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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Clarendon County

Honorable H. Steven DeBerry IV, Circuit Court Judge

TAMMY D. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000763

APPENDIX

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VOLUME I OF II

PAGES 1-500

INDEX

INDEX i

TRIAL TRANSCRIPT DATED MAY 14-18, 2018 1

FINAL BRIEF OF APPELLANT 743

FINAL BRIEF OF RESPONDENT 765

STATE V. BROWN, OPINION NO. 5914 (HEARD SEPTEMBER 15, 2021 – FILED MAY 25, 2022) 789

SUPREME COURT ORDER DENYING CERTIORARI 808

APPLICATION FOR POST-CONVICTION RELIEF 809

RETURN AND MOTION FOR MORE DEFINITE STATEMENT 816

ORDER FOR CONTINUANCE 829

PCR HEARING TRANSCRIPT DATED AUGUST 18, 2025 831

ORDER OF DISMISSAL 881

CLARENDON COUNTY MAGISTRATE CASE HISTORY H070604 899

INDICTMENT 901

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	COURT OF GENERAL SESSIONS 2014-GS-14-00408
State of south Carolina vs. Tammy Dianne Brown DEFENDANT	TRANSCRIPT OF RECORD May 14-18, 2018 Manning, South Carolina

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JUDGE; and a jury.

A P P E A R A N C E S:

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HUGH MCMILLIAN, ASSISTANT SOLICITOR
Attorneys for the State

CHARLES BARR, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Opening Statements				
Mr. DuRant	48			
Mr. Barr	53			
Billy Ward				
Mr. DuRant	59			
Mr. Barr		68		
Bucky Mock				
Mr. DuRant	75			
Mr. Barr		84		
Jeffrey Minnix **In-Camera**				
Mr. DuRant	93		125	
Mr. Barr		105		127
Paige Dubose **In-Camera**				
Mr. DuRant	131			
Mr. Barr		151		
Robin Carol Locklair **In-Camera**				
Mr. DuRant	170			
Mr. Barr		176		

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Tammy Brown **In-Camera**				
Mr. Barr	182			
Mr. DuRant		184		
Dr. Mark Reynolds				
Mr. McMillian	213			
Mr. Barr		220		
Jeffrey Minnix				
Mr. DuRant	221		318	
Mr. Barr		274		
Paige Dubose				
Mr. DuRant	327		386	
Mr. Barr		349		
Angela Floyd				
Mr. DuRant	395		410	
Mr. Barr		406		
Joseph Ham				
Mr. DuRant	412			
Mr. Barr		420		

4

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Mendel Rivers				
Mr. DuRant	422			
Mr. Barr		426		
Stacey Matthew				
Mr. DuRant	431			
Kelly Bugden				
Mr. DuRant	460			
Tim Grambow				
Mr. McMillian	466			
Mr. Barr		475		
Debbie Gutierrez				
Mr. DuRant	482			
Mr. Barr		488		
Bryan Ridgeway				
Mr. DuRant	497		612	
Mr. Barr		574		

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Tammy Brown				
Mr. DuRant	621			
Mr. Brown		637		
Closing Statement				
Mr. DuRant	671			
Mr. Barr	691			
Mr. DuRant	707			
Jury Charge	716			
Verdict of the Jury	735			
Sentence of the Court	741			
Certificate of Reporter	742			

6

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
S-1	Photo		59
S-2	Photo		59
S-3	Photo		59
S-4	Photo		59
S-5	Photo		59
S-6	Photo		59
S-7	Photo		59
S-8	Photo		59
S-9	Photo		59
S-10	Photo		59
S-11	Photo		59
S-12	Photo		59
S-13	Photo	92	262
S-14	Photo	92	508
S-15	Photo	92	508
S-16	Photo	92	508
S-17	Photo	92	508
S-18	Photo	92	508
S-19	Photo	92	508
S-20	Photo	92	508
S-21	Photo	92	508
S-22	Photo	92	508
S-23	Photo	92	508

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
S-24	Photo	92	508
S-25	Photo	92	508
S-26	Photo	92	508
S-27	Photo	92	508
S-28	Photo	92	508
S-29	Photo	92	508
S-30	Photo	92	508
S-31	Photo	92	508
S-32	Photo	92	508
S-33	Photo	92	508
S-34	Photo	92	508
S-35	Photo	92	508
S-36	Photo	92	508
S-37	Photo	92	508
S-38	Photo	92	508
S-39	Photo	92	508
S-40	Photo	92	508
S-41	Photo	92	508
S-42	Photo	92	508
S-43	Photo	92	508
S-44	Photo		508
S-45	Photo		508
S-46	DVD	232	

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
S-47	DVD		259
S-48	Collision Report ID ONLY	92	
S-49	SLED Urine/Blood Report		250
S-50	Chain of Custody Form	415	
S-51	Photo	431	436
S-52	Photo	431	436
S-53	Photo	431	436
S-54	Photo	431	436
S-55	Photo	431	436
S-56	Photo	431	436
S-57	Photo	431	436
S-58	Video	496	568
S-59	Video Animation	496	568
S-60	CAD Drawing	496	530
S-61	CAD Drawing	496	530
S-62	CAD Drawing	496	530
S-63	CAD Drawing	496	530
S-64	CAD Drawing	496	530
S-65	Damage Profile		538
S-66	CAD Drawing		560
S-67	Photo		265
S-68	Photo		508
S-69	Photo		508

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
S-70	Photo		508
S-71	Photo		508
D-1	Photo	68	
D-2	Photo	68	
D-3	Photo	68	
D-4	Photo	68	
D-5	Photo	68	
C-1	Search Warrant		42
C-2	Implied Consent Rights Form		126
C-3	SLED Urine/Blood Report		126
C-5	Affidavit of Jeffrey Minnix		126
C-6	Note from Jury		732

10

THE COURT: All right. You may call your first case.

