 we get to that point.

19 MR. STODDARD: Before we start can I
20 glance at that jury charge just one more time?

21 THE COURT: Yeah.

22 MR. STODDARD: 'Cause sometimes -- I don't
23 want to misquote a charge.

24 THE COURT: Well, then I penned in a few
25 things I'm gonna say too so you may want to take a

1 look at it. Both sides have a right to look at if
2 you'd like to.

3 MR. MOWRY: This was Judge Hocker's basic
4 charge?

5 THE COURT: Yeah, but I just added some
6 word changes, not change the substance of it. I
7 don't think, I don't believe that there is anything
8 in the indictments that would prevent them from
9 being sent back to the jury.

10 MR. MOWRY: No, sir, I don't think we have
11 any graduated offenses or anything like that.
12 Judge, just for the record, I didn't see it in
13 there. I just wanted to affirm that your beyond a
14 reasonable doubt charge is firmly convinced?

15 THE COURT: Let me see what it says.
16 That's what I normally say.

17 MR. MOWRY: That's great. That's...

18 THE COURT: Last paragraph.

19 MR. MOWRY: Good, excellent, perfect.

20 THE COURT: Yes, sir.

21 MR. STODDARD: Your Honor, I believe I've
22 heard in the past of a charge I think is appropriate
23 in this case that if there is such a charge, then I
24 would request it. But I think there's one that that
25 says a verdict can't be the result of passion,

1 prejudice, or similar things, I would request that.

2 THE COURT: Well, I'm going to tell them
3 that they've got to find that the State has proved
4 the allegations beyond a reasonable doubt and that
5 it has to be based upon the evidence in the case.
6 When I start, I'm a little reluctant to make up the
7 charge saying you can't ---

8 MR. STODDARD: If I was thinking that's a
9 standard one I've heard, but...

10 THE COURT: I'm not familiar with that. I
11 don't intend to say that. I'll take a look while
12 you guys are arguing and see if I can come up with
13 something. I'll let you know. You certainly can
14 argue that to the jury. Nothing wrong with you
15 arguing that.

16 MR. STODDARD: May I approach the Bench?

17 THE COURT: Yeah, Mr. Stoddard.

18 (WHEREUPON, counsel approached the
19 Bench for an off-the-record discussion.)

20 THE COURT: All right, let's take a couple
21 of minutes break everyone to have a chance to
22 stretch your legs. Step out the courtroom if you
23 need. In five minutes we're going to call the jury
24 back.

25 MR. MOWRY: Thank you, Your Honor.

1 THE COURT: Thank you. I'm going to stay
2 on the Bench.

3 (WHEREUPON, a recess was taken from the
4 proceedings.)

5 (WHEREUPON, Court Exhibit No. 3 was
6 marked and made a part of the record.)

7 THE COURT: All right, is the State ready
8 to proceed?

9 MR. MOWRY: Yes, sir, Your Honor.

10 THE COURT: Defense ready?

11 MR. STODDARD: Yes, sir.

12 THE COURT: Let's bring the jury in.

13 (WHEREUPON, the jury was returned to the
14 courtroom at approximately 11:47 a.m.,
15 and the following proceedings commenced
16 in open court.)

17 THE COURT: Ladies and gentlemen of the
18 jury, I told you that when we have reached this
19 stage of the proceedings I will allow the attorneys
20 again an opportunity to talk directly to you in
21 their closing arguments or summation. The State
22 will be going first, followed by the Defense. Then
23 the State will be allowed a brief rebuttable. The
24 State may proceed.

25 MR. MOWRY: Thank you very much, Your

1 Honor.

2 THE COURT: Yes, sir.

3 MR. MOWRY: Ladies and gentlemen, before
4 we came to the courthouse today all of us probably
5 went through our morning routine, got a shower, had
6 breakfast, got dressed, got in our cars and drove
7 here. I think all of us probably know in the back
8 of our mind it's possible that some kind of disaster
9 can happen to us, but that's not how we live our
10 lives. And I know back on March the 28th, 2018,
11 Zack Ivey and J.C. Howell knew that might could
12 happen, but that wasn't foremost in their minds
13 either. Here they are, two hardworking guys putting
14 in 12 and 15 hour shifts going out repairing the
15 cables that separate the opposing lanes on the
16 interstates, these cables that arrest cars that are
17 going out of control before they go across the
18 median into the oncoming lane to create a head-on
19 disaster. I'm sure that they thought that they were
20 gonna be fine. They recognize the risks; there are
21 cars going by at 70 miles per hour. But they had
22 done layers of protection in order to alleviate that
23 danger. They put out signs at various distances to
24 warn motorists that they were gonna working, to
25 alert them to the fact that a work zone was gonna be

1 ahead. They had the great big boom that J.C.
2 described on the back of the truck to protect them.
3 If somebody went out of control and came in, that
4 boom would protect them and the truck. That was the
5 theory. There were flashing strobes on the truck.
6 Again, if people had missed the signs, surely those
7 flashing strobes are gonna get their attention.
8 That was the thought. And then there was the truck
9 itself. You've seen the size of it. That thing is
10 big, probably weighs 12, 13-tons. And if somebody
11 goes out of control, surely the truck is gonna
12 protect them. Surely nobody is gonna run off the
13 road, hit the cables, and go up the corridor between
14 the truck and the cables. Surely nobody could be
15 that messed up. Then Pamela Tackett drove along.

16 You know, the classic DUI, ladies and
17 gentlemen, we call it drunk driving. I mean, that's
18 what we always hear it as. Even that wasn't quiet
19 accurate, but it was at least delustered. It would
20 tell you what you were looking at. Somebody would
21 get a case of beer, pound down a bunch of it and
22 then go for a joyride. But as Doctor Garvin told
23 you earlier this week, what we have here is not
24 drunk driving. This is becoming the new normal;
25 it's drugged driving. That's what we're looking at.

1 What are we looking at with felony DUI?
2 In this case, ladies and gentlemen, a person that
3 drives under the influence of drugs to the extent
4 that the driver's faculties, his ability to drive or
5 her ability to drive a car, is appreciably impaired.
6 And then drives a motor vehicle, does an act that's
7 forbidden by law. For example, failing to maintain
8 the proper lane, failing to maintain control of the
9 vehicle, leaving the roadway to strike a pedestrian,
10 failure to exercise due care in other words, which
11 proximately caused, which is the near cause of the
12 death of an individual, in this case Zack Ivey, with
13 the great bodily injury of a person and that would
14 be J.C. Howell.

15 Then we also have child endangerment. A
16 person in that condition who's guilty of one of
17 those other crimes has a child in the car under the
18 age of 16. I submit to you, Kara in this case, was
19 4 and the driver is over 18 and that is what the law
20 requires. The defendant told you yesterday that she
21 was now 32 so she'd have been 31 at the time of
22 incident.

23 So, let's take a look at these elements
24 and let me demonstrate to you how the State has
25 proven its case beyond a reasonable doubt, how we

1 have left you firmly convinced of the defendant's
2 guilt. Now remember, this is the intersection that
3 we're talking about. These two lanes, these two
4 yellow lines here, are I-385. This is the overpass
5 for Highway 14. This is the overpass for Highway 14
6 that will allow traffic to merge on to I-385 north
7 or if they go this way, go south. And here is the
8 roadway that will take people from I-385 south as
9 Ms. Abercrombie was going and take them down towards
10 Grave Court and Laurens and elsewhere.

11 So did the defendant drive a motor
12 vehicle? Remember, Ms. Conte saw the car that ran
13 her off the road and then later saw that same car
14 after the accident. She was on the scene within a
15 minute. Mr. Glodz also coming northbound on 385,
16 also has an encounter with the car he later figured
17 out was being driven by Ms. Tackett. He saw the
18 accident in realtime. He saw Zack Ivey's body
19 flying through the air after he had been struck by
20 the defendant. He was on the scene in seconds.
21 Ms. Abercrombie, likewise, exiting 385 on to 14 up
22 in this area, she sees the accident. I say
23 accident, sees the collision. And she immediately
24 pulls over, runs across the road and tries to render
25 aid. She, too, saw it in realtime. By the way,

1 this building right here, y'all probably know it as
2 ZF Transmission. So all three of those witnesses
3 are on the scene very quickly.

4 An act forbidden by law or a failure of
5 duty imposed by law. What did the defendant do that
6 fell into those categories? Well, what did
7 Mr. Glodz tell you? Mr. Glodz said he was a
8 passenger in the car. His wife was driving. He
9 said that she mentioned, remarked about the bad
10 driver coming up behind him. He turned and watched
11 the car being driven by, he later found out, the
12 defendant. Pulled up behind them, fall back. Pull
13 up behind them and tailgate, fall back. Finally,
14 his wife moved over and allowed her to go by. She
15 seemed briefly to settle into the right lane in the
16 two northbound lanes, the outside lane. And then he
17 said he watched as the car drifted across the lane,
18 across the inside lane, across the shoulder, across
19 the grass, to hit the cables, then run up between
20 the trucks. Ultimately it kills Zack and grievously
21 injured J.C.

22 Ms. Conte, a lady who travels all over the
23 state for a living, she travels all over the state
24 to talk to employees about various benefits. She
25 travels five days a week she said, I believe, four

1 or five days a week. Goes to every county in the
2 state so she drives a lot. Yet, she was concerned
3 enough by the car she saw coming up in her rearview
4 mirror, swerving from lane to lane for no apparent
5 reason, running up, tailgating, backing off,
6 repeating; but she finally pulled over in the
7 emergency lane to let that car go by before she got
8 sideswiped. Then she watched that car pass her and
9 do the same thing all over again. She saw that car
10 she said for about five minutes. You saw Gabriele's
11 video, Trooper Gabriele. Call comes into him at
12 9:43, took him nine minutes to get there. He does
13 some other things before he goes up to the
14 defendant's car. So we're talking 10, 11 minutes.
15 She's still sitting in the driver's seat. You saw
16 the car damage at the scene.

17 Now think of Michael Gabriele's divided
18 attention. You've got traffic backed up needing
19 re-routing. You've got injuries. You've got a
20 criminal investigation to do. Yet, his demeanor --
21 and David Terry's too, the highway patrolman in the
22 hospital -- was nothing but steady and professional.
23 And this act forbidden by law must proximately cause
24 the death of Zack. Now Zack didn't officially die
25 at the scene, not legally. He didn't die until a

1 few days later as far as the law is concerned; but
2 for all intents and purposes, he was dead as soon as
3 his head hit the pavement on 385. Complications
4 from blunt force trauma to the head according to
5 Doctor Ward.

6 Mr. Glodz and Ms. Abercrombie both saw
7 what turned out to be the brightly colored vest,
8 lime green instead of this bright orange, for
9 Bagwell Fence; but they saw that bright color go up
10 into the air, fly through the air and then they
11 found out later where it landed. Zack was 28 years
12 old. As I said a little while ago, he was a young
13 man whose job it was to maintain the equipment that
14 keeps the rest of us safe while we're driving.
15 Pamela Tackett not only terminated the life he
16 lived, but she destroyed the life he might have
17 lived.

18 Great bodily injury to J.C. Howell, the
19 injuries that he received in that event. According
20 to the law, ladies and gentlemen, these injuries
21 have to create a substantial risk of death or cause
22 serious permanent disfigurement or cause protracted
23 loss or impairment to the function of any bodily
24 member or organ. Well, let us count the ways. J.C.
25 told you about all the screws and the plates he's

1 got in his leg and his wrist. He told you about the
2 nerve damage. He told you he was bedridden for
3 months. He told you that he was in a wheelchair
4 after that for months and that he walked with a can
5 after that for months. You saw the scars from his
6 injury. Serious permanent disfigurement, protracted
7 loss of the function of any bodily member. I think
8 that qualifies, ladies and gentlemen.

9 Now, Mr. McMahon in his opening statement
10 talked to you about signs. One of the things that I
11 want to do is discuss with you a term you'll hear or
12 you have heard a couple of times already,
13 particularly from Danny Garvin, the totality of the
14 circumstances, looking at the whole picture, not
15 just cherry picking one or two little things, look
16 at everything in the totality. Think about the
17 signs that would have warned any capable driver, an
18 unimpaired driver what was coming, two warning signs
19 within about a third of a mile. J.C. and Zack were
20 putting out the third sign when they were struck.
21 Again, the flashing strobes on the Bagwell truck.
22 The brightly colored vests that they had on, the
23 long straightaway behind the truck, unimpeded
24 vision. An unimpaired driver would be able to see
25 them a long way off. Ms. Conte did, Mr. Glodz did.

1 They saw the truck. But unlike Pamela Tackett, they
2 were unimpaired by drugs.

3 So what it comes down to, ladies and
4 gentlemen, was she under the influence? That really
5 is the crux of the matter. No question she was
6 driving. No question Zack was killed because of
7 her. No question J.C. was grievously hurt because
8 of her. Was she under the influence when she caused
9 the harm to both of them? Now I don't want to
10 imply, ladies and gentlemen, that the defendant set
11 out to kill anybody. If there was proof of that we
12 would be trying this as a murder case, not felony
13 DUI; but all the testimony, including the
14 defendant's now, says that she voluntarily took the
15 drugs, she voluntarily drove. She's the one that
16 set in motion all the events that lead us here.

17 Were her abilities and facilities to drive
18 the vehicle materially and appreciably impaired?
19 Well, let's look at some of the considerations here.
20 You've heard the term Horizontal Gaze Nystagmus a
21 lot, the eye test that both Gabriele and Terry
22 administered, the abnormal eye movement. Gabriele
23 at the scene, a 385. Terry, two hours later in the
24 hospital. Also observed by Demi Garvin.

25 Ladies and gentlemen, one of the listed

1 side effects for Gabapentin, one of the drugs that
2 Ms. Tackett was on according to Kelly Bugden's
3 toxicology report, one of the listed side effects is
4 abnormal eye movement. Both Terry and Gabriele saw
5 it. And when Demi Garvin reviewed it who used to,
6 remember now, used to be the director of the
7 Richland County Crime Lab, in addition to being a
8 toxicologist, forensic toxicologist, she agreed that
9 Ms. Tackett's, she flunked the test is really what
10 it comes down to. Kelly Bugden testified that if
11 Nystagmus were present, then an impairment exists
12 and the person is under the influence of the drug.
13 Both toxicologists Kelly Bugden and Demi Garvin,
14 they talked about therapeutic level; and one thing
15 they said was, ladies and gentlemen, just because a
16 drug is within therapeutic levels does not mean that
17 a person can't be impaired.

18 Some of y'all may know folks that take,
19 oh, Benadryl over the counter, take it as directed.
20 And what happens? You pass out. I don't mean
21 faint, but you get so sleepy you can barely stand
22 it. That's one of the side effects of Benadryl over
23 the counter. We're talking prescription medications
24 and controlled substances here.

25 The field sobriety test, you've seen the

1 videos. We'll have little clips of them as we go
2 along. You saw the stumbling, the lack of balance,
3 unable to follow directions, the eye tests by
4 Gabriele and Terry, involuntary eye movements with
5 each test, three different tests for both eyes. She
6 was six for six with both of them. And Demi Garvin
7 who probably had as much information regarding this
8 case as anybody, under the totality of the
9 circumstances she believed the defendant was
10 impaired and should not have been driving. Demi
11 Garvin has got 35 years experience in the field of
12 forensic toxicology. What did she know? Slurred,
13 thick speech. And it's markedly different, ladies
14 and gentlemen, from Pamela Tackett sitting there in
15 the witness chair yesterday. Think about that.
16 Unsteadiness, slow, deliberate movements, inability
17 to answer questions. And even the defense witness,
18 Nancy Goodbar, whose testimony was read to you just
19 a little while ago, remember now, she's a
20 pharmacist; she is not a toxicologist. Demi Garvin
21 is both. And what did she look at? She looked at
22 prescription reports and Kelly Bugden's toxicology
23 report. Nancy Goodbar, that's all she had. She
24 didn't look at the totality of the circumstances;
25 she cherrypicked. She got a couple of reports, no

1 incident reports, no videos, no witness statement,
2 nothing like what Demi Garvin had. And even she
3 suggests, even she suggests that marijuana is a
4 central nervous system depressant along with
5 Klonopin, or Clonazepam, and that Gabapentin acts
6 like one. So that will be three drugs in the
7 defendant's system that act like central nervous
8 system depressants. And what is the effect of a
9 central nervous and depressant? Fatigue,
10 drowsinesses, dizziness, causes slow movements, slow
11 reactions, that marijuana can alter reality and it
12 can alter people. Even she, the defense witness,
13 reading the toxicology report in a vacuum, exactly
14 what Demi Garvin cautioned against, even she was
15 unable to give an opinion as to whether or not the
16 defendant was impaired. And she doesn't consider
17 the effect of the two hour delay between the
18 collision and the taking of the defendant's blood
19 sample, an hour-and-a-half to two hours, because
20 remember, she had to be transported from the scene.
21 She doesn't consider the effect of the half liter of
22 saline that was given to the defendant intravenously
23 during the ambulance ride to Greenville Memorial.

24 What are some signs of impairment?

25 (Whereupon, video was played.)

1 MR. MOWRY: Let me just stop that for a
2 minute, ladies and gentlemen. You remember the
3 defendant saying yesterday that she looked out the
4 window and could see a victim lying in the roadway?
5 How? How? Side curtain air bags front and back.

6 (Whereupon, video was played.)

7 MR. MOWRY: Sorry. Those were all at the
8 scene. Demi Garvin talked a little bit about how
9 drugs can impair driving. Let's consider that list
10 along with the warnings, the FDA medication guides
11 for the various medications for Klonopin, for
12 Effexor, Venlafaxine -- I think that's how it's
13 pronounced -- and Neurontin. Coordination,
14 obviously coordination is gonna be essential for
15 safe driving. Driving is a physical task, requires
16 some fine motor skills for steering, for
17 acceleration, for breaking, and the drugs may well
18 affect that. Gabapentin, one of the side effects
19 that is listed in these drug medication guides.
20 Gabapentin, lack of coordination, difficulty in
21 coordination. Klonopin, problems with walking and
22 coordination. Judgment and decision making. Drugs
23 impair the ability to concentrate, to detect, and
24 anticipate and avoid risks, make emergency
25 decisions. What do the guides tell us? Gabapentin,

1 feeling drowsy, Klonopin, drowsiness and dizziness.

2 And one of the interesting things about
3 Klonopin, ladies and gentlemen, if you look in here
4 on the first page -- you'll have these back there
5 with you in the jury room. The warning says when
6 taken with drugs that cause sleepiness and
7 dizziness Klonopin can make your sleepiness and
8 dizziness worse. Perception, majority of the
9 information that a driver processes is gonna be
10 visual, things you see, maybe some of the things you
11 hear; but you got to be able to make an accurate
12 determination as to time and distance.

13 What do we have? Mr. Glodz talking about
14 tailgating, backing off, tailgating, backing off;
15 Ms. Conte, the same thing. Ms. Conte talking about
16 nearly being sideswiped. Gabapentin, double vision,
17 unusual eye movement, problems with memory.
18 Traffic, it's necessary to maintain your position on
19 the roadway. What about that? Klonopin can affect
20 your motor skills. Reaction time, drivers must not
21 only receive information, but process it. Klonopin,
22 slow thinking. Effexor, affects the ability to make
23 decisions, think clearly, react quickly, divided
24 attention and multitasking. Think how many tasks
25 you have to perform while you're driving. Not only

1 steering your own car, but keeping it straight. And
2 not only that, ladies and gentlemen, but watching
3 out for and anticipating the other guy or
4 pedestrians as in this case, or animals or children
5 that might come darting out in the road or merging
6 traffic, traffic from the other lanes, traffic that
7 you were passing or is passing you.

8 Remember, one of the things that Mr. Glodz
9 talked about. He said how this was a perfect storm.
10 He was observing Ms. Tackett's driving for at least
11 a minute. Remember the speed limit out on 385 is 70
12 so we're talking for at least a mile. Ms. Conte
13 talked about even longer than that. I've talked
14 about the tailgating, the weaving, the falling back,
15 speeding past, repeating with the other car, but
16 then swerving across the entire northbound lane
17 missing the safety boom behind the truck going up
18 between the cables. How fast was she going the last
19 half second before the impact? 68 miles an hour.
20 Only a half second before impact according to the
21 MAIT team, the highway patrolman that investigated
22 the accident. A half second before impact, then the
23 brake was applied.

24 Now, ladies and gentlemen, I got to tell
25 you, it's ironic almost that the very devices that

1 were designed to prevent out of control drivers from
2 crossing over, just like the defendant, the devices
3 that were maintained by Zack and J.C. Howell, did in
4 fact contain the defendant's runaway car just like
5 they were designed to. Kept her from going into the
6 southbound lane, perhaps hitting somebody else
7 head-on; but in doing so, ended up creating a shoot
8 between the cables and the driver's side of the
9 truck that made them sitting ducks.

10 Let's consider signs with the defendant.
11 What did she testify to? How did you feel that
12 morning? I felt great that morning, ten hours of
13 sleep after her drugs and her bowl of marijuana the
14 night before. I felt great. Yet then she turns
15 around and tells you that she had a migraine that
16 was an eight on a scale of ten; and with that
17 migraine that was an eight on a scale of ten, what
18 were you doing? Oh, I was talking and singing with
19 Kara. Really? I was fine. What did Doctor Garvin
20 tell you about who was the worst judge of whether
21 somebody was impaired but that person. Think about
22 it, ladies and gentlemen. She doesn't remember
23 swerving in the road. She doesn't remember
24 Mr. Glodz and Ms. Conte coming to her vehicle or
25 Ms. Abercrombie. She doesn't know how the collision

1 happened. She didn't see the Bagwell Fence truck.
2 She doesn't remember Glodz or Conte or Abercrombie
3 talking with her. And what does she tell you? I
4 have weak ankles. I have bad balance. That's why I
5 failed that test. I was distracted because of Kara.

6 Ladies and gentlemen, let me tell you why
7 she failed those tests; and to help do that, I want
8 you to take a look at Defense Exhibit Number 1 when
9 go back in the jury room. Right here, you have the
10 defendant's prescription record from the CVS store
11 in Simpsonville. You will note on there Clonazepam,
12 most recent dosage, actually since September of 2017
13 up until about the time of the accident, the
14 incident. Clonazepam, two milligram tablets. Since
15 that time Clonazepam, one milligram tablets. The
16 dosage has been cut in half. Why? Because she was
17 driving under the influence of drugs, appreciably
18 impaired. Important information. This is something
19 the Defense put in. May cause drowsiness and
20 dizziness, careful using vehicle, vessels, machines.

21 The signs in the hospital. Again, the
22 ambulance, the pint of saline intravenously. She
23 told Terry that she took Wellbutrin and Klonopin at
24 8 a.m. that morning. We have only her word that she
25 smoked marijuana the night before. Demi Garvin

1 said, I'm not sure, it could have been that morning.
2 She doesn't know whether she took the Gabapentin.
3 She never says anything about it on the video at the
4 hospital, but it's certainly in her tox report. I'm
5 driving under the influence of my medication. And
6 again, contrast her appearance yesterday with her
7 appearance on the videos. What did Doctor Garvin
8 tell us? Effexor, Klonopin, Gabapentin taken alone
9 can impair a person's ability to drive. Chronic
10 marijuana use, the residual impairment can be up to
11 24 hours. She'd been smoking every day for three
12 years. The slow movements, the slurred speech, the
13 inability to answer questions. She didn't pass the
14 field sobriety tests on the side of the road.
15 That's something that both the troopers and Doctor
16 Garvin tell you. The effects would have diminished
17 two hours later in the hospital. Passage of time
18 and the saline. But remember, 42 seconds was her
19 estimation of the passage of time, 30 seconds, and
20 that is a factor to consider in the totality of the
21 circumstances. We have Glodz and Conte's
22 pre-collision description. And what was Doctor
23 Garvin's opinion? She was impaired, should not have
24 been operating a motor vehicle.

25 What have we got in Defense case? We have

1 the defendant's husband. And, ladies and gentlemen,
2 you can give him whatever credibility he deserves,
3 you think he deserves; but here's a man who claimed
4 that he researched a braking system on a 2012
5 vehicle, the name of which he did not know, the
6 research for which he could not produce or describe,
7 the workings of which he could not explain. Yet, no
8 documentation that it existed, never told anybody in
9 the solicitor's office about it, never checked about
10 it after the wreck. But you know what he didn't
11 tell us? He didn't tell us anything about the
12 defendant's condition that morning. That might have
13 been fairly necessary; don't you think? Never said
14 a word about her condition. She says that she had
15 EMT training and that she was told to sit up
16 straight, don't turn your head. And then says that
17 she turned around to check on Kara, and that's when
18 she saw Zack's body lying in the lane on I-385. Now
19 I wanted to point out for you on that video those
20 side curtain air bags were curtains. They were down
21 and the curtains were drawn so I don't know which
22 drug apparently gave her x-ray vision as a side
23 effect, but I'd be interested to find out. And she
24 also told you, ladies and gentlemen, when
25 Mr. McMahon asked her the question, could you pass a

1 drug test today? No.

2 Ladies and gentlemen, reasonable doubt.
3 Reasonable doubt is the standard. It's not 100
4 percent doubt, or 100 percent convinced I should
5 say; that's not the standard we have. It's
6 reasonable. Does it leave you firmly convinced of
7 the truth of the proposition that's being proposed.
8 Again, ladies and gentlemen, no question the
9 defendant was the driver. No question that Zack
10 Ivey was killed. No question that J.C. Howell was
11 badly hurt because of her. No question that a four
12 year old child was endangered by the defendant's
13 action. And I submit to you, ladies and gentlemen,
14 there's no reasonable doubt that the defendant was
15 impaired. Mr. Glodz and Ms. Conte told you about
16 her driving. Trooper Gabriele, Trooper Terry and
17 Doctor Garvin tell you about her condition.
18 Ms. Bugden tells you what was in her bloodstream an
19 hour-and-a-half or two hours after the incident.

20 Yes, there's a sign on here as well on
21 Defense Exhibit Number 1. Here's one I wish Pamela
22 Tackett had read that morning. Thank you.

23 THE COURT: All right, ladies and
24 gentlemen of the jury, I'm gonna let you step back
25 to the jury room for just a moment. Obviously we're

1 going to be going on with our closing arguments and
2 charge. We're gonna order lunch for you and brought
3 to the jury room so that you can continue to work.
4 So at this point in time I'm gonna ask you to step
5 back to the jury room. The clerk will be stepping
6 in taking care of that order for you. Once that's
7 finished we'll come back and continue with the
8 closing arguments. As always, don't discuss
9 anything about that case until I ask you to begin
10 deliberations. You may retire to the jury room.

11 (WHEREUPON, the jury was removed from the
12 courtroom at approximately 12:43 p.m.)

13 THE COURT: We'll be in recess for about
14 five minutes.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: Okay, let's come back to
18 order.

19 Tell the bailiff to bring the jury in when
20 they're ready.

21 (WHEREUPON, the jury was returned to the
22 courtroom at approximately 12:52 p.m.,
23 and the following proceedings commenced
24 in open court.)

25 THE COURT: All right, at this time the

1 Defense may proceed with its closing arguments.

2 MR. STODDARD: Ladies and gentlemen, I
3 know it's been a long trial and I hate to -- I know
4 that you're tired of listening. Sometimes we
5 observe something in our initial impression,
6 sometimes that's wrong. Sometimes when you're
7 observing something and we expect something or if we
8 have a preconceived notion of something that affects
9 what we expect, especially sometimes if we hope for
10 a certain outcome or certain things that we're
11 observing that that's even accentuated. A lady
12 working that works in a restaurant told me a story
13 one time. She said a man dressed kind of bummy came
14 in and then some teenagers came in and they were
15 ordering daiquiris. And they started, once they
16 bummed -- and my daughter has a word, they called
17 him sketchy. That's kind of what I imagined when
18 she told me this story. And they started making fun
19 of the man and the way he was dressed, but she knew
20 the man. And it turns out he was one of the
21 wealthiest men in town, very well respected, but he
22 just dressed that way and you would never know it.
23 You know, we talk about circumstantial evidence.
24 And the circumstantial evidence is this is a man, a
25 poor man, a man that doesn't have a, probably not

1 very bright, probably hadn't done a whole lot in his
2 life. It turns out that circumstantial evidence was
3 wrong. She was certain -- she knew that these
4 teenagers were under age and so she thought she'd
5 have fun with them so she was serving them
6 daiquiris, but not putting alcohol in them, and they
7 proceeded to act like they were feeling the effects
8 of alcohol and she laughed and she said they got
9 drunk on virgin daiquiris that had no alcohol. They
10 were, they expected, they thought that this is what
11 I was getting, drinking alcohol, and they tasted it
12 and acted like it. If you expect, when you expect
13 something it can affect your observations.

14 In this case with Pamela Tackett and this
15 car that we -- the initial information in this case
16 is that this car is seen weaving on the road and
17 ultimately it goes off the road and this accident
18 happens, terrible accident, she must be under the
19 influence. And that's a reasonable conditional
20 impression. Officer Gabriele, before he even gets
21 her out of the car when he's walking the scene tells
22 somebody this is, we may have a felony DUI so he
23 suspects DUI before he even does any of these tests.
24 Trooper Terry who is, he's called to the hospital to
25 examine someone who's under the arrest for DUI,

1 felony DUI, and he performs his test.

2 Now I want to show you something. Oh,
3 before I show you this, you heard evidence, these
4 tests, these field sobriety tests were standardized
5 tests. You do them in a standard way and they would
6 have a standard way to interpret them. For this
7 purpose, for the one legged stand there are four
8 clues. Hopping, I think, I forgot the word, weaving
9 I guess. I have to write it down, but you know what
10 I'm saying, not being able to stand straight.
11 Putting a foot down is a clue and using your hands
12 for balance is a clue. Gabriele put in his report,
13 he testified, she failed a test. She put her foot
14 down which he videoed and he said she used her hands
15 for balance. He added an element that's not really
16 a part of the test, that she counted, in 30 seconds
17 she was on 25. She didn't count right, and that
18 told him she's impaired. So pay attention to the
19 speed at which she counts. He's saying she counted
20 too slow. Watch her arms.

21 (WHEREUPON, video was played.)

22 MR. STODDARD: He said she used her -- he
23 said she failed the test. I believe he expected her
24 to fail the test, but she actually passed that test
25 under their criteria. She did one foot and put her

1 foot down, but he said she also used her hands for
2 balance. It didn't happen. He also marked off an
3 even, and Trooper Terry talked about this, for
4 counting too slow. She was at 25 and 30 seconds.
5 Did that seem slow? I believe it was 25 seconds;
6 but I don't know that that would be evidence of, or
7 I would submit it's not evidence of impairment. We
8 might talk about that a little later.

9 Trooper Terry put in his report he does
10 this 12 step analysis that she was slurring the
11 words and that she was having, that her answers were
12 slow, that she was slow in responding. Can we bring
13 up -- can you help me?

14 (WHEREUPON, video was played.)

15 MR. STODDARD: By the way, earlier when
16 Trooper Terry was asking her about her medications
17 she couldn't remember them all. She said the nurse
18 will have them and that's what she was doing right
19 there 'cause you heard that. She asked, will you
20 pull up my medications, which by the way, I'm on
21 four different blood pressure medicines and one for
22 restless leg syndrome. I could not tell y'all -- I
23 have to, if I go to the doctor I always have to look
24 at my bottles and writing. It's not unusual, I
25 would submit, that you don't know the names of all

1 your medicines at any point in time.

2 (WHEREUPON, video was played.)

3 MR. STODDARD: If I get in y'all's way,
4 you have my permission to tell me to move. I don't
5 know if I was in your way where I was standing.
6 She's going to be asking a question while this
7 happens.

8 (WHEREUPON, video is played.)

9 MR. STODDARD: Those are just a couple of
10 things I picked out which is in depth what I'm about
11 to say. But I think one of the things if you watch
12 all of these videos of that in the hospital, all of
13 them, they keep saying her, she had difficult
14 answering questions and slow to respond; but that's
15 not true, it's just not true. I don't know why
16 they're saying it other than we think she's under
17 the influence and we're gonna see what we're going
18 to see. I don't think they're being anything,
19 that's just -- I will tell you something I observed
20 back before we had these videos is any time you had
21 a DUI case the officer would always say this: They
22 had bloodshot eyes, I smelled a heavy odor of
23 alcohol, they had slurred speech and they were
24 unsteady on their feet, every one of them. It still
25 happens sometimes; but the video sometimes shows

1 something else, a lot of times shows something else.
2 And the, Doctor Garvin, Demi Garvin when she gave
3 her expert opinion, I asked her that: Do you agree
4 that her -- Officer Terry who seems like a genuine
5 good guy, but he's saying that, that she was slow to
6 responding. He agreed that she was slow to
7 responding, yes, she was slow to responding, and
8 yes, she was slurring her words. I'll let you be
9 the judge of whether she's slurring her words. I
10 realize she's having a trouble, difficulty 'cause
11 like when she answered that question you can tell
12 she can't open her jaw. But other than that, she's
13 pretty normal in speech. And she's doing things
14 that, she's doing things that the training that
15 these people that say this is the stuff we look for,
16 that person is impaired shouldn't be able to do.
17 Like grasp that clipboard and signing her name while
18 she's lying on her back. Like when officers doing
19 this, answering the person's question without
20 turning her head no. That's multitasking; that's
21 divided attention. So what they, what they're
22 basing their opinions on is not reflected in the
23 actual evidence and that's why I told you that story
24 and that's why I made that statement. Sometimes we
25 see what we want to see or what we expect to see

1 based on the initial event. Yes, it looks like a
2 DUI, but you have to look at all the evidence. And
3 they say, well, we're looking at all the evidence.
4 Trooper Terry is trained -- and he answered this
5 question very clearly. It's a 12 step process.
6 It's a 12 step standardized process that I do. But
7 he left out a number of steps, it wasn't his fault
8 necessarily; but based on her being in a hospital
9 bed he couldn't -- one of those steps is you're
10 supposed to observe their pupils in a dark room
11 where it can, and then let it go to light. I don't
12 know how to perform the test. I just know that's
13 one of the tests from what I've been reading on.
14 And they watch how your pupils, how fast they dilate
15 or how fast they go to normal when they're from dark
16 to light; he didn't do that test. He's supposed to
17 check her -- and he told you this. He's supposed to
18 check her muscle tone for whether it's normal or, I
19 guess flaccid or something. He didn't do that
20 because of the IVs and things. He's supposed to do
21 a Romburg test like this. That's the one -- by the
22 way, that's the one she's supposed to be counting 30
23 like she's doing this and you're looking for various
24 clues. He didn't do that test. And again, it's not
25 his fault that he didn't do it, but Ms. Tackett

1 couldn't help it, but it -- you know, for all we
2 know she would have passed that test with flying
3 colors. It's hard for her to demonstrate to you,
4 it's hard for her to demonstrate I'm okay lying on
5 the back of a hospital bed; but to the extent that
6 she can, they're mischaracterizing the evidence that
7 she's slurring her words and she's not, and she's
8 slow to respond. Other than that, there's not a
9 whole lot in Terry's report that indicates,
10 indicates impairment.

11 And they talk about the Nystagmus in her
12 eyes to the extent they're doing that test right,
13 yes. Another thing I would point out about the
14 Terry report, I would suggest to you that 12 step
15 process is really more of a screening tool than one
16 to determine impairment, and let me tell you what I
17 mean by that. So if you encounter someone on a day
18 that you suspect is guilty of DUI and they -- in
19 this case she couldn't take a Breathalyzer, but he
20 didn't smell alcohol so that test was kind of
21 skipped. But if you don't register a certain number
22 on the DUI, on the Breathalyzer, then they go on to
23 these other tests and they bring in the drug
24 recognition expert to see if maybe they have drugs
25 in their system. That's what I mean screening. I

1 think it's a pretty good test that's telling you if
2 you have certain drugs in your system. I'm not so
3 sure it's any good for telling, for determining if
4 you're impaired. And I asked her that. He talked
5 about how she was trained and said he would do this
6 12 steps which, again, which he didn't do all 12.
7 So it's not even valid if you're going to use it to
8 say she's impaired. But he said -- and then look at
9 the toxicology screen on the suspect. And if the
10 drugs that I identified are in the toxicology
11 screen, if that confirms that I was right. Well,
12 that confirms that they're in the system; but as we
13 know and been taught, the fact that they're in your
14 system doesn't necessarily correlate with
15 impairment. I asked him, how do you determine
16 whether they're impaired or not, and I don't know
17 that he had a good answer. And the Doctor Garvin,
18 when I asked her what did you, what were you basing
19 your opinion on? And she said, I looked at the
20 videos, I read peer review articles, and I reviewed
21 the SFTs, the standardized field sobriety tests. I
22 guess both this one and the last one you saw. And
23 when it comes down to it, that's what she's relying
24 on heavily on those field sobriety tests, one of
25 which on the, at the scene she actually passed, but

1 they said she didn't pass. And by the way, she's --
2 and Doctor Garvin said, yes, she failed the one
3 legged stand; but I submit she passed that test.

4 I want to talk about at the scene a little
5 bit too. In a normal DUI situation whether it's
6 drugs or alcohol if you think about it, and this is
7 a normal case, not this one. But a normal case is
8 the officer, when they see bad driving or may stop
9 you for speeding or some other traffic violation and
10 then when they get to the car they observe things
11 that makes them suspect that you're under the
12 influence. They get you out of the car and they
13 give you those three standard tests. This was a
14 severe accident that Ms. Tackett experienced, very
15 severe collision. You've seen the damage to her
16 car, and you've seen the damage to the trucks and
17 was going, according to the man who did the data,
18 pulled the data, I think it's 67 miles an hour when
19 she hit that truck. I don't know anyone who could
20 experience that event that's gonna be the, on these
21 tests, that's gonna be the same as person I just
22 described that she's pulled over her on a traffic
23 violation.

24 And Ms. Tackett, by the way, is treated
25 and suffers from anxiety. What does that mean?

1 Well, it means she doesn't handle stress very well,
2 does she. So she's gonna very, she's gonna be
3 totally out of it, not from drugs. You know,
4 whether she's on drugs or not, but even if she could
5 have zero drugs in her system and she's gonna have
6 difficulty with doing anything in the moments after
7 the accident, much less these walk-and-turn; but you
8 know what, they keep talking about how bad she was.
9 It appeared to me she wasn't all that bad. As I've
10 shown you, she's, she passed the one legged stand
11 test.

12 Now the one thing I noticed, too, is
13 Gabriele barked out those instructions for the
14 walk-and-turn pretty quickly. You're gonna do this,
15 you're gonna do that and you're gonna do this. And
16 she walked, she fell off the line maybe once, but
17 she was pretty good. What she did so badly was she
18 kept on walking and then she asked him is it nine.
19 Apparently she thought that he would tell her when
20 to turn. You know, he didn't repeat -- you know,
21 if somebody gives you a set of instructions, you
22 know, they talk real slow and they go over it twice,
23 the fellow would mark off for somebody under the
24 stress and, you know, stress that she was under at
25 that moment; and then to say, oh, she's obviously

1 under the influence because she thought you were
2 gonna tell her when to turn around.

3 Oh, another thing about the stress she's
4 under, if you want to know an objective on that --
5 and I'm trying to find a note. But her blood
6 pressure, when she got in the ambulance, and you
7 know, you've seen evidence that she normally has
8 fairly low blood pressure. Her blood pressure at
9 10:22 a.m. was 155 over 104; that's very high. And
10 you know that's not normal for her. By the way, the
11 drugs she's on supposed to be, that's she's
12 supposed to be under the influence on make her blood
13 pressure low so that tells you something's going
14 with her and it's not the drugs there at the scene.
15 But she's all, her body, her body is not acting the
16 way it normally would. Her pulse is 116. She's
17 under some kind of stress, anxiety, whatever. When
18 they're doing these tests, they want you to believe
19 it's these drugs. Then you go back to the hospital
20 and the drug recognition evaluation, again, he, one
21 of his big observations that he relies on is
22 supposedly slurring words and she's slow responding.
23 When I asked Trooper Terry can you give me an
24 example when you talk about slow to respond, can you
25 give me an example. He said, well, I thought about

1 that while I was watching it, it did take her a
2 while to give me the date. That's the only thing he
3 could come up with, and it did. How many of you
4 have experienced when you're signing a check or
5 you're signing a document, what date is today; you
6 had to think about it. Sometimes you can't even get
7 it, you have to ask is today that day. She took a
8 moment, but she got it right.