MR. DURANT: Thank you, Your Honor. May it please the Court. State calls the case of State of South Carolina vs. Tammy Dianne Brown charge on indictment 2014-GS-14-408 two counts of felony driving under the influence one involving death and one involving great bodily injury. May I approach?

THE COURT: Yes, sir. Ladies and gentlemen, if you give me your attention, we are about to begin the trial of The State vs. Tammy Dianne Brown. Is there any member of the jury panel connected by blood or marriage, close personal friends or social relations with Ms. Brown, if so please stand?

(WHEREUPON, a there are none.)

THE COURT: Okay. I'm going to read out a list of potential witnesses in this case. And I need to know the same information Josephina Chapa, Debbie Gutierrez. I may have butchered her name. How do you pronounce her name?

MR. DURANT: Guiterrez.

THE COURT: Oh, I'm sorry Gutierrez. Angela Ann Floyd, Billy Ward, Bucky Mock, Jeffrey K. Minnix, Page DuBose, Joseph Ham, Mendell Rivers, Bryan Ridgeway, Kelly Bugden, Tim Grambow, Dr. Mark Reynolds. Any member of the

jury panel connected by blood or marriage, close personal friend, social relations with any of those potential witnesses, if so please stand? Okay.

PROSPECTIVE JUROR: I volunteer and know Bucky and a few others.

THE COURT: And what's your name and number?

PROSPECTIVE JUROR: 59 Floyd.

THE COURT: Are you volunteer fireman?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And the fact that Bucky Mock and Billy Ward may testify in this case, would that affect your ability to be fair and impartial? Could you listen to the evidence and be fair to both sides?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Thank you, sir.

Yes, ma'am.

PROSPECTIVE JUROR: I do know Bryan Ridgeway, but I don't think it would affect my judgment.

THE COURT: What was your number?

PROSPECTIVE JUROR: 122.

(WHEREUPON, juror 122 name is Jan McGee.)

THE COURT: Okay. And so you can be fair?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you, Ms. McGee.

MR. BARR: What's the number, Judge?

12

THE COURT: 122.

Yes, ma'am.

PROSPECTIVE JUROR: I'm juror number 210 and Jeffrey Minnix.

THE COURT: You can be fair to both sides?

PROSPECTIVE JUROR: Yes.

THE CLERK: Tell my your number again please, ma'am?

PROSPECTIVE JUROR: 210.

(WHEREUPON, juror number 210 name is Tiffany Lancaster.)

THE COURT: Okay. The State is being represented by Chris DuRant and Huge McMillian. Any member of the jury panel connected by blood or marriage, close personal friends, social relations to either two of these attorneys or have been represented by them, if so please stand?

PROSPECTIVE JUROR: I'm related to Chris DuRant.

THE COURT: And how close?

PROSPECTIVE JUROR: Cousins like fourth or fifth something like that.

MR. DURANT: My grandfather and his grandmother are brother and sister.

THE COURT: Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.
THE COURT: What's your number?
PROSPECTIVE JUROR: 21.
(WHEREUPON, juror number 21 name is Frank Bleasdale.)
THE COURT: Okay. Yes, sir.
PROSPECTIVE JUROR: Family and friend of Chris DuRant.
THE COURT: Would that affect your ability to be fair and impartial?
PROSPECTIVE JUROR: No, sir.
THE COURT: What's your number?
PROSPECTIVE JUROR: 124.
(WHEREUPON, juror number 124 name is Ryan McNair.)
THE COURT: Okay. Yes, ma'am.
PROSPECTIVE JUROR: My husband is related to Chris' father. They're cousins.
THE COURT: And what was your number?
PROSPECTIVE JUROR: Six.
(WHEREUPON, juror number six number is Gwyn Baker.)
THE COURT: Would that affect your ability to be fair and impartial?
PROSPECTIVE JUROR: No, sir.

14

THE COURT: Thank you, ma'am.

The defense is being represented by Charles Barr. I need to know if any member of the jury panel is connected by blood or marriage, close personal friends, social relations or been represented by Mr. Barr, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Thank you. Any member of the jury panel formed or expressed an opinion about any of the issues involved in this case, if so please stand?

(WHEREUPON, there are none.)

THE COURT: This occurred on or about August the 30th of 2014. Any member of the jury panel know anything about the facts of this case at all, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Okay. Any member of the jury panel or member of your immediate family a law enforcement officer, a security guard, a probation officer or involved in law enforcement in any way, if so please stand?