9 You know, I've talked about seeing what
10 you expect to see, what you want to see. I would
11 suggest to you the State's witnesses, for example,
12 Trooper Terry, put yourself in his place. He's
13 called to the scene where his colleague has placed
14 her under arrest for felony DUI, and he's asking to
15 do this evaluation, then he leaves off several other
16 steps. I think only four were done completely. And
17 then he gives his conclusions. Imagine if he
18 evaluated it, for example, he made the observation,
19 well, she's talking normally, she's doesn't appear
20 to be slurring her words; but if she is it's because
21 she's grazed because she's very -- she's answering
22 questions correctly, she seems oriented. And he
23 puts that in his report and says, I can't tell she's
24 under the influence. It's not gonna happen.

25 Then they have their expert who works

1 almost exclusively from the State as far as I can
2 tell, she works for SLED. She's hired for this case
3 by the State and she's coming in here to give an
4 opinion. And just to give you a couple of examples
5 of what I'm talking about, how they're gonna see
6 impairment no matter what you ask them. The
7 counting, the 25 seconds versus 30 I just pointed
8 out, when I asked Trooper Terry 'cause Barry Ellis
9 said that indicated impairment to him. Well, I got
10 Terry and he explained, yeah, that his test, the 30
11 versus 42 seconds he talked about, he said there's a
12 five second threshold either way. So if you're
13 within five seconds she wouldn't, that wouldn't
14 indicate anything, would it? And he would not agree
15 with that. He said, no, I would still take it into
16 account. I suggest to you, no, no. If they had a
17 test that says there's a five second threshold, did
18 you look for something outside that threshold being
19 inside the threshold, in layman's terms is she
20 passed, if that was even a test that appears it's
21 not part of the one-legged stand; but even Terry
22 wouldn't concede that.

23 Demi Garvin, you know, we'll talk about
24 the ten hour sleep. When you say I slept ten hours,
25 when somebody says -- it depends on how you ask too.

1 What time did you go to bed and what time you got
2 up. I went to bed last night about 10:30, I got up
3 this morning at 5:30. I bet I slept three hours,
4 maybe four. I don't sleep well when I'm on a case
5 like this. She has sleep apnea and we know that.
6 And I asked the doctor, I said, well, if you've got
7 sleep apnea and have BiPAP or CPAP, you're not
8 really sleeving ten hours. And she wouldn't concede
9 that, she says no. And to me that's -- I'm not a
10 doctor either, but I think that is the definition of
11 sleep apnea. You have interrupted sleep and that's
12 why we treat it is, you know. And again, we've got
13 tunnel vision. We're not gonna knowledge any facts
14 that's inconsistent with our conclusion that she's
15 under the influence.

16 I'm gonna talk a little bit more about
17 Ms. Garvin. So, she listed off all the things she
18 considered, but then when I would ask her what do
19 you base this on, what do you base that on, you get
20 some vague answers. She used a term that I wasn't
21 familiar with and I wasn't one prepared for, but she
22 mentioned peak, peak concentration. I don't know if
23 concentration is a word, but peak level in your
24 blood. And that's my understanding, but I'm a lay
25 person that these drugs are designed to give you the

1 same effect throughout the day as best they can.
2 And she testified that I would expect her
3 concentration to be lower two hours later at the
4 hospital, although I know that they're also, you
5 know, talking a lot about drugs she took the night
6 before including marijuana as if that's gonna be in
7 her system at that same level. That passage of
8 eight hours doesn't matter. But this two hours
9 matters a lot. She had purported to be, but I heard
10 that term peak. Wait a minute, where is the peak.
11 And she said, well, I would expect it to be an hour
12 and forty-five minutes after she took it which is
13 why I asked her, I said, what do you base that on?
14 Well, my knowledge of how these drugs metabolize.
15 Now she talked to you about I based it on peer
16 review articles and all this stuff that she's read.
17 I would expect that where these drugs there would be
18 a chart or list of statistics on this drug including
19 peak, peak concentration. She didn't mention
20 consulting anything about -- I think I picked one
21 drug, Clonazepam, when does it peak? She just said
22 an hour and forty-five minutes is based on my
23 knowledge of how it metabolizes. If she's gonna
24 make a comment that it's, she would expect it to be
25 lower in two hours, I would hope she could say and

1 I'm basing that on this data on this drug that I
2 studied. And by the way, there are other drugs.
3 That was just one. She's saying I suspect to be
4 lower when she's in the hospital. I just ask you,
5 do you believe she consulted every single drug that
6 we're talking about 'cause some of them are gonna
7 have different peaks. I imagine these peaks are
8 different you can can't make that statement. It's
9 just something to think about. Now the judge is
10 gonna charge you when you consider testimony, you
11 get to evaluate it. You don't have -- just because
12 she has the credentials and the name expert, doesn't
13 mean you have to believe everything that she says or
14 take it as true.

15 I will grant Ms. Tackett was impaired at
16 the time of the accident. I would tell you she was,
17 I would suggest unconscious. That driving, the slow
18 drift that the witness talked about, the slow drift
19 to the left and then she hit that rail and never
20 stopped 'til the guard rail stopped her. She wasn't
21 awake. There's no other explanation.

22 All this other evidence I don't think
23 points to intoxication. I think if it weren't for
24 this horrific, horrible accident that they were
25 trying to prove that she's intoxicated, I don't

1 think, I would suggest to you, that any of that
2 evidence, certainly not the 12 step thing at the
3 hospital, certainly not when his observation was
4 wrong, she's slow to respond. So the question is at
5 the time of the accident what's happening? Well, I
6 can recall two instances, and you've probably
7 witnessed something like this. I was having lunch
8 with a colleague and in the middle of lunch he's
9 talking to me and then he stops talking and slowly
10 becomes unconscious. Scared the heck out of us,
11 lasted several minutes. Finally he came to. He
12 didn't go to the hospital. We all insisted, no, you
13 go to the hospital, but nothing, nothing was found.
14 No cause, nothing medical they could find. I've
15 seen the -- and the lady, when we got on the scene
16 one time the lady beside me didn't stand up and we
17 looked and I looked over at her and her eyes are
18 open and she's got this look like this, but her eyes
19 aren't blinking and she stares straight at the air
20 and she stares that way for several minutes until we
21 get somebody to take her out. Her eyes are open. I
22 thought she was dead. She didn't want to go to the
23 hospital. They took her to the hospital. No
24 reason, it's just something that happens. You know,
25 whether you're on drugs or not, something like that

1 can happen if you're driving, this is what could
2 happen.

3 There's another thing in this case I want
4 to talk about and it's intent. The judge will
5 charge you that intent of this crime, of any crime,
6 of most crimes, you have to have intent and he'll
7 explain intent. One of the things I asked
8 Ms. Garvin, Doctor Garvin I should say, you know,
9 you attribute this to drugs. Obviously if this was
10 those drugs that, again, she had low doses according
11 to Doctor Goodbar, low end, she was very, whatever
12 was going on with her at the time of the accident,
13 was severe, very severe, because again, I think she
14 just blacked out and passed out. She can't
15 remember. Would it be unusual to be okay like she
16 described, be feeling fine and this happening
17 suddenly like she was that day on these drugs and
18 she said, yeah, that could happen. So you got to
19 ask yourself, one of the things to have intent --
20 and I'm not -- the solicitor said he's not gonna
21 suggest that she intentionally had the wreck because
22 that would be murder, I agree with that. And I'm
23 gonna suggest that he has to prove that, but I do
24 think, I would submit, that intent means that she
25 knowingly, she got in the car knowingly I had too

1 much, because of the drugs I can't drive. Whether
2 you're the last or worst person to decide that or
3 not, she's taking the drugs the way the doctors told
4 her. And I realize we have these warnings ---

5 MR. MOWRY: Your Honor, he is getting way
6 off, off the field here. He is talking about
7 potentially getting in the car and intentionally
8 driving while she's under the influence and that's
9 not a requirement for the State to prove.

10 THE COURT: I'll allow you to make that
11 argument on your rebuttable.

12 You may proceed.

13 MR. STODDARD: One reason we put this in
14 evidence is that they have something to do with,
15 these are actually the ones that are -- but one of
16 the things they tell is you get used to the drug,
17 understand how it effects you before you get in the
18 vehicle and she's been using these drugs some five
19 years. If she's feeling okay that day and some
20 event happens, and again, it could be something
21 besides drugs, something severe happened down the
22 road, then, she wouldn't be legally accountable, not
23 for a felony DUI.

24 By the way, there was a comment made that
25 Ms. Conte observed over five minutes. That says

1 something about -- that's five miles the speed she
2 was going, and Conte doesn't seem to be consistent
3 with going five miles. I would suggest that maybe a
4 minute to 20 minutes maybe. But anyway, it's hard a
5 year later to estimate the time and distance like
6 that I would suggest. Another thing, just because
7 some testimony is inconsistent, y'all have to
8 remember things differently. And a lot of times
9 when I describe an event to my wife, she'll say, no,
10 no, no, it happened this way. In fact, that's
11 simply because of a bunch of arguments we have. No,
12 it happened this way, no, it happened this way. I
13 got to learn that she's always right, but we
14 remember things differently.

15 They have made a pretty big deal about Ms.
16 Tackett's comment that I turned to my right and I
17 saw a person on the road. She remembers seeing the
18 person in the road. I would suggest that she
19 probably remembers that wrong. It makes more sense
20 that to turn, if you're looking at your child in the
21 back seat, if you turn to the right you have to kind
22 of lean over, all you got to do is turn your head
23 and the head rest a certain way and you can see back
24 there. They say there's no way to see through that
25 curtain. She said, I saw that it out the back

1 window. If there's just a little opening in that
2 curtain that big and you're that close to it, you
3 can see through it. You experience that. If
4 there's a little sliver like that, if you fall away
5 from it you can't see much. If it's closed you can
6 see a lot. The doors are made that way. That
7 little hole, if you look in it you can see the whole
8 room so it's not that unbelievable.

9 And I'm about to wind up. Oh, I did want
10 to mention this to you. The level of drugs that you
11 heard about are on the low end of normal therapeutic
12 are all -- you know, DUI with drugs, if you're on
13 these drugs she on and you have a small impairment,
14 that's what I would expect to see with her with
15 those drugs if it was gonna be that kind of accident
16 is, I was slow to apply brakes or, something like
17 that, that... And examine it with what we observed
18 at the hospital. This, one of the things in this
19 case in congruent that bad driving is, is that level
20 of drugs would suggest that something else besides
21 drug impairment.

22 Now the judge is gonna charge you about
23 reasonable doubt, and this is something to always
24 keep in mind in a case and in any case. It's not
25 what you think happened. You're gonna wonder what

1 does the evidence say caused her bad driving. It's
2 not what you think is the most likely cause; that's
3 not's the standard. It is, is it drugs beyond a
4 reasonable doubt and did she have the intent to
5 drive beyond a reasonable doubt, to drive, knowing
6 she was impaired. You know, I've mentioned, you
7 know, and the judge is going to charge you it's a
8 doubt that I think leaves you firmly convinced but
9 it's still beyond a reasonable doubt, against a
10 reasonable doubt. So you may think or conclude that
11 is the most likely cause, but if there's still a
12 reasonable possibility based on the evidence, if
13 it's a doubt that you can give a reason for, if it's
14 a doubt that makes you hesitate that this is not
15 under the influence of drugs, it's sleep apnea, it's
16 some other event, then your verdict would be not
17 guilty regardless of what you think most likely
18 caused -- and I know that sounds hard, but we're
19 supposed to do what we think is the most likely.
20 Another thing is, your verdict is going to be based
21 on evidence, not passion, not sympathy. And this is
22 an emotional case. There's the injury and the death
23 of catastrophic. You may feel the need to protect
24 these families, but it's got to be based on the
25 evidence beyond a reasonable doubt.

1 THE COURT: The State can reply.

2 MR. MOWRY: Thank you very much, Your
3 Honor.

4 THE COURT: Yes, sir.

5 MR. MOWRY: Ladies and gentlemen, y'all
6 are probably all saying, I've heard enough from them
7 so I'm not gonna to keep you long, I promise. But
8 while Mr. Stoddard was talking there was a time I
9 thought to myself why in the world have we been
10 trying this case for four days. He told you the
11 defendant was impaired. He told you she was
12 impaired to the point of unconsciousness. She was
13 driving her car impaired to the point of
14 unconsciousness. That is the basis of felony DUI,
15 whether death or serious bodily injury. Why have we
16 been going through this exercise?

17 There were several things in there where
18 he was giving you his interpretation of videos.
19 Okay, that's fine. Remember the old line who you
20 gonna believe, me or your lying eyes? Y'all figure
21 out for yourselves. You have that duty, really, but
22 you certainly have that privilege. One of the
23 things that I thought of during the course of
24 Mr. Stoddard's argument, kind of like the old Johnny
25 Cochran line or if it doesn't fit you must acquit.

1 Well, it's abuse, it's not an excuse. She was
2 abusing drugs. She was using a lot of drugs. And
3 she took on a whole bunch that made her unconscious
4 on the road, it put her out apparently. That's what
5 caused the drift across the road. That's what
6 caused the collision. That's what killed Zack and
7 injured J.C.

8 Mr. Stoddard told you about people just
9 sitting there and passing out and not wanting to go
10 to the hospital. Well, Ms. Tackett did go to the
11 hospital. She did go to the hospital and what
12 reason was found? There's nothing in the reports
13 besides the drugs according to Demi Garvin,
14 according to Dana Nemr, that would account for any
15 impairment. Remember we talked about Mr. McMahon
16 had to remind the defendant that she had her
17 grandfather CPAP machine at the time of this
18 incident. During the ten hours that she was asleep,
19 according to what she told Mr. McMahon, she may have
20 gotten up to go to the bathroom; otherwise, she was
21 asleep. And remember what she said, I felt great,
22 until she had the eight out of on the scale of ten
23 migraine. I think Mr. Stoddard was getting Gabriele
24 and Terry confused as to the time. Yes, it was 30
25 seconds; she had counted to 25. You make the

1 decision as to whether or not Gabriele said that was
2 part of the reason that she flunked the test. It
3 was 42 seconds with Terry on the 30 second count.
4 42 seconds. And there wasn't any distraction.
5 She's lying there with her eyes closed on a hospital
6 bed and still couldn't get the time right.

7 Mr. Stoddard made an issue of the fact
8 that she didn't know her meds and he didn't know
9 his. Well, maybe it's because she's got so many of
10 them. This is six months' worth. Six months of
11 records, everyone of those is a different
12 prescription. Oh, by the way, Mr. Stoddard's story
13 about the virgin daiquiri, ladies and gentlemen, it
14 was not a virgin Gabapentin or a virgin Effexor or a
15 virgin Clonazepam. Pamela Tackett had real drugs in
16 her system when she killed Zack and injured J.C.
17 Remember, he was showing you clips from the
18 hospital. Time on that is ninety minutes later, two
19 hours later, and that's after she had had a bowl of
20 saline in the ambulance. And in spite of that,
21 ladies and gentlemen, her own blood testified
22 against her. Mr. Stoddard brought up
23 Doctor Goodbar's testimony. She's not a
24 toxicologist; she's a pharmacist. She looked at the
25 toxicology report and the prescription records,

1 that's it. That's what she's drawing her
2 information from. She never interviewed the
3 defendant, never interviewed doctors, never looked
4 at hospital reports, never looked at anything else.
5 What all did Demi Garvin look at: Videos, witness
6 statements, incident reports, tox report,
7 prescription records, hospital report, EMS run
8 report. That's just stuff associated with this
9 case.

10 Mr. Stoddard paid a lot of attention to
11 the hospital. He also paid attention to the
12 aftermath of the wreck. How did the wreck happen?
13 What led us to this point? Think about Ms. Conte
14 and Mr. Glodz and their testimony. How does the
15 defendant explain her driving? Mr. Stoddard said
16 that Ms. Conte underes-- or misestimated her time
17 that she had viewed the defendant. Well, really,
18 does that matter? Does it matter? She was able to
19 watch the defendant driving up in an erratic, scary
20 manner in her rear-view mirror. She had to pull off
21 the road to avoid being sideswiped, pulled into the
22 emergency lane and let her go. And then Mr. Glodz
23 testifies to much the same driving and then
24 testifies she's in the right lane, drifts all the
25 way across and into the shoot between the cables and

1 the truck. What other reason do we have? There's
2 been zero medical testimony, zero, that there's any
3 other cause for this incident except drugs.
4 Prescription drugs? Sure. But Zack Ivey is still
5 dead, and J.C. Howell is still badly hurt.

6 Ladies and gentlemen, Mr. Stoddard talked
7 about using your common sense and I'm gonna ask you
8 to do the same thing. Every one of y'all comes from
9 different background, different life style,
10 different jobs, everything else; but every one of
11 y'all has at least one thing in common and that's
12 common sense. You used your common sense when you
13 were listening to the testimony that came off the
14 witness stand. I ask you to continue to use your
15 common sense in just a minute when the judge
16 instructs you on the law in this case, and I ask you
17 to continue to do it when you go back in your jury
18 room to determine your verdict. Your common sense
19 will tell you the State's proved its case. We've
20 proved it beyond a reasonable doubt. You're
21 completely justified in convicting this defendant on
22 all these charges. Thank y'all very much.

23 THE COURT: All right. Ladies and
24 gentlemen of the jury, I told you that when we
25 reached this stage of the proceeding it would be my

1 responsibility to charge you concerning the law in
2 this matter. We've been going a little while.
3 Again, I want to take a short break, let you step
4 back, stretch your legs. I'm gonna stay on the
5 Bench. I'm not gonna move so it won't be long.
6 I'll bring you back and we'll charge you on the law.
7 Again, when you step back to the jury room don't
8 discuss anything about the case until I tell you to
9 begin deliberations so go ahead and take about a
10 five minute break.

11 Mr. Bailiff, as soon as they're ready
12 let's bring them right back in. Thank you, sir.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 1:47 p.m.)

15 THE COURT: All right, we'll take a short
16 break. I'll stay on the Bench.

17 (WHEREUPON, a recess was taken from the
18 proceedings.)

19 (WHEREUPON, the jury was returned to the
20 courtroom at approximately 1:51 p.m., and
21 the following proceedings commenced in
22 open court.)

23 THE COURT: All right, the jury has
24 returned to the courtroom. I told you it is now my
25 responsibility to charge you the law to be applied

1 in this case. First of all, I want to mention to
2 you there are three indictments in the case. Those
3 indictments are for the offenses of driving under
4 the influence in which death results, felony driving
5 under the influence with great bodily injury, and
6 child endangerment. Now these indictments, again,
7 are the documents that bring the case into this
8 court. They inform us of the charges to be tried.
9 They inform the defendant of the charges lodged
10 against her. I'll give you these indictments to
11 take back into the jury room so that you can view
12 them in detail as you consider them; but I want to
13 remind you of the fact that the defendant has been
14 arrested, charged, and even indicted.

15 Hold on a minute.

16 MR. MCMAHON: Thank you, Your Honor, I
17 apologize.

18 THE COURT: Well, we got off to a quick
19 start.

20 MR. MCMAHON: Yes, sir.

21 THE COURT: The fact that a defendant has
22 been arrested or charged and even indicted is not
23 evidence in this case. It cannot be considered by
24 you as evidence of guilt in the case, nor do those
25 facts create any inference or presumption of guilt.

1 Again, these are simply informational documents that
2 bring the case into the court. They inform us of
3 those charges that have been lodged in the case.

4 Now each of those indictments alleges a
5 separate offense, and you must decide each
6 indictment separately as to the evidence and law
7 that's applicable to that indictment. Your decision
8 in each of the cases should be uninfluenced by your
9 decision as to the other indictments in this case.
10 A defendant can be convicted or acquitted on either
11 or both of the felony driving under the influence
12 charges; and if she is found guilty of either of
13 those charges, then you should consider the charge
14 of the child endangerment. You can only consider
15 that charge should you find her guilty on one or
16 both of the felony driving under the influence
17 charges; and again, you're going to be called upon
18 to write a separate verdict as to each of those.

19 I told you earlier, it remains the case
20 the defendant has pled not guilty to those
21 indictments. Under our system of justice that
22 places the burden of proof upon the State to prove
23 the defendant guilty. I will tell you that a person
24 who is charged with the commission of a crime is
25 never required to prove herself innocent. It's an

1 important rule of law that every defendant in a
2 criminal trial and it doesn't matter what the
3 seriousness of the crime might be, will always be
4 presumed to be innocent of the crime for which an
5 indictment has been issued until and unless guilt
6 has been shown to you, the jury, by proof that
7 satisfies you of that guilt beyond a reasonable
8 doubt.

9 Now the presumption of innocence that a
10 defendant has doesn't end when you begin your
11 deliberations. It accompanies the defendant
12 throughout the trial and into your deliberations.
13 It remains with the defendant until and unless you
14 reach a verdict of guilt based upon the evidence
15 that satisfies you of that guilt beyond a reasonable
16 doubt. Now some people describe the presumption of
17 innocence like the robe a judge wears in a
18 courtroom. So think of the robe as the presumption
19 of innocence. It's around the defendant's shoulders
20 at the beginning of the trial. It remains about the
21 defendant's shoulders throughout the trial. It is
22 still about the defendant's shoulders as you begin
23 and go through your deliberations. Only when it has
24 been stripped by the defendant by proof that
25 satisfies you of the defendant's guilt beyond a

1 reasonable doubt is it removed from the defendant's
2 shoulders.

3 Now the presumption of innocence is not a
4 legal theory; it's not just a legal phrase. It's a
5 substantial right that every defendant is entitled
6 to until and unless you, the jury, find the
7 defendant guilty by evidence that satisfies you of
8 the defendant's guilt beyond a reasonable doubt.
9 Now you've heard me refer to that proof beyond a
10 reasonable doubt several times. That's an important
11 concept in our jurisprudence, and I will tell you
12 that the State has the burden of proving the
13 defendant guilty beyond a reasonable doubt.

14 Now you may say, well, just what is meant
15 by proof beyond a reasonable doubt, what is a
16 reasonable doubt? The cases that have defined
17 reasonable doubt have said that a reasonable doubt
18 is that kind of doubt that would cause a reasonable
19 person to hesitate to act.

20 Now, if you've ever been involved in a
21 civil case -- and let me digress for just a second
22 and be sure I've made a distinction here. If you've
23 ever been in a civil case, that's where somebody is
24 seeking monetary damages and that can be for such
25 things as breach of contract, the failure to pay a

1 debt, personal injuries. Those are the kinds of
2 cases where people seek monetary damages and those
3 are called civil cases. In those cases the standard
4 of proof is different than in a criminal case such
5 as this one. In a civil case the standard of proof
6 is proof by the greater weight of the preponderance
7 of the evidence. They tell you to imagine the
8 scales of justice. In a civil case if those scales
9 tip ever so slightly in favor of a plaintiff, the
10 plaintiff gets the verdict. If they stay even or
11 tilt ever so slightly in favor of the defendant, the
12 defendant gets the verdict. That's the standard of
13 proof in a civil case. That does not apply to this
14 case. The standard of proof in this case is more
15 powerful than that. I will tell you that proof
16 beyond a reasonable doubt is that kind of proof that
17 will leave you firmly convinced of the defendant's
18 guilt.

19 Now there's very few things in this world
20 that can be proven beyond any doubt whatsoever, and
21 that's not the standard of proof that the State is
22 put to. They do not have to produce proof that
23 overcomes every possible doubt. What I will tell
24 you is if based on your consideration of the
25 evidence you are firmly convinced that the defendant

1 is guilty of the crime, you must find the defendant
2 guilty. However, on the other hand, if you think
3 there's a real possibility that the defendant is not
4 guilty, then you must give the defendant the benefit
5 of that doubt and find her not guilty.

6 Now at the beginning of the trial I
7 pointed out to you that you and I have different
8 functions in the trial. It's been my job to preside
9 over the case, and I've had to rule on some issues
10 that have come up during the trial and you're only
11 to consider whatever evidence went into the record
12 of the case. If there's anything that I ruled out
13 of order or didn't allow to come in, don't consider
14 that information at all in reaching a verdict.
15 You're only to consider the competent evidence in
16 the record of the case in the evidence that's before
17 you in this trial.

18 I have the additional duty to charge you
19 on the law in this case, and I told you at the
20 beginning of the trial I'm considered to be the sole
21 judge of the law in this case. It's your duty under
22 your oath to take the law and accept the law and
23 apply it to the facts as you determine the facts to
24 be; and if you have any idea as to what the law is
25 or a notion as to what the law ought to be before

1 today or when you came into the courtroom today,
2 leave those notions outside of the jury room and
3 take the law exactly as I give it to you, apply it
4 to the facts as you determine those facts to be.
5 That should put you in a position to render a
6 verdict in this case.

7 Now in every case tried in this court
8 before a jury the jury is the sole and exclusive
9 judge of the facts. I told you you can't disagree
10 with me concerning the law because I'm the sole
11 judge of the law. You, as the sole judges of the
12 facts, I'm not allowed to disagree with you
13 concerning your determination of the facts in this
14 case. I will caution you, again, don't take from
15 anything that I have said or done or say or do even
16 during this charge to indicate to you that I have
17 some notion or idea or belief as to how you should
18 determine the facts in this case. The law doesn't
19 allow me an opinion concerning the facts. I do not
20 have an opinion as to how you should determine the
21 facts in this case. That's for you to decide and
22 for you to decide alone. It is your duty as jurors
23 to find and determine the facts in the case. You
24 will determine the effect, the value, and the weight
25 of the evidence that's been presented during the

1 trial of this case.

2 Now in doing this you have the right to
3 consider two types of evidence. We divide evidence
4 into either direct evidence or circumstantial
5 evidence, and let me explain what we mean by those
6 two, two divisions. Direct evidence is when a
7 witness testifies directly on the fact that's sought
8 to be proven, usually it's someone who actually
9 experienced the facts about which they're
10 testifying, an eyewitness to an event, someone who
11 saw something, heard something, felt it, experienced
12 it, smelled it. Any time they testify directly on
13 the facts sought to be proven, that's what we refer
14 to as direct evidence.

15 Now the other type of evidence that the
16 law allows you to consider is circumstantial
17 evidence, and the law doesn't make a distinction
18 between the weight or the value that you can give to
19 either direct or circumstantial evidence.

20 Now the State has this burden of proving
21 the defendant guilty beyond a reasonable doubt and
22 that burden of proof rests upon the State regardless
23 of whether the State relies on direct or
24 circumstantial evidence. I'd like to give you a
25 fairly simply example of what we mean by proof of a

1 fact by circumstantial evidence. Sometimes it's
2 described as proof of a fact from collateral facts.
3 Let's say last night before you went to bed you
4 walked over to the window in your bedroom, you
5 looked outside, the stars were shining, it was a
6 beautiful night, you went to sleep. You got to bed,
7 slept all night, didn't wake up at all. The next
8 morning you got up and walked to the same window and
9 you looked outside and the sun's shining, but when
10 you looked a little closer you noticed there was
11 water dripping out all the trees. Out in the
12 driveway or in the road in front of the house there
13 weren't any puddles there the night before, but now
14 there's big puddles standing the road. Maybe the
15 lawn has a thick color of water on it. Now, you
16 slept all night, you didn't see it rain, you didn't
17 hear it rain so you can't say directly that you
18 experienced it raining. But from the collateral
19 facts that you know to be true, water dripping out
20 of the trees, puddles where they weren't there the
21 night before, heavy water on the lawn, from those
22 collateral facts you could reasonably infer that at
23 some time during the night it did, in fact, rain.
24 So that's what we mean of proof of a fact by
25 inference, by collateral facts from which a main

1 fact would be reasonably be inferred so that's what
2 we mean by direct or circumstantial evidence.

3 And you have the right to consider either
4 of them, and again, the law makes no distinction as
5 to the weight or value that you, the jury, can give
6 to either direct or circumstantial evidence. That's
7 for you as the finder of fact to determine. In
8 doing your job as the finder of fact you're gonna
9 have to decide the credibility and the believability
10 of what you've heard during the case and credibility
11 simply means believability. It'll be your duty to
12 decide as jurors what evidence convinces you of its
13 credibility. In determining credibility of
14 witnesses who testified you can believe one of the
15 witnesses against all the others, all the others
16 against one. You can believe all or part of or none
17 of what any witness has testified to. I urge you to
18 use your good common sense in making those
19 decisions. I'll ask you to do that again. Use your
20 good common sense and make a determination on the
21 credibility or the believability of what you've
22 heard during the trial. You can consider whether or
23 not a witness exhibited an interest or a bias or
24 prejudice or one way or the other, whether or not
25 the witness had the ability to know what the witness

1 was testifying about. I told you earlier we put the
2 witness stand in front of you directly so you can
3 observe the witnesses, how they testify, the way
4 they deliver their testimony. Use your common
5 sense, analyze and evaluate the evidence that you
6 heard, make the determination as to the credibility
7 or believability of the testimony you've heard in
8 this case.

9 Now there have been expert witnesses who
10 testified, and you may recall the first one who was
11 qualified I explained to you that that qualification
12 allows that witness to state opinions within the
13 area of expertise for which they've been qualified
14 and state the reasons why they hold that. And
15 that's a person who because of their education or
16 experience has become an expert in some art or
17 science or profession or calling and they are
18 allowed to state those opinions, as I said. You as
19 the jury as the finders of fact can consider the
20 testimony given by an expert like any other evidence
21 in the case. You give it the weight you think it
22 deserves. Should you decide that the opinion's not
23 based on sufficient education or experience or if
24 you consider the supporting evidence and you find
25 that it's lacking in some fashion, that the opinion

1 may not be sound or that the opinion is outweighed
2 by other evidence, you as the jury can disregard the
3 opinion of an expert entirely if you choose to.
4 Like any other witness, you can believe all or part
5 or none of what the witnesses testified to. Just
6 because someone's been declared to be an expert,
7 that fact in and of itself does not mean that you
8 should give that testimony any greater weight than
9 any other testimony. You're not required to accept
10 an opinion from an expert even if it's not
11 contradicted by other evidence. You decide the
12 weight it deserves like any other evidence in the
13 case. Use your common sense in making that
14 determination.

15 Now in all criminal cases criminal
16 liability, there's certain level of intent that's
17 required. That's a mental state to be proven by the
18 State for a particular crime. Intent is proven by,
19 by this must be proven beyond a reasonable doubt and
20 it's always taken from the facts and circumstances
21 surrounding the situation because there's no way we
22 can look in somebody's brain and tell what they
23 intended to do at any given time so we can't, we
24 can't directly prove that by direct evidence. It
25 has to be proven by the facts and circumstances

1 surrounding the situation. That's how you make a
2 determination as to whether or not intent was
3 necessary and criminal intent is a state of mind.
4 It's a conscious wrongdoing, and it's up to you to
5 determine what the defendant intended to do based on
6 those circumstances that have been shown to exist.

7 Now criminal intent can arise from action
8 or a failure to act. It can arise from negligence,
9 recklessness, or an indifference to duty for the
10 consequences that is considered by the law would be
11 the equivalent to criminal intent.

12 Now I'm going to talk to you about the two
13 main charges in the case. First of all, felony
14 driving under the influence in which death results,
15 and the defendant is charged with that crime. The
16 State must prove beyond a reasonable doubt that the
17 defendant drove a vehicle while under the influence
18 of drugs. Now driving a motor vehicle means that
19 the vehicle was in motion, and while in motion it
20 was under the control of the driver and the
21 affirmative acts of the driver. This must be -- can
22 be proven either by direct or circumstantial
23 evidence. The movement of the vehicle could occur
24 without an affirmative act or by a driver or, in
25 fact, by any other person. If a vehicle is moved by

1 some power beyond the control of the defendant or by
2 accident, this would not be driving.

3 Now the State must prove beyond a
4 reasonable doubt that while driving the vehicle the
5 defendant was sufficiently under the influence to
6 impair her ability to drive with reasonable care
7 with due regard for others and herself or as a
8 reasonably prudent person would drive under similar
9 circumstances. It's not necessary to show that a
10 defendant was in a helpless condition, passed out,
11 or even drunk or intoxicated. On the other hand,
12 the mere fact that a defendant at some point in time
13 prior to the accident consumed drugs, that fact by
14 itself does not prove that the defendant was under
15 the influence.

16 Next the State must prove beyond a
17 reasonable doubt that while driving under the
18 influence the defendant did act, did an act which is
19 forbidden by law or neglected a duty imposed by law.
20 Finally, the State must prove beyond a reasonable
21 doubt that the act or negligence of the defendant
22 proximately caused death. Now by proximate cause we
23 mean that it was a direct cause, that it was the
24 immediate cause, the effective cause. It is that
25 cause which without, without which the death of the

1 victim would not have resulted. There must be a
2 chain of causation from the time the injury was
3 inflicted by the defendant until the time of the
4 victim's death. Proximate cause does not mean that
5 it occurred immediately prior to the death.

6 Now the defendant's acts may be regarded
7 as a proximate cause if it is a contributing cause
8 of the injury or death of the victim. The fact that
9 other causes may have also contributed to the injury
10 or death of the victim does not relieve the
11 defendant from responsibility. The defendant's acts
12 need not be the sole cause of the injury or death,
13 but it must be a proximate cause contributing to the
14 injury or death of the victim.

15 Now the other charge, felony driving under
16 the influence with great bodily injury is the next
17 charge we'll talk about, and the State must prove
18 beyond a reasonable doubt all of the factors that I
19 mentioned concerning felony driving under the
20 influence resulting in death. The defendant -- the
21 afore-- those aforementioned acts on negligence of
22 the defendant must proximately cause great bodily
23 injury in this case. Great bodily injury means
24 bodily injury which creates a substantial risk of
25 death or which causes serious permanent

1 disfigurement or protracted loss or impairment of
2 the function of any bodily member, part, or organ.

3 Now if you find the defendant guilty of
4 the felony driving under the influence resulting in
5 death or resulting in great bodily injury, then you
6 would consider the child endangerment charge. The
7 defendant is charged with child endangerment and the
8 State must prove beyond a reasonable doubt that the
9 defendant committed either the offense of felony
10 driving under the influence in which death results
11 or felony driving under the influence with great
12 bodily injury, and the defendant had one or more
13 persons younger than 16 years of age in the motor
14 vehicle when the violation occurred.

15 Now, let's see, Ms. Lawrence, I believe
16 you're seated in the front; is that right?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: You're gonna be the foreperson
19 of the jury. Now what that means is you'll be the
20 person who will lead the discussions of the jury.
21 Should the jury have a question during deliberations
22 I'll ask that you record that on a piece of paper,
23 knock on the door, pass it to the bailiff. He'll
24 bring it to me and I'll determine what answer I
25 should give to that question. I can't answer every

1 question you might have in the deliberations 'cause
2 you're the sole judges of the facts; but I'm not
3 gonna ask you to edit any question the jury might
4 have. Once the jury has agreed on a question, you
5 write it on a piece of paper, knock on the door,
6 give it to the bailiff, he'll bring it to me and
7 then I'll decide how I can respond to that
8 particular question. I'm also gonna give you a
9 verdict form and the indictments. I'm going to
10 explain those to you in just a minute 'cause I've
11 gone over a lot of things. I'm gonna talk to the
12 lawyers before I send you out here before final
13 deliberations and so I'm gonna send you out one more
14 time and ask you not to discuss the case before
15 then.

16 But I will tell you, once you consider the
17 case, the jury cannot act unless the verdict is
18 unanimous. Each and every one of you must agree
19 upon the verdict before it's the verdict of the
20 jury. So once a unanimous verdict has been reached
21 as to the issues before you, you would record that
22 on the indictment that's applicable and the verdict
23 form. Once you've completed those documents, the
24 verdicts, you let the bailiff know a verdict's been
25 reached, then you will come back to the courtroom

1 for us to accept the verdicts.

2 So nobody has any greater say than any
3 other jurors. As I told you earlier in the matter,
4 all of you must agree before a verdict can be
5 reached in the case. Now this is probably the last
6 time I'm gonna tell you, step back for just a
7 minute, don't start your discussions. I'll bring
8 you back for final instructions. It won't take
9 long, should be in just a moment. You may step back
10 to the jury room.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 2:13 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: Exceptions from the State to
15 the charge?

16 MR. MOWRY: No, sir.

17 THE COURT: Any from the Defense?

18 MR. STODDARD: No, sir.

19 THE COURT: All right. I'm gonna ask you
20 folks to come forward with the court reporter.
21 Let's set aside the exhibits that are going to go
22 back to the jury, be sure we've got an agreement on
23 those.

24 (Attorneys review exhibits.)

25 MR. MOWRY: There is a clean computer, no

1 ---

2 THE COURT: Is it back in the jury room?

3 MR. MOWRY: I think the clerk has it, and
4 if they need to watch anything it's available.

5 THE COURT: I see. I'll let them know if
6 they need to watch it we'll get it for them. All
7 right, I got the verdict form here. I want you to
8 look at that before I send that back.

9 (Attorneys review verdict form.)

10 THE COURT: Okay. Any objection to the
11 verdict form, Mr. McMahon?

12 MR. MCMAHON: No, sir.

13 THE COURT: Any from Defense?

14 MR. STODDARD: No, sir.

15 THE COURT: And we've reached an agreement
16 on the exhibits, that's correct? The ones on the
17 table should go back. Is that right?

18 MR. MCMAHON: Yes, sir, and those up there
19 that are on the rail.

20 THE COURT: And the pictures.

21 MR. MCMAHON: And I understand they have a
22 computer.

23 THE COURT: All right, bring them back.

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 2:17 p.m., and

1 the following proceedings commenced in
2 open court.)

3 THE COURT: All right, Mr. Bailiff, if
4 would please let me hand these papers to you. If
5 you'd give those to Ms. Lawrence for me.

6 All right, ma'am, the papers that you've
7 just been handed I'm going to go over those with
8 you. The one on the top is the verdict form. It
9 has the state and county, the court we're in, and it
10 has on there the name of the case. Below that there
11 are three different verdict forms, three different
12 possibilities. The first two involve the felony DUI
13 charges. The third one, you'll see there's a note
14 before the third one that indicates you should only
15 decide the third one should you find the defendant
16 guilty on either or both of the first two. You see
17 that?

18 Now, ma'am, there's two choices under each
19 of those, guilty or not guilty; and of course, you
20 would put a mark, an X, or something beside the
21 appropriate verdict once a unanimous verdict has
22 been reached on that. Now don't take from the fact
23 that they're on that form in any order that that
24 indicates a preference on my part. That has nothing
25 to do with it. They're in that same order on every

1 form I use and so that's nothing, no preference on
2 my part as to the order they're there. Once you
3 have completed that form you would sign it and let
4 the bailiff know that it's been signed.

5 Now the indictments are the charges that
6 are under that; and on the back side of those
7 indictments, if you'll turn them over there. Just
8 one of them, you can do that. You'll see in the
9 bottom left corner there's a place to record the
10 verdict on the indictment. You see that block that
11 says verdict?

12 THE FOREPERSON: Yes, sir.

13 THE COURT: All right. So once a verdict
14 is reached on any particular indictment, you would
15 write the verdict in that block and sign and date it
16 on that form as well. So there's two places to
17 record the verdict, once on the form that I've given
18 you, once on the indictment. Do you understand how
19 we're gonna do that?

20 THE FOREPERSON: (Nods.)

21 THE COURT: All right. Now I'm gonna ask
22 that the jury retire, begin your deliberations. If
23 it becomes necessary at any time for the bailiff or
24 somebody from the clerk's office to come in
25 concerning your lunch or whatever, don't deliberate

1 at all while someone else is in the jury room. You
2 should only discuss the case only among yourselves.
3 Allow the person to come in, get their work done,
4 don't discuss the case with them. When they leave,
5 resume your deliberations once they have left the
6 room. All right, now the two alternates I want to
7 ask that you remain seated in the courtroom. The
8 jurors can now retire to begin your deliberations.