PROSPECTIVE JUROR: My wife is dispatcher in Sumter County would that impact at all?

THE COURT: What's your number?

PROSPECTIVE JUROR: 198.

(WHEREUPON, juror number 198 name is Joseph White.)

THE COURT: And who is a dispatcher?

PROSPECTIVE JUROR: Ashley White my wife.

THE COURT: Okay. Does she -- what agency does she work for?

PROSPECTIVE JUROR: Sumter Police Department.

THE COURT: Okay. Would that affect your ability to be fair and impartial in this case?

PROSPECTIVE JUROR: No.

THE COURT: Thank you.

Yes, ma'am. Go ahead.

PROSPECTIVE JUROR: My uncle Ronnie Stewart started out with the sheriff's office.

THE COURT: Would that affect your ability to be -- the sheriff, Mr. Stewart is not testifying in this. This is not a sheriff department case, but the fact that you have an uncle that works in law enforcement would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: What was your number please, sir?

PROSPECTIVE JUROR: 174.

(WHEREUPON, juror number 174 name is Austin Stewart.)

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: I am 163. My son is a police with SWAT and violent crimes.

16

(WHEREUPON, juror number 163 name is Barbara Shumpert.)

THE COURT: Okay. And would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: I hope not.

THE COURT: You the only one that know that. You can listen to the evidence and be fair to both sides?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay, thank you, ma'am.

Yes, ma'am.

PROSPECTIVE JUROR: My son inlaw works as police officer with the City of Charleston.

THE COURT: Okay. And what was your number?

PROSPECTIVE JUROR: 166.

(WHEREUPON, juror number 166 name is Carol Slade.)

THE COURT: 162?

PROSPECTIVE JUROR: 166.

THE COURT: I'm sorry. Ms. Slade, would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you.

Yes, sir.

PROSPECTIVE JUROR: During the time she was incarcerated ---

THE COURT: Wait a minute, wait a minute, come here. Don't say anything else.

PROSPECTIVE JUROR: When she was in custody, I was working at the Clarendon County detention center during that time. I don't remember her or anything.

THE COURT: Are you working there now?

PROSPECTIVE JUROR: No, sir.

THE COURT: What's your number?

PROSPECTIVE JUROR: 123.

(WHEREUPON, juror number 123 name is Talbrick McKenzie.)

THE COURT: Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. Thank you. You can go have a seat.

Any member of the jury panel or member of your immediate family related to anybody Third Circuit Solicitor's office, if so please stand?

Yes, sir.

PROSPECTIVE JUROR: My brother is a solicitor for Sumter County.

THE COURT: And what's your number?

PROSPECTIVE JUROR: 43.

(WHEREUPON, juror number 43 name is Julius

18

Corbett.)

THE COURT: Would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you, sir.

Any member of the jury panel in the last five years been involved in law enforcement in any capacity, if so please stand, outside those who have already told me?

(WHEREUPON, there are none.)

THE COURT: Any member of the jury panel support police organizations South Carolina Trooper's Association or any police organization, if that applies to you please stand?

(WHEREUPON, there are none.)

THE COURT: Any member of the jury panel member a member or contributor to any victim organizations or MADD, SADD, if so please stand?

Yes, ma'am.

PROSPECTIVE JUROR: I support MADD.

THE COURT: You support MADD. What's your number?

PROSPECTIVE JUROR: 134.

(WHEREUPON, juror number 134 name is Betty Nesbitt.)

THE COURT: And the fact that this defendant is

charged with felony DUI would that affect your ability to be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you.

Any member of the jury panel believe it's morally wrong or a sin to drink alcohol, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Any member of the jury panel formed or expressed an opinion about any issues to malice involved in this case, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Any member of the jury panel aware of any bias or prejudice either the State of South Carolina or this defendant, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Any member of the jury panel served on the grand jury here in Clarendon County that heard this case, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Any member of the jury panel due to religious or moral reasons unable to sit in judgment of your fellow man, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Any member of the jury panel know

20

any reason whatsoever they can't give the State of South Carolina or this defendant a fair and impartial trial, if so please stand?

(WHEREUPON, there are none.)

THE COURT: Any further question from the State?

MR. DURANT: No, sir, Your Honor.

THE COURT: Mr. Barr.

Yes, ma'am.

PROSPECTIVE JUROR: May I come up there?

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: I feel can't be a good juror because my sister was accused, tried and convicted and I feel like she was unfairly charged with her crime.

THE COURT: So you don't think you can be fair to both sides?

PROSPECTIVE JUROR: I don't think so.

THE COURT: What was your number?

PROSPECTIVE JUROR: 145. I just hold that deep in my heart and I just can't.

THE COURT: All right. I will excuse you then. Thank you.

(WHEREUPON, juror number 145 name is Paulette Peterson.)

THE COURT: Anything further questions from the State?

MR. DURANT: No, sir.

THE COURT: How about from the defense?

MR. BARR: Judge, how about question number 11 on the defense question of voir dire?

THE COURT: Let's approach and we can talk about it.

(WHEREUPON, a bench conference was held in the presence of the jury panel, but out of the hearing of the jury panel.)

THE COURT: Is it any member of the jury panel have strong feelings one way or the other concerning the consumption of alcohol and operating a motor vehicle, if so please stand?

Yes, ma'am.

PROSPECTIVE JUROR: I do not feel that you should not be in a car driving if you're under the influence.

THE COURT: There's a difference between being under influence now and consuming alcohol. And, you know, it's against the law in this state to operate a motor vehicle while you're under the influence. It is not against the law to operate a motor vehicle after you consumed some portion of alcohol. You just can't under the influence. So I needed to know whether any juror has strong feelings about consuming alcohol and operating a

22

motor vehicle one way or the other?

Now, the difference between being under the influence. If you're under the influence, but your ability to operate that vehicle is appreciably impaired, you legally can't operate a vehicle and that's what the law is and that's what I only will charge the jury in this case. I just needed to know if anybody has strong feelings one way or the other. I don't think that can be fair and impartial. If I had a case involving consumption of alcohol and driving a motor vehicle, I need a fair juror who's listen to the facts and make a determination based on the law I give you as to whether -- and reach a verdict that's fair to both sides. So I'm trying to find a fair juror. If you can do that, that's great. If you has such strong feelings one way or the other that you can't do that, I need to know that now.

PROSPECTIVE JUROR: I will be fair.

THE COURT: Huh?

PROSPECTIVE JUROR: I will be fair.

THE COURT: What's your number?

PROSPECTIVE JUROR: 41.

(WHEREUPON, juror number 41 name is Anne Cooper.)

THE COURT: Thank you, ma'am.

Anything else from either side?

MR. DURANT: Not from the State, Your Honor.

MR. BARR: No, sir, Judge.

THE COURT: Madam clerk, if you will give me a jury.

What did you tell me your number was again?

PROSPECTIVE JUROR: 41.

THE COURT: Okay. Thank you, ma'am.

THE CLERK: Ladies and gentlemen, if I call your name, come down the center aisle, walk up to where you see this mic, turn around and face the two tables, stand there until I give you further instructions. Ladies, if you have a purse or a jacket or whatever, please bring it up with you.

Number 210 Tiffany L. Lancaster.

(WHEREUPON, a black female, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Lancaster.

THE CLERK: The defense?

MR. BARR: Seat her please.

THE CLERK: Go over to the bailiff, ma'am, and have a seat in the jury box.

92 Joy S. Joyner.

(WHEREUPON, a white female, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Joyner.

24

THE CLERK: The defense?

MR. BARR: Seat her please.

THE CLERK: Go over to the bailiff please. Number 3 Raquan T. Andrews.

(WHEREUPON, a black male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please excuse Mr. Andrews from the trial of this case.

THE CLERK: You can have a seat back with the jury, sir. Thank you.

Number 189 Stephanie Walker.

(WHEREUPON, a black female, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Walker.

THE CLERK: The defense?

MR. BARR: Seat the juror please.

THE CLERK: Go over to the bailiff, ma'am. Thank you.

123 Talbrick D. McKenzie.

(WHEREUPON, a black male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. McKenzie.

THE CLERK: The defense?

MR. BARR: Seat the juror.

THE CLERK: Have a seat in the jury box, sir.

Thank you.

Number 24 Pete E. Bradham, Jr.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please excuse the juror.

THE CLERK: Have a seat back with the jury, sir. Thank you.

Number 107 Jakkia L. Lawson.

(WHEREUPON, a black female, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Lawson.

THE CLERK: The defense?

MR. BARR: Seat the juror please.

THE CLERK: 198 Joseph D. White.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. White.

THE CLERK: The defense?

MR. BARR: Excuse the juror.

THE CLERK: You can have a seat back with the jury, sir. Thank you.

124 Ryan T. McNair.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Your Honor, may we approach?

26

THE COURT: Yes.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Mr. McNair, this case may go into Tuesday and I promise to let Tuesday off. So I'm going to sit you down on this one.

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you.

THE CLERK: Juror number 6 Gwyn E. Baker.

(WHEREUPON, a white female, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Baker.

THE CLERK: The defense?

MR. BARR: Excuse the juror from the trial of this case only.

THE CLERK: You may have a seat back with the jury panel. Thank you.

Number 63 Frankie Frierson.

(WHEREUPON, a black male, comes forward.)

THE CLERK: What say the State?

MR. DURANT: Please excuse Ms. Frierson from the trial of this case.

THE CLERK: You can have a seat back with the jury, sir.

131 Robert Morris.

(WHEREUPON, a black male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Morris.

THE CLERK: Mr. Morris a paramedic?

PROSPECTIVE JUROR: Correct.

MR. BARR: Please excuse Mr. Morris.

THE CLERK: You can have a seat back with the jury please, sir. Thank you. Juror number 129 Justin K. Mooneyham.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. Mooneyham.

THE CLERK: The defense?

MR. BARR: Seat the juror please.

THE CLERK: Go over to the bailiff, sir.

Number 69 Joshua M. Graham.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. Graham.

THE CLERK: The defense?

MR. BARR: Seat the juror.

THE CLERK: Have a seat in the jury box, sir.

Number 104 Nikasha C. Lang.

(WHEREUPON, a black female, comes forward.)