9 Oh, one other thing I need to mention to
10 you, Madam Forelady. There are disks here with
11 recordings on them. If the jury feels the need to
12 watch any of those recordings, there is a clean
13 computer we can bring in that you can watch them if
14 you wish to do that. You've seen them in the
15 courtroom. You're not required to watch them again;
16 but if you want to, let the bailiff know and we'll
17 get you the means to watch those. All right, you
18 may retire to begin your deliberations.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 2:22 p.m., and the following
21 proceedings commenced in open court.)

22 ALTERNATE: Yes.

23 THE COURT: Okay, gentleman, let's, I
24 believe I've got James Canty and Hanker Patel. Am I
25 correct? You, gentlemen, are the guys we invited to

1 dance, but we're not gonna let you dance. You were
2 here in case one of the jurors fell ill or we had
3 somebody have an emergency and you would have been
4 chosen -- we'd have done a lottery between you two
5 to see which one would go to the jury and on the
6 first one. But since they've all retired the law
7 says that your job has ended so I'm going to excuse
8 you this case. I told you throughout the trial
9 you're not to discuss it with anybody. I tell you
10 now that you can if you want to. You know, a
11 citizen doesn't owe anybody an explanation for what
12 they do on a jury. You don't have to talk to
13 anybody about this case unless you decide you want
14 to do that.

15 Should anybody bother you or harass you in
16 any way about your service, let the Clerk's Office
17 know; I'm sure the appropriate action would be
18 taken. I don't think that's gonna happen; but if it
19 does, please let us know because you certainly don't
20 deserve to be harassed for having served on the jury
21 in any fashion. We do appreciate your help. We
22 couldn't have done it without you. And at this
23 point in time you're free to go. Thank you very
24 much.

25 (Alternates were excused.)

1 THE COURT: Any objections concerning my
2 final instructions from the State?

3 MR. MOWRY: No, sir.

4 THE COURT: Any from the Defense?

5 MR. STODDARD: No objection.

6 THE COURT: We'll be in recess until we
7 get a question or get a verdict.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 THE COURT: I need to put one thing on the
11 record. I have been informed that a verdict has
12 been reached. During deliberations I received a
13 note from the foreperson. The note reads, could we
14 please get the first body cam video when she got out
15 of the vehicle. It was signed by R. Lawrence. I
16 instructed the clerk at that time to provide them
17 with the clean computer and which was done. I
18 received no further messages from the jury so I
19 assume that responded to that. I didn't see any
20 reason to bring you in here since it wasn't a
21 question to answer. I'm gonna have this made a
22 Court's exhibit and part of the record.

23 (Court's Exhibit Number 4 was marked
24 and made a part of the record.)

25 THE COURT: All right. Is the State ready

1 to receive the verdict?

2 MR. MOWRY: Yes, sir, Your Honor.

3 THE COURT: Defense ready to receive the
4 verdict?

5 MR. STODDARD: Yes, sir, Your Honor.

6 THE COURT: Bring the jury in.

7 I will caution those in the courtroom, if
8 you have any trouble controlling your emotions at a
9 time like this, please don't shout out or make any
10 noises or anything when the verdict is read. If you
11 have difficulty controlling those things, step
12 outside and don't put yourself in a position where I
13 have to take action about something like that. So
14 if you would please restrain any emotions until you
15 have left the courtroom please.

16 (WHEREUPON, the jury was returned to the
17 courtroom at approximately 3:57 p.m., and
18 the following proceedings commenced in
19 open court.)

20 THE COURT: Madam Forelady, I have
21 received from the bailiff the verdict form and the
22 indictments in the case. Has the jury reached a
23 unanimous verdict on these matters?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: And is it properly recorded on

1 these forms?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: Thank you. I'll ask the clerk
4 to please publish the verdict.

5 THE CLERK: Your Honor, in the case of the
6 State of South Carolina versus Pamela Tackett, case
7 number 2018-GS-30-1109, 1110, and 1111, as to the
8 charge of felony driving under the influence in
9 which death results: We, the jury, find the
10 defendant guilty. As to the charge of felony
11 driving under the influence with great bodily
12 injury: We, the jury, find the defendant guilty.
13 As to the charge of child endangerment: We, the
14 jury, find the defendant guilty. I certify this
15 decision was the unanimous decision of the jury,
16 signed by the forelady, Regina L. Lawrence. Ladies
17 and gentlemen, if that be your verdict please
18 indicate by raising your right hands.

19 (All jurors complied by raising their hand.)

20 THE CLERK: Thank you.

21 THE COURT: Anything further from the
22 State before I release the jury?

23 MR. MOWRY: Nothing further from the
24 State.

25 THE COURT: Anything further from Defense?

1 MR. STODDARD: Nothing from the Defense.

2 THE COURT: All right. Ladies and
3 gentlemen, I want to thank you very much for your
4 service in this case and your attention to your
5 duties. I appreciate very much your assistance to
6 our court system this week. Throughout the trial I
7 have instructed you not to discuss this case with
8 anyone. I will tell you now that you have the right
9 to do so. You also have the right not to do so. A
10 citizen owes no one an explanation for their service
11 on a jury panel. You're not required to discuss
12 anything about this case unless you choose to
13 discuss that. Now if anybody were to harass you or
14 bother you concerning your service on the jury -- I
15 don't expect that to happen, but should it happen,
16 please report that to the Clerk's Office as soon as
17 possible. Appropriate action would be taken should
18 something like that occur. I will thank you for
19 your help in this matter.

20 If you wish to be present for sentencing,
21 the bailiffs can tell you if that's possible; they
22 will be checking you out. We're not gonna start any
23 other cases for this week. This ends your jury
24 service for the week so I thank you very much for
25 your assistance at this time. And at this time

1 you're free to go.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 4:00 p.m.)

4 MR. MOWRY: If it please the Court, I'll
5 go get the sentencing sheets.

6 THE COURT: Yes, sir, please do.

7 (Pause.)

8 THE COURT: All right, Defense at this
9 time wish to make any posttrial motions?

10 MR. STODDARD: Your Honor, I would move
11 for a judgment notwithstanding a verdict or a new
12 trial on the grounds that there's inherent
13 reasonable doubt in this case. Their own expert
14 said that with these drugs, they're within a
15 therapeutic level and would not necessarily cause
16 someone to be so impaired they couldn't drive. No
17 evidence was presented as to -- you know, she
18 doesn't have any duty to prove her medical
19 condition. That wasn't something beside the drugs.
20 No evidence to contradict her testimony that when
21 she made the decision to drive, she had no
22 impairment, no reason to understand or know that if
23 it was these drugs that that would happen.

24 THE COURT: All right. I understand the
25 motion, however, there is adequate information that

1 would indicate that even though the therapeutic
2 level, there's warnings on the bottle to operate
3 vehicles with caution, I think there's testimony
4 from witnesses indicating that for some period of
5 time prior to the accident she was having difficulty
6 in maintaining her vehicle properly on the highway.
7 All of those factors along with the videos I saw and
8 the testimony from those who were present, provide
9 sufficient information and evidence that I'll deny
10 the motion. I'll allow the verdict to stand.

11 MR. STODDARD: I would also move that the
12 Court conduct, allow a pretrial investigation before
13 sentencing.

14 THE COURT: Well, I'm gonna allow you to
15 speak to me about it, but I don't know that that's
16 necessary. From what I have heard and we'll get
17 into it in just a minute, but I know during our
18 discussion concerning her right to testify I didn't
19 hear that there was any prior records or anything of
20 that nature. If she had such extensive records I'd
21 be more inclined to do something like that; but at
22 this point in time I don't feel that's necessary.

23 MR. MOWRY: Your Honor, for the record we
24 do have members from each family, both from Zack's
25 family and from J.C.'s family that would like to

1 address the Court for victim impact.

2 THE COURT: I will give them an
3 opportunity to do that. I do want to get on the
4 record the penalties for these offenses.

5 MR. MOWRY: I did not bring -- 1 to 25 for
6 felony DUI with death.

7 THE COURT: It's got a mandatory fine as
8 well, I believe.

9 MR. MOWRY: Your Honor, if you give me a
10 second I'll grab my red book and we can ---

11 THE COURT: That's what I'm looking for is
12 that mandatory fine.

13 MR. MOWRY: Your Honor, the child
14 endangerment is kind of funky as well. It is not
15 more than one half the maximum time for the
16 substantive offense and not more than one half the
17 maximum fine for the substantive offense.

18 THE COURT: There is no requirement
19 though that it be ran consecutively or in addition
20 to the other ---

21 MR. MOWRY: No, sir. No, sir.

22 THE COURT: That's my understanding. So
23 it's basically one half the underlying offense. Now
24 we've got two offenses ---

25 MR. MOWRY: Right.

1 THE COURT: ---with two different
2 penalties I believe.

3 MR. MOWRY: I would submit that it's
4 probably one half of the larger.

5 THE COURT: More severe and that's ---

6 MR. MOWRY: Yes, sir.

7 THE COURT: What I have for that, I have a
8 fine of not less than 10 thousand dollars, nor more
9 than 25, so it must be at least 10 and imprisonment
10 for not less than one year, nor more than 25.

11 MR. MOWRY: Yes, sir. And for felony DUI
12 with great bodily injury it's 30 days, 15 years and,
13 5 to 10 thousand dollar fine.

14 THE COURT: Not less than 5,000.

15 MR. MOWRY: Yes, sir.

16 THE COURT: All right, so we're in
17 agreement. Is that your understanding as well, Mr.
18 Stoddard?

19 MR. STODDARD: Yes, sir.

20 THE COURT: Okay. All right, I'm going to
21 ask Ms. Tackett to please stand, please. Thank you.
22 Ms. Tackett, you have been found guilty by a jury of
23 your peers of the offense of felony driving under
24 the influence resulting in death and also felony
25 driving under the influence resulting in great

1 bodily injury, as well as child endangerment. I
2 have gone over with your attorney the maximum
3 penalties for those offenses. I'm going to give him
4 an opportunity to speak with me concerning
5 sentencing or other matters that he thinks I may
6 consider in determining an appropriate sentence.
7 I'll give you an opportunity to speak with me as
8 well about this; and if there's someone here who
9 would like to speak on your behalf, I'll be happy to
10 hear from them.

11 Now once we complete that process I will
12 be going to the State. I'll ask them for
13 information that they may have and I'll be hearing
14 from the victims in the matter. You understand what
15 I'm going to do?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, Mr. Stoddard.

18 MR. STODDARD: Your Honor, if it please
19 the Court, and I know you've heard all the evidence
20 and I feel you would have put some thought into what
21 you're gonna do in this event so I'll have a few
22 brief remarks.

23 THE COURT: Well, there are some things
24 that I will consider in sentencing I haven't heard
25 yet so I would like to, I am concerned about those

1 matters.

2 MR. STODDARD: Well, one thing is -- well,
3 you know that, apparently you've already been
4 advised she has no criminal record.

5 THE COURT: Uh-huh.

6 MR. STODDARD: And another thing is, I
7 know the Court would not take into consideration
8 someone's exercising constitutional right to go to
9 trial; but you would consider normally in a guilty
10 plea expression of remorse.

11 THE COURT: I won't punish anybody for
12 having had a trial, but I may help someone who is
13 willing to accept responsibility.

14 MR. STODDARD: Right.

15 THE COURT: Yes, sir.

16 MR. STODDARD: And I've given this some
17 thought and maybe my perspective on this might be
18 different but, well a couple things. First of all,
19 I do think this is a different felony DUI than
20 somebody that goes to a bar and gets drunk and gets
21 in a car and something like this happens which is a
22 lot different because she's taking medicines as
23 prescribed that are needed to treat her medical
24 condition. So that, unlike going to a bar and doing
25 it for your own enjoyment, she needed those

1 medicines for one. They were taken apparently
2 according to the evidence as prescribed, all at a
3 therapeutic level.

4 In this case it's difficult for her to
5 understand and appreciate, I would submit -- it's
6 not like somebody that goes in and robs a bank or
7 pulls a gun and shoots somebody or does those kind
8 of acts. She had this event happen and she told me
9 from day one, I blacked out, I think when the tox
10 report comes back you're gonna find all my medicines
11 were taken as prescribed at reasonable levels. She
12 has believed that there was some medical cause of
13 this. She actually has consulted with doctor
14 recently about a possible autoimmune disease that
15 could cause this kind of event, and the doctor has
16 advised her that makes sense to me; but she hasn't
17 been able to get the physician she's seen to
18 referring to the testing for that. That could be a
19 dead-end. I'm not saying that is the case. What
20 I'm saying is, if her testimony and what she's told
21 me is true and when she got up in the morning she
22 had no reason to feel that this was any different
23 than any other day and then she blacked out, I'm
24 just saying it's reasonable for her to still
25 believe, I didn't get in a car, you know, it wasn't

1 that reckless for me to get in the car, I've driven
2 before, I knew these drugs, I knew how it affected.
3 This was a different thing that happened to her.

4 She tells me she was molested as a child.
5 That's one reason she has some of these conditions.
6 It was her grandfather that molested her and so some
7 of the things, some of these conditions she has as a
8 result, and I would ask that you take her conditions
9 into evidence. The grandfather that molested her,
10 she's forgiven him and she's actually become his
11 caretaker. And I guess he's gonna be losing that
12 now unless you saw, you know, if she's gonna go to
13 prison he's gonna lose the benefit of her being his
14 caretaker.

15 THE COURT: Well, there's mandatory time.

16 MR. STODDARD: I realize that. When I
17 said if, I'm like, I know there's a -- and, you
18 know, I would ask, well, I think she is remorseful.
19 I think she'll tell you that. Again, I don't know
20 that she understands why these drugs did this 'cause
21 it's not like it's done it in the past for her. And
22 you know, I've conversed with the pharmacists that
23 you heard the testimony from. Even her family
24 doctor told me I don't understand, or I don't have a
25 reason to believe that these drugs would do this,

1 have this effect based on the way she was taking
2 them. So it's just, it's just, it's tragic for
3 everybody; but I don't believe that, I just don't
4 believe she's the kind of person that -- I mentioned
5 somebody in the bar, for example, someone else that
6 abuses these drugs. In fact, I think it was said in
7 court today she was abusing these drugs. No, she's
8 taking them all as prescribed as needed and they
9 were helping with real ailments. And unfortunately,
10 something happened on that day that was different
11 from other days for her and end this result.

12 THE COURT: All right. I have on the
13 sentencing sheet that her age is 32 years; is that
14 correct?

15 MR. STODDARD: That's correct.

16 THE COURT: Okay.

17 MR. STODDARD: She does have family here.
18 She has a husband here, her mother.

19 THE COURT: Okay. Well, let me hear from
20 Ms. Tackett if she wishes to address me.

21 Do you wish to tell me anything?

22 THE DEFENDANT: I don't know what happened
23 that day, and I wish that I can take that day back
24 and it never happened. I had no idea that you can
25 get DUI for your medications that you were taking,

1 and I am so sorry for what has happened, and I know
2 there's nothing that's gonna make up for everything
3 that's happened. And I did not do this
4 intentionally. I'm really sorry.

5 THE COURT: Anyone wish to speak on her
6 behalf? Is there anyone who want to speak on her
7 behalf?

8 You have to identify yourself, sir. You
9 have to speak up 'cause this lady has to be able to
10 take this down on the recorder.

11 JEFF TACKETT: Jeff Tackett.

12 THE COURT: Yes, sir.

13 MR. STODDARD: Can he move up to the rail?

14 THE COURT: You can come up to the bar,
15 please, if that will help. Yes, sir, Mr. Tackett.

16 JEFF TACKETT: I'm, to tell you the truth
17 I'm concerned about her mental health. While she
18 was in jail before she was on suicide watch, and
19 she's told me multiple times that she wanted to end
20 her life while she was in and I'm concerned about
21 that.

22 THE COURT: Thank you, sir. Anything else
23 you want to share with me?

24 JEFF TACKETT: I know she's very sorry.
25 We've talked about it many a time, and we've asked

1 to go back in time and prayed and everything else
2 that we can do for this and, sorry.

3 THE COURT: Thank you, sir.

4 All right, I'll hear from the State.
5 Anything the State wants to share with me about the
6 case?

7 MR. MOWRY: Yes, sir, Your Honor. In
8 addition to the prescription drugs, obviously, she
9 was self-medicating with marijuana and though there
10 seems to be a movement afoot nationally to perhaps
11 legalize it at least for limited purposes, it is
12 still an illegal drug. She did not reveal that to
13 her healthcare providers. I don't know if that
14 would have made any difference on the prescription
15 she was given; but quite frankly, I think she
16 brought that on herself in large part. There are
17 two members of the family, families that wish to
18 speak. First of all, Jeremy Case -- okay, I'm
19 sorry, Yvonne Howell, J.C.'s mother.

20 THE COURT: Yes, ma'am. You are Yvonne
21 Howell?

22 YVONNE HOWELL: Yvonne Howell, Y-V-O-N-N-E
23 H-O-W-E-L-L.

24 THE COURT: Yes, ma'am.

25 YVONNE HOWELL: Sir, I would just ask that

1 you take in consideration, I'm not saying that she
2 set out that day; but when we make our own actions
3 and decide at the end of the day what were gonna do
4 with our day, we make those choices. She may today
5 say that she feels remorse. I was at the bond
6 hearing the first time; but the first judge couldn't
7 see her, sir, because she was still too intoxicated
8 with whatever she took and had to come back later in
9 the afternoon and twice had to leave the hospital
10 from my son's bed to go be there to keep her in.
11 She's been out, one night in jail, while my son has
12 been laid up. All he did was go to work to provide
13 for his little girl and his soon to be wife and
14 doing what every American wants to do is go to work
15 and provide for his family. He was not doing
16 anything wrong. She made the wrong choices that
17 day; and unfortunately, we all have to stand up and
18 take our consequences when it comes to that.

19 And I would ask that Your Honor think
20 about that when you decide on the sentencing because
21 we can't take back all the things that J.C. has lost
22 this last year and our family has suffered through
23 and he will continue to suffer through, not just
24 physically, but mentally the rest of his life. He
25 is young. He's not even 25 yet, and he has to deal

1 with these things forever. Thank you, sir.

2 THE COURT: Thank you, ma'am.

3 MR. MOWRY: Jeremy.

4 THE COURT: State your name please.

5 JEREMY CAYCE: My name is Jeremy Case,
6 C-A-S-E.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: I'm Zack Ivey's older
9 brother. I won't take up a lot of your time, sir.

10 THE COURT: Well, that's why I'm here.

11 JEREMY CAYCE: I just want you to consider
12 while you're sentencing just some characteristics
13 I'd like you to know about my brother. He was a
14 very kind hearted soul. He would give somebody food
15 when his own stomach was empty. He would give
16 somebody the last dollar he got. And that was just
17 him. From the moment he was born, that's the way he
18 was. By all accounts, he probably should have never
19 lived to see this tragic day. He was born two
20 months premature. I do believe the doctors told my
21 mother don't plan on bringing him home. But he
22 triumphed, he grew to be a strong, strapping young
23 man, Your Honor. He took care of me when I hurt my
24 back, moved me into my home when I couldn't, took
25 care of my yard work when I couldn't. Whenever I

1 needed him he was there. He had a, he had a lot of
2 titles, brother, brother-in-law, cousin, nephew,
3 friend, brother, son; but one, one title that hasn't
4 been brought up is he was a father. And his son
5 lost his caregiver that day. His son is five years
6 old and still wants to know where daddy is, where
7 daddy is. And there's no, there's no answer for
8 that. You know, he's too young to understand that
9 somebody made a really bad decision that cost him
10 his daddy's life when all he was doing was trying to
11 go work. That's all. Thank you for your time, sir.

12 THE COURT: Thank you.

13 And I will confirm there was no prior
14 record for this defendant; is that correct?

15 MR. MOWRY: Yes, sir.

16 THE COURT: All right, Ms. Tackett, if you
17 would stand. Sentencing is one of the more
18 difficult things that a circuit court has to do.
19 There's nothing that I'm going to do here today
20 that's gonna bring back the young man that was lost.
21 There's nothing that I can do in this sentence
22 that's going to restore the mobility to the young
23 man whose body has been damaged as a result of this
24 so none of this is going to repair those things.
25 One of the things that does concern me, though, is

1 the fact that people who go out on our highways and
2 maintain those highways and repair safety devices to
3 try to save us all, they've got to be protected.
4 There's got to be a consequence when people violate
5 work zones, injure people that are out there trying
6 to help the public. They don't get paid enough;
7 it's dangerous work. And then when something like
8 this happens, it's truly a tragedy.