28

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Lang.

THE CLERK: The defense?

MR. BARR: Seat the juror please.

THE CLERK: Go over to the bailiff, ma'am.

Number 181 Priscilla G. Tindal.

(WHEREUPON, a black female, comes forward.)

THE CLERK: What say the State?

MR. DURANT: Please excuse Ms. Tindal from the trial of this case.

THE CLERK: Have a seat back in the pool, ma'am.

Number 43 Julius G. Corbett.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. Corbett.

THE CLERK: The defense?

MR. BARR: Excuse the juror from the trial of this case.

THE CLERK: Have a seat back in the pool, sir. Thank you.

Number 21 Frank C. Bleasdale, III.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. Bleasdale.

THE CLERK: The defense?

MR. BARR: Seat him please.

THE CLERK: Go and have a seat in the jury box please, sir.

Number 116 William T. Lowder.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. Lowder.

THE CLERK: The defense?

MR. BARR: Excuse the juror from the trial of this case.

THE CLERK: Have a seat back in the juror pool. Thank you.

Number 127 Keenan D. Miller.

(WHEREUPON, a black male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. Miller.

THE CLERK: The defense?

MR. BARR: Seat the juror please.

THE CLERK: Have a seat, sir. Thank you.

Number 59 William T. Floyd.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Mr. Floyd.

THE CLERK: The defense?

MR. BARR: Seat the juror.

30

THE CLERK: Have a seat in the jury box please. Thank you.

Number 163 Barbara S. Shumpert.

(WHEREUPON, a white female, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Shumpert.

MR. BARR: Seat the juror please.

THE CLERK: Have a seat in the jury box, ma'am. Thank you.

Number 106 Keith E. Larkin.

(WHEREUPON, a white male, comes forward.)

THE CLERK: What say the State?

MR. DURANT: Please excuse Mr. Larkin from the trial of this case.

THE CLERK: You can have a seat back in the jury box, sir. Thank you.

Number 4 Kaye P. Anglebrandt.

(WHEREUPON, a white female, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Anglebrandt.

THE CLERK: Defense?

MR. BARR: Seat the juror please.

THE CLERK: That be your seat forever and ever right there. Thank you, ma'am.

Number 111 Janice D. Lewis.

(WHEREUPON, a black female, comes forward.)

THE CLERK: What says the State?

MR. DURANT: Please present Ms. Lewis.

THE CLERK: The defense?

MR. BARR: Seat the juror please.

THE CLERK: That will be your seat forever right behind her, okay.

THE COURT: Are there any matters of law pertaining to selection of the jury on behalf of the State?

MR. DURANT: No, sir, Your Honor.

THE COURT: On behalf of the defense?

MR. BARR: No, sir.

THE COURT: All right. What do you want me to do with the panel?

MR. DURANT: Ask them to call back after six tonight, Your Honor.

THE COURT: Ladies and gentlemen, who are not selected to serve on this jury, you are free to go. I ask you to call the clerk's office after six o'clock tonight. And it will be a recording to tell you when to either call back or come back. So you're free to go and call back and keep calling until you get through. You want get to talk to a real person. It's just an answering machine, so you cant argue with it. Thank you.

32

(WHEREUPON, the jury panel is excused.)

THE COURT: Ladies and gentlemen, I got to take up some matters of law. Instead of keeping you all locked up back in the jury room, I'm going to send you all to lunch. And we going to deal with the legal matters and I'll ask you to be back in your jury room at two o'clock. When you come back, go straight in the jury room.

Now, over lunch don't talk to anybody about this case, allow anyone to talk to you about it. You can't even discuss it among yourselves and I'll explain that to you when you get back. Don't go do any research. Don't Google on anybody. Don't get on social media. Everything you know about this case is I need you to learn in this courtroom. If you have an emergency over lunch, you need to call the clerk's office or 9-1-1 or the sheriff's office or somebody because I expect all of you to be back at two. I can't get started until all of you show up. So if one of you don't come back and you don't call anybody, I'm going to send the sheriff to look for you and bring you in. So it's important that you all be back. So I'll see you back at two o'clock. If you have an emergency, please call us. Thank you.

(WHEREUPON, the jury is excused for lunch.)

THE COURT: Okay.

MR. BARR: Your Honor, please the Court at this

time, we would respectfully move to dismiss the indictment for reasons concerning the sufficiency of the indictment as it relates to due process. If Your Honor look at Count 1 as well as Count 2 that in Clarendon County, South Carolina on or about August 30th 2014, while driving a vehicle under the influence of alcohol, drugs or combination of alcohol and drugs, the Defendant Tammy Dianne Brown did an act forbidden by law or neglected a duty imposed by law in driving the said vehicle, such act, such act approximately cause the death of Mario (sic) Guillermo. Of course, all in violation of section 56-5-2945.

Your Honor, here's our -- now, of course, if you read the other count in the indictment that is the one that relates serious bodily injury. It tracks the same language coming from the statute. It's our position that with respect to the sufficiency of the indictment and I'm reading -- quoting from one of the cases that I thought was directly on this point. That's State vs. Grampus, State vs. Grampus 288 South Carolina 395 343 Southeast 2nd 26, says that the indictment -- of course, this is an indictment for prosecution of felony DUI, must state with particularity the act forbidden by law or the duty imposed by law which will be relied upon by the State to support the felony driving under the influence charge.