9 And I know it's a tragedy in your life
10 too, you did not expect this. I have no doubt that
11 you did not intend for this to occur; however, it's
12 clear that you had been taking this medication from
13 the records that were put into the case, taking this
14 medication for some time. And I would expect that
15 several times during that process you would have
16 been made aware of the dangers of these drugs, the
17 fact that warnings that were on the bottle that was
18 put into evidence clearly indicate that it could
19 affect your ability to operate a vehicle or
20 machinery, things of that nature. And then you add
21 to it as the State pointed out, illegal drugs, drugs
22 that your doctors don't know about. How can they
23 advise you concerning the dangers of using those
24 drugs if they have no clue that you're using those
25 drugs so that's another matter that's a concern to

1 me in this situation. And I'm not here to preach at
2 you, I'm just here to point out the fact that there
3 is a great deal of fault here even though you may
4 not have intended the result that occurred.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: There has to be a consequence
7 for the actions that you took. I'm setting this
8 sentence in such a fashion that you -- I think
9 you'll have a light at the end of this and you have
10 something that you can look forward to hopefully,
11 get back to maybe a normal life at some point in
12 time; but there is going to be a consequence for
13 what occurred.

14 Now the, on the two what I consider lesser
15 charges, I'm not sure they are, but on the child
16 endangerment and the felony DUI with great bodily
17 injury, it's the sentence of the Court that you be
18 confined in the State Department of Corrections for
19 a period of seven years. There's a 5,000-dollar
20 mandatory fine on the great bodily injury charge.
21 I've run them concurrently. And on the felony DUI
22 resulting in death, the sentence is that you be
23 confined in the State Department of Corrections for
24 a period of 15 years with a 10,000-dollar fine.
25 Good luck to you, ma'am.

1 THE DEFENDANT: Thank you.

2 MR. MOWRY: Thank you, Your Honor.

3 THE COURT: Court is adjourned.

4

5 (WHEREUPON, the proceedings were concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding was transcribed for April Herron from audio with the use of computer-aided transcription; that the foregoing transcript contains a true record of the proceedings to the best of my ability.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 25th day of March, 2020.

Frances B. Ray

FRANCES B. RAY, RPR

WITNESSES

M. A. Gabriele
South Carolina Highway Patrol

WARRANT NUMBER

20182360308570

True Bill

Cynthia E. Surron
Foreman of the Grand Jury

Date: *7-27-18*

VERDICT

Guilty
Regina L. Lawrence
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2018
Indictment # 18GS30- 1109

THE STATE

vs.

PAMELA MICHELLE TACKETT

INDICTMENT FOR

**Felony Driving under the Influence
with Great Bodily Injury
§56-05-2945(A)(1)**

CDR: 0406

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

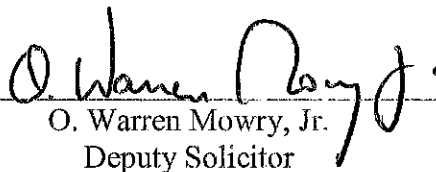
INDICTMENT FOR

**Felony Driving under the Influence
with Great Bodily Injury
§56-05-2945(A)(1)**

At a Court of General Sessions, convened on the 27th day of July, 2018, the Grand Jurors of Laurens County present upon their oath:

The defendant, Pamela Michelle Tackett, did on or about March 28, 2018, in Laurens County, while under the influence of alcohol, drugs, or a combination of alcohol and drugs, drive a motor vehicle, and, when driving the motor vehicle, did an act forbidden by law, or did neglect a duty imposed by law in the driving of said vehicle by failing to operate the vehicle in a safe and reasonable manner and failed to maintain proper control of vehicle, which act or neglect proximately caused great bodily injury to John Howell, all in violation of Section 56-05-2945(A)(1), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


O. Warren Mowry, Jr.
Deputy Solicitor

WITNESSES

M. A. Gabriele
South Carolina Highway Patrol

WARRANT NUMBER

20182360308572

True Bill
Gyethia E. Swanson
Foreman of the Grand Jury
Date: 7-27-18

VERDICT

Guilty
Regina L. Lawrence
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2018
Indictment # 18GS30- 1110

THE STATE

vs.

PAMELA MICHELLE TACKETT

INDICTMENT FOR

Child Endangerment
§56-05-2947
CDP: 2395

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

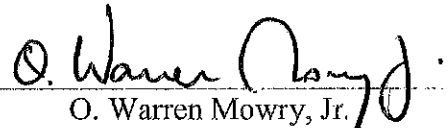
INDICTMENT FOR

Child Endangerment
§56-05-2947

At a Court of General Sessions, convened on the 27th day of July, 2018, the Grand Jurors of Laurens County present upon their oath:

The defendant, Pamela Michelle Tackett, did on or about March 28, 2018 in Laurens County, commit the crime of Child Endangerment. The Defendant, who is over 18 years of age, did drive a vehicle with one or more passengers who were under the age of 16, and did commit the crime of Felony Driving Under the Influence, in violation of §56-05-2947, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


O. Warren Mowry, Jr.
Deputy Solicitor

WITNESSES

M. A. Gabriele
South Carolina Highway Patrol

WARRANT NUMBER

2018A3010200084

True Bill

Cynthia E. Swanson
Foreman of the Grand Jury

Date: *7-27-18*

VERDICT

Guilty
Regino L. Lawrence
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2018
Indictment # 18GS30- 1111

THE STATE

vs.

PAMELA MICHELLE TACKETT

INDICTMENT FOR

**Felony Driving under the Influence
in which Death Results
§56-05-2945(A)(2)**

CDR: 0395

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

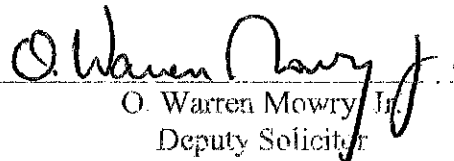
INDICTMENT FOR

**Felony Driving under the Influence
in which Death Results
§56-05-2945(A)(2)**

At a Court of General Sessions, convened on the 27th day of July, 2018, the Grand Jurors of Laurens County present upon their oath:

The defendant, Pamela Michelle Tackett, did on or about March 28, 2018, in Laurens County, South Carolina, while driving a vehicle under the influence of alcohol, drugs, or a combination thereof, perform an act forbidden by law or neglect a duty imposed by law in the driving of the vehicle. The Defendant committed one or more of the following unlawful acts and/or neglected one or more of the following duties imposed by law while driving under the influence of alcohol and/or drugs causing the deadly encounter: By failing to maintain her lane of travel, failing to maintain proper control of her vehicle, driving at excessive speed and without due caution while under the influence in a designated highway work zone, and/or leaving the roadway to strike highway maintenance workers. The Defendant's unlawful acts or neglect proximately caused the death of Zachariah Ivey. The crime occurred on Interstate 385 in Laurens County, in violation of 56-05-2945(A)(2), South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


O. Warren Mowry Jr.
Deputy Solicitor

COUNTY OF LAURENS

STATE VS.

PAMELA MICHELLE TACKETT

AKA: _____

Race: WhiteSex: FAge: 32

DOB: _____

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: **Felony DUI, Great Bodily Injury**In violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406☐ 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:

O. Warren Mowry, Jr. 4124
O. Warren Mowry, Jr., Deputy Solicitor SC Bar #Pamela M Tackett
DefendantDon 5362
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center**,
for a determinate term of 7 ~~days~~ months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ 5,000.00; 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 Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/18/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before
any other fees.

Presiding Judge: _____

Judge Code: _____

Sentence Date: 7/18/19Recipient: DUI Pullout

100

*Fine: _____

\$ 5000.00

§14-1-206 (Assessments 107.5%)

\$ 5375.00

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ _____

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ 12.00

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ _____

§14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$

\$ 314.61

TOTAL

\$ 10,801.61Clerk of Court/Deputy Clerk: Lynn W. LancasterCourt Reporter: April Herron

COUNTY OF LAURENS

STATE VS.

PAMELA MICHELLE TACKETT

AKA:

Race: White Sex: F Age: 32

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Child EndangermentIn violation of § 56-05-2947 of the S.C. Code of Laws, bearing CDR Code # 2395☐ 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:

O. Warren Mowry, Jr., Deputy Solicitor 4124
SC Bar #Pamela U. Tackett
Defendant[Signature] 5362
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/18/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge: [Signature]

Judge Code: 2135Sentence Date: 7/18/19

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$.75TOTAL \$ 25.75Clerk of Court/Deputy Clerk: Lynn W. LancasterCourt Reporter: April Herron

COUNTY OF **LAURENS**

STATE VS.

PAMELA MICHELLE TACKETT

AKA: _____

Race: **White**Sex: **F**Age: **32**

DOB: _____

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: **Felony DUI, Death**In violation of § **56-05-2945(A)(2)** of the S.C. Code of Laws, bearing CDR Code # **0395**☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §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:

O. Warren Mowry, Jr. 4124
O. Warren Mowry, Jr., Deputy Solicitor SC Bar #**Pamela M. Tackett**
Defendant**L. G.** 5362
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center**,
for a determinate term of 15 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and ☒ payment
of \$ 10,000.00; 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 Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/18/19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: **DUI Pullout****100**

*Fine: _____

\$10,000

§14-1-206 (Assessments 107.5%)

\$10,750

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Prob)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

\$

TOTAL**\$21,487.86**Clerk of Court/Deputy Clerk: **Lynn W. Lancaster**Court Reporter: **April Herron**

Presiding Judge: _____

Judge Code: **2135**Sentence Date: **7/18/19**

FORM 5

STATE OF SOUTH CAROLINA)

County of LAURENS)Pamela Michelle Tackett)

Full name and prison number (if any) of Applicant)

v. 380899)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022 CP-30-325

APPLICATION FOR

POST-CONVICTION RELIEF

LAURENS COUNTY
CLERK OF COURT

2022 APR 18 PM 2:52

K. MICHELLE SIMMONS

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional Inst.
2. Name and location of Court which imposed sentence Laurens County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 18GS30-1111
 - (b) 18GS30-1109

(c) 18G530-1110

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 18, 2019, 15 years(b) July 18, 2019, 7 years(c) July 18, 2019, 7 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty NA(b) after a plea of not guilty yes(c) after a plea of nolo contendere NA

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. State of South Carolina Appellate Court

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed per ANDERS brief

ii. _____

iii. _____

(c) the date of each such result:

i. March 2, 2020

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 386 US 738 (1967) ANDERS vs California

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) NA(b) NA

- (c) NA
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Please see Appendix A
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please see Appendix A
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Direct Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal Dismissed
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Appellate Court
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. March 2, 2022
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unpublished Opinion No 2022-UP-084
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NA
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) These grounds rely on additional facts outside
 (b) the record that was before the previous court
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. David Stoddard, 320 E. River St ANDERSON
South Carolina 29624
 ii. Adam Ruffin, PO Box 11589 Columbia,
South Carolina 29211-1589
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL
 ii. Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

Applicant seeks Relief from her conviction
and sentence.

20. Are you now under sentence from any other court that you have not challenged?

Applicant is not under sentence from
any other court.

STATE OF SOUTH CAROLINA)

County of)

Greenwood)

VERIFICATION

I, Pamela Tackett, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Pamela Tackett

SWORN to and subscribed before me this

day of

April, 2002

Calandra King

Notary Public

(L.S.)

My Commission Expires:

4/10/04

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Pamela Tackett, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Pamela Tackett
Applicant

SWORN or affirmed to and subscribed before me this

11 day of April, 2008

Salvador V. Kung
Notary Public

My Commission Expires: 2/11/24

Appendix A

(Grounds for Relief and Supporting Facts)

I. Ineffective Assistance of Trial Counsel

Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, 3, and 14 of the South Carolina Constitution. Trial counsel's performance was both unreasonable and prejudicial as outlined below. See *Strickland v. Washington*, 466 U.S. 668 (1984). Trial counsel's acts or omissions included:

- (1) Counsel failed to Advise Applicant of the maximum sentence she faced. Failed to advise Applicant about Plea deal. The trial court would likely have accepted the plea, and Applicant received a greater sentence following trial than she would have received had she been advised of Plea Deal.
- (2) Counsel failed to offer an alternative theory of causation.
- (3) Counsel failed to call expert witnesses to offer alternative theories of causation.
- (4) Counsel failed to ask for jury charge or Directed Verdict of Reckless vehicular homicide pursuant to SC Code 56-5-2910.
- (5) Counsel failed to call expert knowledgeable of psych

- (6) Counsel failed to object to the State's official testifying beyond the scope of their expertise and offering opinions not based on scientific evidence.
- (7) Counsel failed to object and seek a ruling excluding reference to drugs aside from marijuana and clonazepam and precluding the state from arguing synergistic effect.
- (8) Counsel failed to object to leading questions and redirect beyond the scope of cross-examination.
- (9) Counsel failed to properly prepare for trial or obtain complete medical records including mental health and neurological history.

II. Due Process

Applicant's conviction and sentence were obtained in violation of the due process clause of the Fourteenth Amendment of the United States Constitution, and the corresponding provisions of the South Carolina Constitution.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
Pamela Michelle Tackett,	)	Case No.: 2022-CP-30-00325
S.C.D.C. No. 380899,	)	
	)	
Applicant,	)	
	)	RETURN TO THE APPLICATION FOR POST-
v.	)	CONVICTION RELIEF
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent the State of South Carolina, in response to the application for post-conviction relief filed by Applicant Pamela Michelle Tackett on April 18, 2022, makes the following Return:

I. PROCEDURAL HISTORY

Applicant is presently confined within the South Carolina Department of Corrections. Applicant was indicted at the July 2018 term of the Laurens County Grand Jury for felony driving under the influence resulting in great bodily injury (2018-GS-30-1109), child endangerment (2018-GS-30-1110), and felony driving under the influence resulting in death (2018-GS-30-1111). Applicant was represented by David F. Stoddard, Esquire, and the State was represented by O. Warren Mowry and R. Knox McMahon, of the Eighth Circuit Solicitor's Office.

On July 15, 2019, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. On July 18, Judge Couch sentenced Applicant to imprisonment for concurrent terms of seven years for child endangerment, seven years plus a fine of \$5,000 for felony driving under the influence resulting in great bodily injury, and fifteen years plus a fine of \$10,000 for felony driving under the influence resulting in death.

Applicant appealed her convictions and sentences. On October 21, 2020, Appellate Defender Adam S. Ruffin filed a brief of appellant pursuant to *Anders v. California*, 386 U.S. 738 (1967). On March 2, 2022, the South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. *State v. Tackett*, Op. No. 2022-UP-084 (S.C. Ct. App. filed March 2, 2022). Applicant did not seek further review, and the remittitur was sent on March 28, 2022.

II. STATEMENT OF THE FACTS

On March 28, 2018, Applicant was driving on I-385, with her niece in a rear child's seat, when she swerved into the median and struck two SCDOT highway workers, fatally wounding one and seriously injuring the other. Michael Gabriele, a Highway Patrol trooper, responded to the scene. He decided to conduct field sobriety tests on Applicant after he observed her moving slowly and slurring her speech. When the field sobriety tests indicated impairment, Gabriele arrested Applicant for driving under the influence. Applicant was then transported to Greenville Memorial Hospital.

At the hospital, Applicant consented to provide a blood sample to law enforcement. She also told officers that she was taking Wellbutrin, Klonopin, Claritin, Effexor, Geodon, and Tramadol, and that she smoked marijuana every night before going to bed.

At the trial, the State qualified Kelly Budgen, of SLED, as an expert in toxicology. Budgen testified that Applicant's blood contained therapeutic quantities of Clonazepam (Klonopin) and Gabapentin (Effexor), as well as THC. Budgen also testified that Clonazepam and Gabapentin, like alcohol, are central nervous system depressants and, taken together, could impair one's ability to drive. She testified that THC could also impair one's ability to drive because it slows down a person's reaction time. However, because the efficacy of drugs differs from individual to

individual, Budgen could not determine from the blood sample whether Applicant was impaired at the time of the accident.

The State also qualified Dr. Demetra Garvin as an expert in pharmacology and toxicology. She testified that the drugs in Applicant's blood sample each had the potential to impair an individual's driving ability. She also reviewed the body camera footage of Applicant taken after the crash and opined that Applicant's behavior and performance on the field sobriety tests indicated impairment.

III. CURRENT APPLICATION

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to advise Applicant regarding the maximum sentence she was facing and the plea deal.
 - b. Failure to offer an alternative theory of causation.
 - c. Failure to call expert witnesses to offer alternative theories of causation.
 - d. Failure to request a jury charge or directed verdict of reckless vehicular homicide pursuant to S.C. Code 56-5-2910.
 - e. Failure "to call expert knowledgeable of psych."
 - f. Failure to object to the State's officials testifying beyond the scope of their expertise and offering opinions not based on scientific evidence.
 - g. Failure to object and seek a ruling excluding reference to drugs aside from marijuana and clonazepam and precluding the State from arguing synergistic effect.
 - h. Failure to object to leading questions and redirect beyond the scope of cross-examination.
 - i. Failure to properly prepare for trial or obtain complete medical records including mental health and neurological history.
2. Due process
 - a. Applicant's conviction and sentence were obtained on violation of the due process clause of the Fourteenth Amendment of the United States Constitution and corresponding provisions of the South Carolina Constitution.

Attached to this Return and incorporated into this response to the application are the Laurens County Clerk of Court records regarding Applicant's convictions, the records of Applicant's direct appeal including the transcript from Applicant's trial, Applicant's records from

the South Carolina Department of Corrections, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Trial Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, an applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove her factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386

S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality

of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Respondent submits that Applicant cannot satisfy either prong of the *Strickland* test. The transcript of Applicant’s trial reflects that her attorney vigorously represented her. Moreover, there is no reasonable likelihood that any of the acts or omissions alleged by Applicant would have changed the outcome of her trial; there is no question that Applicant caused the death and injury of the highway workers by driving into the median, and Applicant herself admitted she was under the influence of numerous drugs at the time. However, to the extent Applicant’s allegations raise a question of fact that cannot be conclusively resolved based on the record and applicable law, Respondent requests an evidentiary hearing be convened to address her claims.

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from

the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. CONCLUSION

WHEREFORE, Respondent respectfully requests an evidentiary hearing be held to resolve Applicant's allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DON J. ZELENKA
Deputy Attorney General

ZACHARY W. JONES
Assistant Attorney General

By:


ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

7/26, 2024

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

PAMELA MICHELLE TACKETT
#380899

Applicant,

v.

STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

2022-CP-30-00325

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan
McMahan Law, LLC
PO Box 50536
Columbia, SC 29250

DATED this 26th day of July, 2024


Leigh Ann Stone
Administrative Support Manager
for Respondent

K. MICHELLE SIMMONS
2024 AUG - 5 P 12:46
LAURENS COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Pamela Tackett, #380899

Applicant,

v.

State of South Carolina.

COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No.: 2022-CP-30-00325

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through her undersigned attorney, hereby amends her PCR application filed on April 18, 2022, to add that the Applicant requests that she be permitted to amend her PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted.



ASHLEY A. MCMAHAN

MCMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahanlawac.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

August 13, 2024

Columbia, South Carolina

CLERK OF COURT
2024 AUG 22 A 10 09
K. MICHELLE SIMMONS

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary W. Jones
Assistant Attorney General
zacharyjones@scag.gov

This 13th Day of August, 2024.


ASHLEY A. MCMAHAN
Attorney for Applicant

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	2022-CP-30-00325
	)	
	)	
	)	
	)	
PAMELA MICHELLE TACKETT,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

August 19, 2024
Laurens, South Carolina

B E F O R E:

THE HONORABLE J. DERHAM COLE, JUDGE.

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

ASHLEY A. MCMAHAN, ESQ.
Attorney for the Applicant

ZACHARY JONES, ESQ.
Attorney for the Respondent

Tara Scott, Court Reporter
Transcribed by Penny M. Johnson

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.(AW) PAMELA MICHELLE TACKETT:

Direct Examination by Ms. McMahan.....	5
Cross-Examination by Mr. Jones.....	13

(RW) DAVID STODDARD:

Direct Examination by Mr. Jones.....	14
Cross-Examination by Ms. McMahan.....	23

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

THE COURT: Yes, sir.