34

Now, of course, it will be our contention, Your Honor, that in addition to what is stated here in this indictment unless the indictment specifically pointed to the act that the prosecution is relying upon to establish the complete offense of driving under the influence, whether it be involving great bodily injury or death without some specification in the act with particularity as the case says. We would submit that the indictment would be fatally flawed and we would respectfully move to dismiss the indictment.

THE COURT: Okay. You like to respond to that, Mr. Solicitor.

MR. DURANT: Yes, Your Honor. I haven't read the case that Mr. Barr is citing, but my understanding is that the case law in the state is that the language of the indictment -- because the indictment is a noted document and language of the indictment is sufficient if it tracks the language of the statute, which these both counts clearly do. It's never been my understanding that the State would require to allege in the indictment particular act or law alleged to have been violated by the defendant with traffic violation. However, in this case, Your Honor, it's certainly no secret that the law that Mrs. Brown violated is speed, that's referenced throughout the discovery that's been provided to Mr. Barr. It's in

big black and white letters on the reports issued by the MAIT team. In this case, Your Honor, that speeding was the factor involved, was the violation of law involved. Mr. Barr has received ample discovery from the State with references to the exact speed that his client was alleged to have been traveling at the time of this accident the speed limit for that area, so she certainly -- Mr. Barr certainly been notified. Ms. Brown certainly aware of the act that the State alleges that she violated in this case. And again it's my understanding that an indictment which tracks the language of the statute is sufficient.

MR. BARR: Judge, if I might, we don't concede to any speed. And granted it may very well be the prosecutions theory that the defendant was speeding and that that is the particular act that's required in order to complete the elements, but as far as the indictment is concern, the mere fact that the prosecution intends to prove by evidence a allegation that the prosecution is making regarding the speed at issue in this case, that doesn't satisfy the indictment.

The law says -- and that's the case that I cited to the Court is that if in fact speeding was to be relied upon, then the indictment has to state with some particularity that this is in fact what the prosecution would be relying upon to establish the driving under the

36

influence in a felony DUI case. So judge we would submit that if you read the case, the case is just as clear as a bell. It says that it must be stated with particularity and that's the act that's forbidden. And in this case it seems that the State is arguing, well, the forbidden act was speeding which we don't concede, but even if it were, then that speeding would have to be alleged in the indictment and not by way of evidence the case law requires that it stated in the indictment.

THE COURT: Okay. And tell me the name of that case again, sir?

MR. BARR: State vs. Grampus.

THE COURT: Grantlin?

MR. BARR: Grampus G-R-A-M-P-U-S.

THE COURT: Okay.

MR. BARR: 288 South Carolina 395 343 Southeast 2nd 26.

THE COURT: All right. I'll go read it and let you all know something. Anything else before I go back there?

MR. BARR: No, sir.

THE COURT: Anything from the State?

MR. DURANT: No, sir, Your Honor.

THE COURT: Okay. I'll be back in a minute.

MR. BARR: Judge, you coming back after lunch or

now?

THE COURT: No, now. Unless, you want me to come back after lunch.

MR. BARR: No, no, I want you to do whatever pleases you.

THE COURT: I got a hearing at a quarter to two. Whatever you all want to do?

MR. DURANT: I got nowhere to be, Your Honor. It's only 11:40.

THE COURT: If you all want to break for lunch, I can let you all know. You don't have to sit here and wait on me to read the law.

MR. DURANT: We defer to, Your Honor.

THE COURT: Okay. We will be back at 1:30 and I'll let you all know then. You all can go do something. I'll see you back at 1:30. I got a hearing and then we'll either go forward with the trial or we will do something else.

MR. DURANT: Thank you, Judge.

(WHEREUPON, a lunch break was taken.)

THE COURT: All right. Anything else either one of you all want to say?

MR. DURANT: Your Honor, I like to be heard on that.

THE COURT: Okay.

38

MR. DURANT: Your Honor, I had the opportunity to review the case submitted by Mr. Barr over the lunch hour State vs. Grampus. First of all, I would present to, Your Honor, that the issue in that case is one of -- it deals with the issue as to whether or not a defendant who had already been prosecuted for and had been tried magistrate court for the underlying traffic offense of improper lane use could be later tried for felony driving under the influence. It's only in a footnote the court -- the Supreme Court addressed the issue of the sufficiency of the indictment. Your Honor, I would submit to Your Honor that a footnote is not binding authority. Moreover that case was reversed by the Supreme Court in State vs. Easter, which again dealing with the issue of double jeopardy, but the case law -- the law of the case of State vs. Grampus had been reversed by the Court. Your Honor, and I'd also submit up for Your Honor to view Court of Appeals case State vs. Campbell.

THE COURT: I just read State vs. Campbell. It's directly on point.

MR. DURANT: Okay. Well, I don't want to bet against myself then, Your Honor. I believe State vs. Campbell stands for the position that an indictment, specifically a felony DUI indictment which tracks the language of the statute is sufficient and that's the

State's argument, Your Honor.

THE COURT: Okay. I just read State vs. Campbell and it says exactly that. It's felony DUI trial where the argument of the defendant was that it did not specify what act that they violated. It's exactly the situation here that you thought that the indictment specify speeding or following too close or whatever facts may be. And Campbell said as long as the indictment track the language of the statute it was sufficient. And then State vs. Gentry overrule Campbell in part in that State vs. Gentry spelled out is two different issues whether the Court has subject matter jurisdiction on whether the sufficiency of the indictment. Sufficiency of the indictment involves you must make that motion prior to swearing in a jury. Subject matter jurisdiction can be brought up at any time. And Mr. Barr made that motion prior to the jury being sworn, so he's preserved that, but I think based on Campbell and the litany of cases I've read, that this indictment follows the language of the statute. And it is sufficient under our law and I will respectfully deny your motion.

MR. BARR: All right, sir.

THE COURT: Okay. Anything else I need to deal with before I deal with these lawyers sitting out here who have come a long way to see me?

40

MR. DURANT: No, sir, Your Honor.

THE COURT: All right. We'll be in recess until two o'clock on this case.

(WHEREUPON, a break was taken.)

MR. DURANT: Please the Court.

THE COURT: Yes, sir.

MR. DURANT: Your Honor, the only other issue that may need to be addressed by Your Honor before we start is the introduction of two of the defendant's statements. The State intends to introduce the statements made by the defendant at the incident scene when she was in the EMS in the ambulance there. And a second statement or additional statements made by the defendant at the emergency room to law enforcement after Miranda and also in some excited utterance essentially from the defendant and the officer's vehicle from the hospital to the jail. Mr. Barr hadn't mentioned anything in regards to a Jackson Denno hearing, but I do want to make the Court and Mr. Barr aware that the State intends to introduce those statements, certainly would be willing to address the voluntariness of those statements now if Your Honor believe that's necessary.

THE COURT: Mr. Barr, do you want ---

MR. BARR: Judge, we intend to object to the introduction of the statement. Of course, the statements

that were allegedly made by the defendant at the initial interview, I just receive an affidavit this morning I believe from the officer actually conducting that statement which asserts that he was not wearing a body mic. And, of course, it would be our position that that statement the statement made at that time he should have had a body mic on and the statement should have been recorded.

Now, he indicates in the affidavit that he was away from his vehicle I believe and he did not was not able to record or get a video recording. However, the rationale that he gives for not -- I'm not sure, I don't want to argue the State's position, but he simply indicates that the defendant was not available in order for him to get a -- to record the statement. And at the same time he said that he made the decision himself and said that the defendant would -- we would concede that the defendant was in the EMS, but as far as the nature of her injuries or whether she was injured or not, we would submit that he should have recorded the statement with his body mic. And because he had no recording, now we got rely on what he says the defendant says without any type of recording to corroborate the statement that he had attributes to the defendant.

Now, that statement or the subsequent statement

42

that the Solicitor referred to that was made during the in-car transportation, it would be our position that the defendant was in custody at that time? And that statement was involuntary.

MR. DURANT: Your Honor, I guess as a threshold matter we can go ahead and mark the affidavit as a court's exhibit and pass it up to Your Honor for review.

(WHEREUPON, Court's Exhibit No. 1 was marked for the record.)

MR. DURANT: This is an affidavit signed by the investigating officer Trooper Minnix this morning that addresses the video tape requirements pursuant to 56-5-2953.

THE COURT: All right. I wish you all would have let me know we had a Jackson vs. Denno hearing before I brought this jury back at two o'clock. So is the State intends to introduce this statement early in the case. I mean, is it something we start the case and I need to rule on it now or we have to have a Jackson vs. Denno hearing.

MR. DURANT: Your Honor, that statement would probably be introduced through the third witness. The first two are going to be very short, would be the investigating officer, Trooper Minnix. It's two o'clock now, Your Honor. We certainly can do both of these statements and the first two witnesses and break for the

afternoon and handle the Denno issue.

THE COURT: Okay. I mean, I don't want to keep them lock up and bring them back. Do you have any objections to doing it that way, Mr. Barr?

MR. BARR: No, sir.

THE COURT: All right. Then we'll make opening statements, cover the first two witnesses, break and deal with -- before I break, I may bring you all back up here to the bench and be sure that, you know, we still going forward and it's not an issue and deal with the Jackson vs. Denno issues and start back in the morning.

MR. DURANT: Thank you, Your Honor.

THE COURT: Is there any other legal issues I need to deal with that you all know about right now?

MR. DURANT: Not that I have been made aware of, Your Honor.

MR. BARR: Judge, as I said, I'm reluctant to participate what the State intends to present by way of evidence. However, it was blood drawn and we would move to suppress the results of the blood urine analysis. Of course, as I said I don't want to jump the gun, but that would be an issue as well.

THE COURT: Okay.

MR. DURANT: Your Honor, if you recall, I mention to Your Honor this morning that I assume we need

44

to have a suppression hearing. Mr. Barr told me that we didn't.

MR. BARR: I didn't say we didn't. I said maybe in terms of laying a foundation not knowing exactly how you intend to proceed, that would have to be...