MR. JONES: Thank you, Your Honor. First up, we have the matter of Pamela Michelle Tackett vs. The State of South Carolina, case number 2022-CP-30-325. My name is Zachary Jones for the State of South Carolina. Ms. Tackett is present, as is her attorney, Ashley McMahan.

Ms. Tackett was indicted at the July 2018 term of the Laurens County Grand Jury for felony driving under the influence resulting in great bodily injury, child endangerment and felony driving under the influence resulting in death. Those are indictment numbers 2018-GS-30-1109, 1110 and 1111.

On July 15th, 2019, Ms. Tackett proceeded to trial before the Honorable Roger L. Couch and a jury. On July 18th, Judge Couch sentenced Ms. Tackett to imprisonment for concurrent terms for seven years for child endangerment, seven years, plus a fine of \$5,000 for felony driving under the influence resulting in great bodily injury and 15 years, plus a fine of \$10,000 for felony driving under the influence resulting in death.

Ms. Tackett appealed her convictions and sentences and on March 2nd, 2022, the South Carolina Court of Appeals dismissed her appeal in an unpublished opinion. Remittitur was sent on March 28th, 2022 and Ms. Tackett filed the

1 present application for post-conviction relief on April
2 18th, 2022.

3 With that, I'll turn it over to Ms. McMahan.

4 THE COURT: Has there been any amendment to the
5 application?

6 MR. JONES: Your Honor, there was an amendment
7 submitted by an e-mail this past week. I don't know if it
8 has been technically filed or not.

9 THE COURT: What's the State's position on the
10 amendment?

11 MR. JONES: The State does not object to a
12 consideration of the amendment allegations.

13 THE COURT: All right.

14 Ms. McMahan.

15 MS. MCMAHAN: Yes, Your Honor. The Applicant calls Ms.
16 Tackett.

17 THE COURT: Tell me specifically what allegations
18 you're proceeding on.

19 MS. MCMAHAN: Judge, ineffective assistance of counsel.
20 Mr. Stoddard, essentially, in my conversations with Ms.
21 Tackett, he didn't discuss the benefits of a guilty plea
22 versus a trial. There were two trials. There was,
23 actually, one that was a mistrial. It was after that that
24 she felt that she did not have enough time to discuss with
25 Mr. Stoddard her case or the defenses related. And the fact

1 that her -- and the defense related to the fact that her
2 drugs that she was on was a medication that she had been on
3 for approximately five years or so.

4 THE COURT: What's that issue?

5 MS. MCMAHAN: That would be related to the defenses
6 that she wanted to raise to Mr. Stoddard.

7 THE COURT: Which specifically were?

8 MS. MCMAHAN: That the drugs that she had been on, she
9 had been on for more than five years. It was felony DUI,
10 not for drinking or drugs, for medication.

11 THE COURT: And how was Mr. Stoddard ineffective in
12 that regard?

13 MS. MCMAHAN: The Applicant feels that that was not
14 adequately presented to the jury.

15 THE COURT: Oh, okay.

16 You are Pamela M. Tackett?

17 THE APPLICANT: Yes, sir.

18 PAMELA TACKETT,

19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MCMAHAN:

22 Q Would you state your name for the record, please?

23 A Pamela Michelle Tackett.

24 Q And Ms. Tackett, did you hire or retain Mr. Stoddard?

25 A I hired.

1 Q And were you in the detention center the entire time or
2 were you out on bond?

3 A I was out on bond.

4 Q And how long were you out on bond before the first
5 trial?

6 A I want to say almost a year, but I'm not 100 percent.

7 Q Okay. And where's Mr. Stoddard's office?

8 A In Anderson.

9 Q And how many times do you think you met with him prior
10 to that first trial?

11 A A lot.

12 Q Okay. Was it always in person or was it on the phone?

13 A Person and phone.

14 THE COURT: Excuse me, did you say a lot?

15 THE APPLICANT: Yes, sir.

16 BY MS. MCMAHAN:

17 Q And was it always with Mr. Stoddard or was it a member
18 of his staff or somebody else?

19 A Ninety-five percent of the time, it was Mr. Stoddard.

20 Q And do you recall what you guys spoke about prior to
21 the first trial in regards to defenses or guilty pleas or
22 anything like that?

23 A He told me I needed to take a plea, but he didn't know
24 what the plea would be.

25 Q Okay. And was he kind of advising you as to what kind

1 of plea you should take or --

2 A I'm not sure. It was just his advise was to take a
3 plea, but I didn't -- a plea wasn't offered to my knowledge.

4 Q Okay. Did he ever have a discussion with you about
5 going to the solicitor and, possibly, trying to get a plea
6 offer?

7 A No.

8 THE COURT: Was that a yes or no?

9 THE APPLICANT: I'm sorry. No, ma'am.

10 BY MS. MCMAHAN:

11 Q Who was the solicitor on the case, do you remember?

12 A Who?

13 Q Was the prosecutor in the case, do you remember?

14 A I don't remember the first time, but the second time,
15 it was Judge Couch.

16 Q That was the judge.

17 A Oh, yeah, okay. So it was just Mr. Stoddard.

18 Q And do you remember who was prosecuting your case? Was
19 it Mr. Mallory and McMahan?

20 A Yes.

21 MS. MCMAHAN: And I'm not related to that McMahan, just
22 for the record.

23 BY MS. MCMAHAN:

24 Q When he said you should take a guilty plea, did he
25 discuss straight-up pleas, negotiations, anything like that

1 with you?

2 A No, ma'am.

3 THE COURT: Did you say yes or no?

4 THE APPLICANT: I said no, ma'am.

5 BY MS. MCMAHAN:

6 Q What kind of defenses were you guys talking about then?

7 A We had stuff from my doctors and from the pharmacy.

8 Q What specifically was the stuff from your doctors and
9 your pharmacy that you guys discussed?

10 A From the pharmacy?

11 Q Uh-huh.

12 A We were trying to find somebody that could relate on
13 the fact that the prescription bottle read use until you
14 know how body reacts -- do not use heavy machinery until
15 your body knows how it reacts to it.

16 Q And what drug were you on?

17 A Klonopin.

18 Q And how long had you been on it?

19 A About six or seven years.

20 Q And had you driven before while you were on that?

21 A Yes, ma'am.

22 Q And was that a discussion you had with Mr. Stoddard?

23 A Yes, ma'am.

24 Q Did you meet with Mr. Stoddard alone or with your
25 husband present?

1 A My husband.

2 Q All the time was your husband present?

3 A Most of the time, yes, ma'am.

4 Q And on average, how long do you think each of your
5 conversations with Mr. Stoddard lasted when you met with
6 him?

7 A Anywhere from five to ten, 15 minutes.

8 Q And when you got closer to the trial, did you guys meet
9 for a longer period of time?

10 A No, ma'am.

11 Q Did you ever have a discussion about which witnesses
12 you were going to call on your behalf?

13 A He said he was going to try to get the ones that were
14 at the first trial.

15 Q Okay. Well, prior to the first trial, what were you
16 guys talking about in terms of witnesses?

17 A He wanted to get somebody that would know the
18 difference in the medication and all that and wanted to talk
19 to my doctor.

20 Q Were you on any other medication at the time of the
21 incident?

22 A I was on -- I can't remember the names.

23 Q But you were on some other medication?

24 A Yes, ma'am.

25 Q Did you ever have a discussion about if that had an

1 interaction with the Klonopin and those other medications?

2 A I had been on it for a while.

3 Q So all those medications you had been on for a while?

4 A Yes, ma'am.

5 Q For, at least, six or seven years?

6 A Yes, ma'am.

7 Q And so after the mistrial or the hung jury, what were
8 you guys talking about in terms of defenses for the second
9 trial?

10 A First, we were hoping that it wouldn't proceed to a
11 second trial, but then he said he was going to try to get
12 everybody that he had in the first trial to come in for the
13 next one, for the second trial.

14 Q Did you guys have any conversations about guilty pleas
15 at that point?

16 A Well, he asked, but I never knew what the plea was.

17 Q He asked what?

18 A He asked did I want to take the plea and I don't know
19 what the plea was.

20 Q Did you discuss pleading straight up versus going to a
21 trial?

22 A Not that I remember, no, ma'am.

23 Q Did he explain to you the amount of time that you were
24 facing on these charges?

25 A Yes, ma'am.

1 Q Had you ever been in trouble before?

2 A No, ma'am.

3 Q This isn't your traditional DUI where you were under
4 the influence of alcohol. Did you have a conversation --
5 again, I think you alluded to the doctors and the
6 pharmacist, but do you recall what kind of conversation you
7 had about the defense to that, given there wasn't alcohol
8 involved?

9 A No, ma'am.

10 Q Did you have any mental health issues at the time this
11 case was going on?

12 A Yes, ma'am.

13 Q What were those?

14 A I had depression and anxiety and PTSD.

15 Q Is that the reason why you were taking all those drugs?

16 A Yes, ma'am.

17 Q Did you ever have a discussion with him about your
18 mental health and whether or not you were --

19 A He couldn't even get the file until the day they
20 sentenced me.

21 Q Your mental health records?

22 A Yes, ma'am.

23 Q Did you have any discussion about challenging the field
24 sobriety tests or anything like that?

25 A I did that while we were out there at the -- on the

1 lines?

2 Q Uh-huh.

3 A I'm sorry.

4 Q It's okay.

5 A We did the lines on that and I told the State Trooper
6 that I don't have good balance, that I fall easily and that
7 the EMS paramedic told me, he said, at my scene, don't get
8 up.

9 Q But, ultimately, you ended up having a field sobriety
10 test, right?

11 A I did, but every time he asked me to do something, I
12 had to tell him, you know, I can't do this. I've had to do
13 physical therapy for that.

14 Q Did you explain that to Mr. Stoddard?

15 A Yes, ma'am.

16 Q And was there a conversation about that being a defense
17 as well?

18 A I'm not 100 percent sure.

19 Q Okay. And did you have an attorney prior to having Mr.
20 Stoddard?

21 A Yes. I had one from --

22 Q You had a public defender?

23 A A public defender, yes, ma'am.

24 Q How long did you have the public defender for?

25 A I had him trying to get me out on bond and then that

1 was it.

2 Q So the public defender was able to get you out on bond?

3 A Yes, ma'am.

4 Q And then you hired Mr. Stoddard?

5 A Yes, ma'am.

6 Q Is there anything else you want the Court to know about
7 your PCR?

8 A I just -- I'm really sorry for the way things happened.
9 And I'm sorry to everybody that was hurt in this accident.
10 I pray for everybody every night. I just feel so -- I'm
11 just extremely sorry.

12 MS. MCMAHAN: Okay. Answer any questions the attorney
13 general has for you.

14 CROSS-EXAMINATION

15 BY MR. JONES:

16 Q In addition to Klonopin, do you recall telling officers
17 that you were taking Wellbutrin?

18 A Yes, sir. Effexor.

19 Q Effexor, Geodon?

20 A Yes, my nighttime medicine. It helps me sleep with my
21 anxiety.

22 Q And Tramadol?

23 A Tramadol is for muscle pain.

24 Q All right. Do you recall admitting that you smoke
25 marijuana every night before going to bed?

1 A Yes, I told my psychiatrist about that.

2 MR. JONES: That's all the questions I have. Thank
3 you.

4 THE COURT: Anything else?

5 MS. MCMAHAN: No further questions.

6 THE COURT: Okay. Step down.

7 MS. MCMAHAN: Your Honor, at this time, the Applicant
8 rest.

9 THE COURT: Mr. Jones.

10 MR. JONES: Thank you, Your Honor. The State would
11 call David Stoddard.

12 DAVID STODDARD,

13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. JONES:

16 Q Thank you, Mr. Stoddard. Could you just state your
17 name and spell your last name?

18 A David Stoddard, S-T-O-D-D-A-R-D.

19 Q Thank you, Mr. Stoddard. And how did you become
20 involved in Ms. Tackett's case?

21 A She contacted me and discussed her case, I think it was
22 over the phone. We did a consultation either over the phone
23 or in the office, I can't recall. And she hired me and
24 retained me.

25 Q And can you in your own words, sort of, summarize the

1 facts of the case?

2 A Yes. So Ms. Tackett was in an accident. She was on,
3 it's either 385, it's part of I-85, but I think it's 385,
4 but she was traveling from somewhere in Laurens County going
5 into Greenville. She had gotten up in the morning. She had
6 a doctor's appointment. She had a child in the car with
7 her.

8 The allegation is that she was driving -- there were
9 some witnesses that saw her driving erratically on the road
10 and she ended up going off the road. And there was a crew
11 working on the road and she hit two individuals that were on
12 that crew.

13 Ms. Tackett, if I recall, told me she remembers getting
14 in the car. I don't know -- I can't remember when she lost
15 -- what her last memory was, but she said I was fine and
16 then the next thing I know I'm being awakened by people,
17 somebody knocking on my door, which was a police officer.
18 And she said, I saw there had been an accident. But as far
19 as driving -- some part of the trip, she either blacked out
20 or had amnesia, but she could not remember the accident
21 itself and for a ways prior to the accident.

22 Q And --

23 A Well, I guess, there's -- and, of course, she was
24 arrested for felony DUI. She told me what drugs she was on.
25 I don't think there was a toxicology report when she hired

1 me, but there may have been. But I do recall her describing
2 what medicine she was on and she was not abusing them in any
3 way, taking them as prescribed.

4 She and I talked about the possibility that she had
5 some kind of medical event, like a seizure of some sort of
6 whatever. She told me she was making appointments with
7 doctors to try to find out what happened that day. She
8 didn't believe that it was the drugs that had caused all
9 this, that she had had some kind of medical event.

10 So part of what I was doing and we were doing together
11 was waiting to see if any doctor could come up with an
12 explanation. And then that never happened. I'm not saying
13 it wasn't a medical event, but there was nothing that a
14 doctor could find.

15 Q Can you explain how plea negotiations went?

16 A So there were none prior to trial. I mean, it was a
17 case that if you pled guilty, you're going to do some time.
18 You would probably do less if you plead guilty than if you
19 go to trial.

20 But my recollection is -- and this is one thing I told
21 Ms. Tackett. The State has to put up some kind of expert
22 witness that the drugs in her system were -- would have been
23 at a level that you would expect her to be impaired. And
24 right up until trial, I don't think I saw any expert
25 reports. There was a SLED toxicology report. I want to say

1 her name was Bundrin (ph), but it was somebody that worked
2 for SLED.

3 I called that person and interviewed her and asked her
4 had she given anybody an opinion about whether she would be
5 impaired, and she had not. She told me I can't really state
6 an opinion as to whether -- I just test for the levels of
7 drugs, but I cannot say they would impair somebody.

8 I'm not sure when it was that I learned they had -- and
9 by then, we hired an expert witness to talk about the level
10 of drugs. And I can talk about that for a minute.

11 Q Yes, sir.

12 A One of the things I think I heard is that we didn't
13 discuss the fact that she had been on the drugs for five
14 years. And that expert in her testimony did emphasize
15 several things, one of which was all of the levels were a
16 therapeutic level, which was good for us, I felt like. And
17 she, also, talked about I think it's called titration. I
18 may be mispronouncing that, but that's when a doctor -- and
19 I learned these things through the expert because I'm not an
20 expert. But that's the process whereby a doctor introduces
21 a drug like Effexor or -- what was one of the others you
22 mentioned?

23 Q Wellbutrin.

24 A Wellbutrin.

25 Q Geodon, Klonopin?

1 A Klonopin. Those types of drugs that you introduce it
2 and then you see how the patient does on it and then you
3 adjust it up or down. And she talked about how you're
4 trying to get the desired effect that it's supposed to have
5 while minimizing the side effects. And she did say -- her
6 testimony was that it would be unusual for the levels I'm
7 seeing that have been titrated over the years that she was
8 on them, it would be unusual that it would impair you to the
9 extent that you couldn't drive. So that was part of it.

10 As far as plea negotiations, again, kind of our
11 position is I'm not guilty. These are prescription -- it's
12 kind of a strange case, too, because Ms. Tackett can't tell
13 me what happened that day. So if she told me I was impaired
14 and I had too much, then I might be talking more about
15 pleading, but I did not advise her to plead.

16 We did talk about pleas during the trial. And I'm sure
17 I did, because I always do this, I'm sure I talked to her
18 about, you know, her options. You know, plead guilty and
19 you would get a lower sentence, but you're going to do time
20 versus a trial.

21 After the first few witnesses, they were, I felt,
22 pretty devastating. They were witnesses who saw the driving
23 beforehand. And I know I did this with Judge Couch, but I
24 think I did this during both trials. I asked to talk to the
25 Judge in chambers with the prosecutors. And I told the

1 prosecutors, I want to feel out the Judge as to what he
2 might sentence her to if she were to plead guilty.

3 And I know what Judge Couch -- if I did it with Hocker,
4 neither Judge would really give me a number. I was fishing
5 for a number. If she pled guilty, what might you do. And
6 they both said -- well, Couch said -- he wouldn't give me a
7 number, but he said it would certainly be less than if she
8 goes to trial. He, also, commented at that time, he said,
9 From what I've seen, I don't see how a jury could find her
10 not guilty. I'm not sure I agreed with that because he
11 hadn't heard my expert yet, but he was just basing it on
12 those eyewitnesses.

13 So during that conversation, by the way, the prosecutor
14 told me, Well, if she pleads guilty, we're going to
15 recommend 18 years. And I sort of waved that away. I'm
16 like I don't care what you're going to recommend. I want to
17 know what the Judge will do. And I'm going to be arguing if
18 we plead guilty for less time. But that's what he said.

19 He even made another interesting comment, you know, he
20 said, you know, we've told the victims' family that we can't
21 make her go to trial. As if we would rather go to trial
22 because they want the highest sentence they could get. And
23 I did discuss that with her during the trial more than once
24 that --

25 I remember one conversation where I told her I felt if

1 she pled guilty, you might get a sentence of less than ten,
2 maybe five to seven. Because the facts of this case were --
3 there were sympathetic mitigating -- even if she's guilty,
4 mitigating. The fact that all of these are prescription
5 drugs taken as prescribed, I thought was very mitigating.
6 And she said I don't want to do that. I can't do that much
7 time. I can't do that. And I talked about it several
8 times.

9 So when she says I recommended -- I advised her to
10 plead guilty, I don't think I ever advised her to plead
11 guilty. I usually don't do that with my clients. I tell
12 them these are your options, these are the risks, but it's
13 their decision. But I do think I told her I'm very worried
14 that you might get convicted. And I know I told her you'll
15 get more time if we go to trial and lose this.

16 She even had a friend with her during the trial, kind
17 of for moral support, and the friend told me privately that
18 I'm worried about this. I don't know if we're going to win
19 this. And I said, I'm worried, too. And I asked her, I
20 said, Well, talk to her about that because I'm not sure
21 Pamela appreciates the danger.

22 So those are some of the conversations we had, but most
23 -- a lot of those were more during the trial as the trial
24 developed. Prior to the trial, I felt like until I see
25 evidence that she was impaired in the wreck itself, that

1 there's this event that we can't explain and she's got drugs
2 that are normal levels that shouldn't have done this.

3 Q Just to clarify one thing, you said earlier that SLED
4 toxicologist, could that have been Kelly Bugden?

5 A Bugden, that's the name.

6 Q Again, to clarify, did you ever receive a firm plea
7 offer from the State in this case?

8 A No. The only thing was if she pleads guilty, we're
9 going to recommend 18 years. It's not that I -- that, to
10 me, is not a plea offer. That is what I would consider a
11 straight-up plea. And there are times when it's to your
12 advantage to plea straight up. Normally, when the State
13 makes a recommendation, it's to minimize the number you're
14 going to get and that wasn't a number that I felt was a
15 minimum. In fact, we got less than that after trial, for
16 example.

17 So I would have considered the State's not offering
18 anything, it's going to be straight up. And I think this is
19 a close case whether you take it to trial or not, but I
20 think I would have erred on pleading guilty to try to
21 minimize the sentence.

22 Q So in other words, the defense you were prepared to
23 present at trial for which you called the experts was that
24 these were prescription medications taken within therapeutic
25 levels?

1 A That's right. That's correct. One argument we made is
2 that something happened to her that day that wasn't the
3 drugs. Her and I talked about the field sobriety tests and
4 how I was going to try to attack those, which I did what I
5 could. I tried to point out the things that were observable
6 that were inconsistent with impairment.

7 For example, the trooper -- or the patrol officer that
8 did the field sobriety tests stated the things she did wrong
9 on the one-leg stand. And one of the things he said she did
10 is she used her arms for balance. And I went back over the
11 videotape with the jury because that did not happen. And I
12 emphasized that.

13 In fact, I said if you look at it -- I'm going to use
14 the word pass or fail. The officers say we don't -- it's
15 not a grade where you pass or fail, but we look for so many
16 clues. And right now, I can't tell you, but I knew back
17 then because I had studied it. But it's like three clues
18 you look for, or four, and if you get four, that indicates
19 impairment. And I argued based on the videotape that she
20 passed that test. And some other things like that.

21 Q That was another component to the defense?

22 A It was. It was -- another component was to attack
23 their -- their evidence of she looked impaired, including
24 the field sobriety tests and to point out things that were
25 inconsistent with impairment. And that because --

1 Oh, another thing we argued was to the extent that
2 during the field sobriety tests and interactions with the
3 officer, he described somebody that looked impaired to him.
4 But she had just been through a very severe, high impact
5 accident and that's going to cause anybody to be shaken up
6 and maybe not hear the instruction. You're under high
7 stress and it's hard to listen to instructions and follow
8 them.

9 Because one of the things she did wrong on the walk and
10 turn test is she -- I think she walked and asked is this --
11 how many am I supposed to take and he won't answer that.
12 Because that's one of the signals, can they follow
13 instructions. And I pointed out nobody could follow
14 instructions -- I don't want to say nobody, but it would be
15 reasonable for somebody who's been through that kind of
16 accident, their mind is not going to be -- they're under
17 such stress that they wouldn't be listening.

18 And I pointed out the blood pressure reading by the EMS
19 driver was very high. She normally has low blood pressure.
20 Things like that.

21 MR. JONES: All right, Mr. Stoddard. I think that's
22 all the questions I have for you. Thank you.

23 CROSS-EXAMINATION

24 BY MS. MCMAHAN:

25 Q I can't write and look at you with my glasses on at the

1 same time, so I have to get closer. You said that you were
2 retained. Do you recall how long after she was charged that
3 you were retained?

4 A No. I could probably go back and look, but it -- I
5 think she said it was -- it might have been a year. Did she
6 say that? Well, it might have been a year.

7 Q I believe she said she was out on bond for about a
8 year?

9 A That could be.

10 Q So it was shortly after -- she was already out on bond
11 when she --

12 A Oh, yes, she was out on bond.

13 Q And do you remember how many times you might have met
14 with her? Was it more than ten? Less than ten?

15 A No, I couldn't tell you. There were a lot of phone
16 conversations. We talked a good bit. Until I got the
17 State's discovery, there wasn't a whole lot to talk about.
18 And that's what I would tell her, I'm waiting on this, I'm
19 waiting on this.

20 One of the things was it took a while for them -- I
21 called the prosecutor and said, Are there no videotapes?
22 And he said, I think there were. He didn't think the
23 videotapes would be that important. And, you know, to me,
24 they were. He said, I don't think they're going to show
25 anything. I'm like, well, you need to have them.

1 And I got his videotapes and I sent them to an expert
2 consultant. Not a witness, but it's a retired highway
3 patrolman that instructs lawyers on how to defend DUI cases.
4 And he reviews evidence to give you possible ways to attack
5 the State's case. And I sent the videos and all the
6 evidence to this expert. And he gave a report and I
7 discussed the report with the expert.

8 Q Do you recall what the specifics of the report were or
9 anything?

10 A I remember some of the things. I don't know if he -- I
11 don't think that he talked about the drug levels and
12 toxicology because that's probably not his area. We may not
13 have even had the results then, but I think we did. He had
14 reviewed everything.

15 One of his suggestions was he thought she was talking
16 on the phone when the police officers arrived. And maybe
17 she was. I think she was talking to Onstar, though, not the
18 phone. But she denied to me she was on the phone while she
19 was driving. He suggested that -- to argue that the bad
20 driving was consistent with somebody on the phone. And I
21 talked -- I actually talked to him and told him I don't like
22 that.

23 For one reason, it's inconsistent with what she's told
24 me. But the driving was so bad that -- and because of her
25 lapse of memory, I thought that it would be better that

1 there might have been a medical event, undiagnosed or
2 unexplained medical event like a seizure. He agreed with
3 that, yeah, that is better.

4 Q Well, you admitted earlier that there were some
5 witnesses that testified about the driving being bad. Was
6 that in both of those trials?

7 A Yes.

8 Q And was that the testimony that you thought was pretty
9 damaging?

10 A Yes.

11 Q In your mind, how erratic was her driving?

12 A My recollection of the testimony -- and it's in the
13 transcript, but I haven't reviewed it -- I've been reviewing
14 -- I've reviewed the transcript. I remember things like one
15 witness said she went almost off the road on the left side
16 to almost off the road on the right side. That she would be
17 right up on my bumper and then slow down. This driver said,
18 I actually slowed down to get away from her, to let her go
19 on because it scared me. And I think there were three of
20 them and they were all consistent in that way.

21 And it's really hard to explain that kind of driving
22 without there being some kind of impairment. But my
23 argument is the impairment could just as easily be an
24 episode where you're -- some people sometimes just go into a
25 staring -- I don't know what you call it, it might be called

1 a TIA, but you have an event, like, sort of a mini seizure
2 or mini stroke or something. And that that's as likely,
3 maybe more likely than the drug impairment.

4 Q So what was the issue with the mental health records
5 and not being able to get those until --

6 A I don't recall that. I don't recall that being an
7 issue. I don't know that there was -- I don't know that
8 that makes a difference right now because I don't know that
9 there's anything in them.

10 One thing that I -- so I interviewed a neurologist and
11 I interviewed her family doctor about -- and one of the
12 questions was, is there anything in your treatment that
13 would suggest this could have been a medical event, and
14 there wasn't anything. I don't think they could say it
15 didn't happen. I just don't see anything. And I don't know
16 that -- so when you say mental health, I guess, it's like
17 she's getting psychological counseling?

18 Q Yes. Well, was it -- I think the drugs that she was
19 on, were those mostly related to mental health issues?

20 A I think there was a neurologist that prescribed
21 something. I think her family doctor was prescribing most
22 of those. In her testimony just now, I think she said that
23 one of her doctors was aware that she was on marijuana.
24 Because that came up in the trial, too. Did your doctor
25 know this? And she told me her doctor -- and I don't know

1 if it was her family doctor or if it was this mental health
2 person you're talking about. But she, also, told me this
3 person would deny knowing about it if I brought the person
4 to court. That they wouldn't back her up on that. And
5 maybe I even talked to the person. I think that they would
6 be worried that they would get in trouble knowing that she's
7 on marijuana.

8 Q And still prescribing drugs?

9 A And still prescribing drugs. I'm not saying the
10 doctor, actually, prescribed marijuana, but it might have
11 been something like it's okay if you do that if it's
12 helpful.

13 Q Did she tell you that she had been smoking marijuana in
14 addition to all this?

15 A She told me -- like she said, I think she told me she
16 smoked marijuana every night. She had a bowl and would
17 smoke it every night. And I think it was for headaches and
18 it helped with the headaches.

19 Q And you alluded to again earlier that this was sort of
20 difficult because you had a client that didn't remember the
21 facts of what happened?

22 A Yes.

23 Q When you got the videos, did that help --

24 A Well, I will say this, the videos of the witnesses --
25 so the witnesses gave their statements on video and I didn't

1 get those until pretty late before trial. And their written
2 statement -- or, actually, they didn't even do written
3 statements. They had videotaped statements. The officer
4 did a fairly long report where he described what the
5 witnesses saw and it was a lot less detailed than what the
6 witness actually said.

7 So yeah, when I saw the detail of their -- when I heard
8 the more detail, I thought this is pretty bad because it
9 does describe somebody that something is going on. It's
10 either impairment from the drugs -- the only two
11 explanations I could come up with, it's either impairment
12 from the drugs or she's having some kind of medical event.

13 Q Did she ever indicate to you that she wanted to plead
14 guilty or was it always a situation where she wanted to take
15 it to trial?

16 A Nobody wants to go to trial, okay? But she did not
17 want to plead guilty. I do remember telling her you might
18 -- toward the end of the trial with Judge Couch -- it may
19 have been even after -- I remember we were at lunch one day
20 and I was with her and her family eating lunch and I was
21 saying I didn't like the way the trial had gone. I felt
22 like she probably was more likely to get convicted than not,
23 that she might really should think about pleading guilty.
24 And I told her it might -- everybody wants to know well, how
25 much time will I get. And I told her I couldn't answer

1 that, but it could be as little as five to about seven
2 years. I felt like it might be below ten. And I think I
3 told her I think it's going to be about ten if you go to
4 trial. I don't know how much. And she said I will not plead to
5 five years.

6 MS. MCMAHAN: Court's indulgence, Your Honor.

7 (Pause.)

8 MS. MCMAHAN: I have nothing further. Thank you.

9 MS. JONES: Nothing further from the State, Your Honor.
10 The State rests, Your Honor.

11 THE COURT: Anything else?

12 MS. MCMAHAN: No, Your Honor.

13 THE COURT: All right. I've reviewed it and issue an
14 order.

15 MR. JONES: Thank you, Your Honor.

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

September 30, 2025

Penny M. Johnson
Penny M. Johnson
Transcriber

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	FOR THE EIGHTH JUDICIAL CIRCUIT
Pamela Michelle TACKETT, #380899,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
The STATE of South Carolina,	)	Civil Action No. 2022-CP-30-00325
	)	
Respondent.	)	

This matter comes before the Court on application for post-conviction relief ("PCR") filed by Pamela Michelle Tackett ("Applicant") on April 18, 2022, and amended on August 13, 2024. An evidentiary hearing was held on August 19, 2024 at the Laurens County Courthouse. Applicant was present and represented by Ashley A. McMahan, Esq. Assistant Attorney General Zachary W. Jones represented Respondent.

After a consideration of the evidence presented and a full review of the record before the Court, this Court finds Applicant has not met her burden of proof in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. At the July 2018 term, the Laurens County Grand Jury returned an indictments against Applicant for Felony Driving Under the Influence - Great Bodily Injury (2018-GS-30-1109), Child Endangerment (2018-GS-30-1110), and Felony Driving Under the Influence - Death (2018-GS-30-1111). Applicant was represented by David F. Stoddard, Esq. The State was represented by Eighth Circuit Assistant Solicitors O. Warren Mowry and R. Knox McMahon.

On July 15, 2019, Applicant proceeded to trial before Circuit Judge Roger L. Couch and a jury. Applicant was found guilty and sentenced to concurrent terms of imprisonment for seven years for Child Endangerment, seven years and a fine of \$5,000 for Felony Driving Under the Influence - Great Bodily Injury, and fifteen years and a fine of \$10,000 for Felony Driving Under the Influence - Death.

#1

Applicant appealed her convictions and sentences. On October 21, 2020, Appellate Defender Adam S. Ruffin filed a brief of appellant pursuant to *Anders v. California*, 386 U.S. 738 (1967). On March 2, 2022, the South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. *State v. Tackett*, Op. No. 2022-UP-084 (S.C. Ct. App. filed March 2, 2022). Applicant did not seek further review, and the remittitur was sent on March 28, 2022.

Factual Summary

On March 28, 2018, Applicant was driving on I-385, with her niece in a rear child's seat, when she swerved into the median and struck two SCDOT highway workers, fatally wounding one and seriously injuring the other. Michael Gabriele, a Highway Patrol trooper, responded to the scene. He decided to conduct field sobriety tests on Applicant after he observed her moving slowly and slurring her speech. When the field sobriety tests indicated impairment, Gabriele arrested Applicant for driving under the influence. Applicant was then transported to Greenville Memorial Hospital.

At the hospital, Applicant consented to provide a blood sample to law enforcement. She also told officers that she was taking Wellbutrin, Klonopin, Claritin, Effexor, Geodon, and Tramadol, and that she smoked marijuana every night before going to bed.

At the trial, the State qualified Kelly Budgen, of SLED, as an expert in toxicology. Budgen testified that Applicant's blood contained therapeutic quantities of Clonazepam (Klonopin) and Gabapentin (Effexor), as well as THC. Budgen also testified that Clonazepam and Gabapentin, like alcohol, are central nervous system depressants and, taken together, could impair one's ability to drive. She testified that THC could also impair one's ability to drive because it slows down a person's reaction time. However, because the efficacy of drugs differs from individual to individual, Budgen could not determine from the blood sample whether Applicant was impaired at the time of the accident.

The State also qualified Dr. Demetra Garvin as an expert in pharmacology and toxicology. She testified that the drugs in Applicant's blood sample each had the potential to impair an individual's driving ability. She also reviewed the body camera footage of Applicant taken after the crash and opined that Applicant's behavior and performance on the field sobriety tests indicated impairment.

AZ

Present Application

In her post-conviction relief application, Applicant alleges she is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. Failure to advise Applicant regarding the maximum sentence she was facing and the plea deal.
- b. Failure to offer an alternative theory of causation.
- c. Failure to call expert witnesses to offer alternative theories of causation.
- d. Failure to request a jury charge or directed verdict of reckless vehicular homicide pursuant to S.C. Code 56-5-2910.
- e. Failure "to call expert knowledgeable of psych."
- f. Failure to object to the State's officials testifying beyond the scope of their expertise and offering opinions not based on scientific evidence.
- g. Failure to object and seek a ruling excluding reference to drugs aside from marijuana and clonazepam and precluding the State from arguing synergistic effect.
- h. Failure to object to leading questions and redirect beyond the scope of cross-examination.
- i. Failure to properly prepare for trial or obtain complete medical records including mental health and neurological history.

2. Due process

- a. Applicant's conviction and sentence were obtained on violation of the due process clause of the Fourteenth Amendment of the United States Constitution and corresponding provisions of the South Carolina Constitution.

On August 13, 2024, Applicant submitted an amended application requesting to conform her allegations to the evidence presented at the PCR hearing. The Court has reviewed the evidence presented at the PCR hearing and determined that Applicant presented testimony on the following allegations of ineffective assistance of counsel raised in her initial application: a, b, c, and i. Applicant did not raise any new issues at the PCR hearing. Accordingly, the Court will address those allegations below. All other allegations are deemed abandoned for lack of proof.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony and evidence presented, observed the witnesses who testified at the hearing, and weighed the testimony. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Laurens County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the records of the present PCR action. This Court has considered the evidence presented and the record submitted to it by the parties, the legal argument of counsel. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the

following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel, Generally

In a PCR action, Applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove her factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that Counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons Counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, Applicant must prove that Counsel's deficient performance prejudiced her such that "there

is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

A. Advice concerning sentencing and plea deal

In her PCR application, Applicant alleged Counsel was ineffective for failing to adequately advise her concerning the maximum sentence she was facing and for failing to explain the plea deal to her. Applicant alleged she received a higher sentence at trial than she would have received under the terms of the plea deal.

However, at the PCR hearing, Applicant testified that Counsel *did* advise her to plead guilty, although she also claimed he did not know what the plea would be. Applicant further testified she had no knowledge of any plea offer. Applicant then claimed she never discussed the differences between a negotiated plea, a straight-up plea, and trial.

Counsel testified that he initially advised Applicant *not* to plead guilty because there was no plea offer made prior to trial, Applicant could not tell him what actually happened on the day of the incident, and he believed he had a viable jury argument based on the fact that the toxicologist found only therapeutic levels of prescription drugs in Applicant's system. After trial began, however, Counsel became more pessimistic about Applicant's chances due to the strength of the State's first witnesses. Counsel testified he had a conference in chambers with Judge Couch, and the prosecutor offered a recommended sentence of 18 years if Applicant would plead guilty. Counsel testified he explained the offer to Applicant and

discussed the possibility that she could get more time if she continued with trial but that she might get less than the State's recommended sentence if she pled guilty. However, Counsel testified it was a close case because he thought the State's plea offer of an 18-year recommendation was not much better than a straight-up plea; in fact, 18 years turned out to be more than Applicant received after trial. Ultimately, Counsel testified Applicant did not want to plead guilty because she did not want to do that much time.

The Court finds Applicant's statements in her PCR application and her testimony at the PCR hearing are somewhat equivocal and inconsistent. Applicant claims in her application that she would have received a lower sentence under the plea offer, but she testified at the hearing that no offer was ever made, to her knowledge. She also implied in her application that Counsel's advice prevented her from taking the plea deal, but she testified at the hearing that Counsel told her she needed to accept the plea offer. These inconsistencies reflect poorly on Applicant's credibility. Therefore, to the extent any conflict exists between Applicant's testimony and Counsel's testimony, the Court finds Counsel's testimony is more credible. Accordingly, the Court finds Counsel did explain the plea offer to Applicant and the appropriate considerations between accepting the offer and proceeding with the trial. The Court further finds Applicant knowingly chose to turn down the plea offer. The Court also notes that Applicant received an aggregate sentence of 15 years at trial, which was less than the 18 years the State agreed to recommend as part of the plea deal.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

B. and C. Alternative theories of causation

Applicant claims Counsel failed to propose an alternative theory of causation to explain what caused her to lose control and drive onto the median. She also claims Counsel should have called expert witnesses in support of an alternative theory, such as witnesses who could testify to the differences and interactions between different medications. However, she did not provide any alternative theory at the PCR

hearing, nor did she present any expert testimony. Therefore, the Court finds she has failed to prove this allegation. See, e.g., *Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation).

The only testimony Applicant provided on this point at the PCR hearing was that the bottle for her Klonopin prescription had a warning not to use it while driving until she learned how her body reacted to it. This testimony does not constitute an "alternative theory of causation"; if anything, it corroborates the State's theory that Applicant's hazardous driving resulted from her use of prescription drugs, including Klonopin.

In addition, Counsel testified he *did* consider presenting an alternative theory of causation—namely, that some medical event, like a stroke, unrelated to Applicant's drug use had caused her to lose control while driving. He testified that he tried to find a doctor who would support that theory, and that he interviewed Applicant's family doctor and neurologist, without success. He also sent video recordings from the incident to a consultant, a former highway patrol officer, who prepared a report, but Counsel thought the report would be inconsistent with Applicant's story. However, he was able to present a defense at trial based on the theory that Applicant was taking her prescriptions within therapeutic limits and that her strange behavior following the crash was caused by the stress of the incident, not by her drug use.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

I. Mental health and neurological history records

Applicant claims Counsel was unprepared for trial because he had not obtained her complete

medical history, including her mental health and neurological history records. However, Applicant did not substantiate this allegation by presenting her mental health records at the PCR hearing. See *Taylor*, 258 S.C. at 378, 188 S.E.2d at 854. Moreover, as already discussed, Counsel testified that he *did* consult Applicant's family physician and neurologist.

At the PCR hearing, Applicant testified she was prescribed the various drugs she was taking in order to treat her mental health issues, which include depression, anxiety, and PTSD. That fact was not unknown to Counsel; it accords with the toxicologist's finding that the levels of those drugs in Applicant's blood sample were consistent with therapeutic use, and Counsel testified he argued to the jury based on the toxicologist's report that Applicant was using the drugs as prescribed.

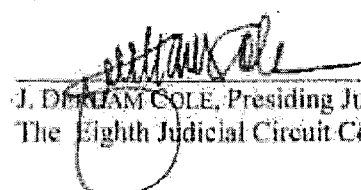
Applicant has failed to present any new defenses or probative evidence that Counsel could have used had he more thoroughly investigated her medical history. Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violation or deprivation that would entitle her to post-conviction relief. The **APPLICATION** for post-conviction relief should be and **IS** therefore **DENIED** and **DISMISSED** with prejudice and Applicant remanded to custody for completion of the sentence imposed.

This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

AND IT IS SO ORDERED this 4th day of June, 2025.


J. DEBRA COLE, Presiding Judge
The Eighth Judicial Circuit Court

*9