THE COURT: Let me ask you is the State intending to offer some results of some blood tests or ---

MR. DURANT: Your Honor, I'm prepared to proceed with a suppression hearing necessary this afternoon.

THE COURT: Okay. So is it from a scheduling standpoint, we can do opening statements and the first two witnesses, and deal with Jackson vs. Denno and the blood this afternoon?

MR. DURANT: Yes, sir, Your Honor.

THE COURT: Okay. Then that's what we'll do then. All right. Anything before bring in the jury?

MR. DURANT: No, sir, Your Honor.

THE COURT: Bring me the jury please, sir.

(WHEREUPON, the jury came into open court.)

THE COURT: Okay. Good afternoon, ladies and gentlemen. I'm sorry, I got a cold. My voice is going away. And we're about to begin he actual trial of The State vs. Tammy Brown. I'm going to basically just give you some introduction instructions as to what you can expect, what your responsibilities are and how this case

will unfold.

This is not a charge on the law. At the end of the case, I will charge you on the law that you're to apply in this case. Ms. Brown has been indicated by the State of South Carolina for two counts of driving felony DUI, one resulting in death and one resulting in serious bodily injury. To this indictment, she's entered a plea of not guilty. Therefore, it place the burden upon the State of South Carolina to prove each and every element of this indictment to you beyond a reasonable doubt.

Now, your job is to pay close attention to the evidence in this case and reach a verdict in this case based on that evidence. The evidence is going to come to you in basically three forms. First of all through sworn testimony from the witness stand. Witness is going to come before you under oath and testify as to what he or she saw or observed. The other way that you may receive evidence is through documents or photographs that I rule under our law is admissible. And the third way that you may receive evidence is through stipulations of the attorneys. That's how you going to see the evidence in this case that you must base your verdict on.

Now, the lawyers going to get up in a few minutes and make an opening statement, that is not evidence. Even the questions that the lawyers ask is not

46

evidence in this case. The lawyers will sit together and tell -- explain to you what this case is about. And what they think the evidence is going to show or not show. Then we present the evidence in this case. At the end of the case, the lawyers going to get up and argue to you as to what they think the evidence shows in this case or the evidence did not show. I will charge you on the law and give you this case to decide.

It's very important for both sides that you pay close attention. Because if you get it wrong, it's very hard to correct that. If I make a mistake, at some other time and some other place it will be reviewed and corrected, but it's very hard to correct a mistake that the jury makes. I will try to take a break every hour, hour and a half. I try not break in the middle of a witness' testimony, but sometime we have to. Having said that, if any of you need a break at all, just simply raise your hand because it's very important that all of you pay close attention. And if you're uncomfortable for any reason, you can't pay attention. So if you need a break, raise your hand. I'll stop the testimony and send you back to the jury room and take a break and then bring you back out and finish the testimony.

Now, I'm also going to tell you you can't talk about this case with anyone while this trial is going on.

You can't discuss it with any of the parties. You can't discuss it with any of your family. I don't want you to read anything to the newspaper, doing any research. Everything you learn about this case you got learn in this courtroom. You can't even talk about it among yourselves. And I understand that seems a bit strange. When you go back there on a break and you heard the testimony of one or two witnesses, why can't we talk about what that witness said. And the reason I don't want you to because if you do at the end of the case, you going to want to defend that opinion you had at the beginning of the case through your fellow jurors. And I don't want you to start sharing those opinions and discussing this case until you heard all of the case, until you heard the testimony in its entirety as well as the law that I will charge you. And then and only then will it be proper for you to discuss the case and that's why that rule is in place. It's very important for both sides that you're a fair and impartial juror. And that you going to listen to the facts and reach a verdict based on that. So that's why our rules are in place and it's important that follow those rules. In a few minutes, the lawyers going to make an opening statement to you. Then we'll begin the testimony. And at the end I will charge you on the law that you're to apply in this case.

48

Mr. Solicitor.

MR. DURANT: Thank you, Your Honor. May it please the Court.

THE CLERK: Your Honor ---

THE COURT: You see I've already messed up. The clerk's got to swear you all in.

(WHEREUPON, the jury is sworn.)

MR. DURANT: May it please the Court.

THE COURT: Yes, sir.

MR. DURANT: Ladies and gentlemen of the jury, good afternoon. Back on August the 30th 2014, on a Saturday night just before midnight a fatal car accident occurred off of Highway 261 between Paxville and Manning. That collision which claim the life of a 39 year old Hispanic male Guillermo Lopez-Arenas and permanently disabled his passenger 36-year-old male, that collision was the direct result of two intentional acts by the Defendant Tammy Brown. It was the direct result of two decisions that she made. Number one was to get behind the wheel of her car severely intoxicated. Number one was to get behind the wheel of her car and drive her vehicle while severely intoxicated. And number two was to drive that vehicle at an exceedingly high rate of speed at least, at least 20 miles per hour over the speed limit for that area.

My name Chris Durant. I'm assistant solicitor here in Clarendon County. I been assistant solicitor here since 2011. I was in another circuit before that. And I'm from Clarendon County. I'm from the Gable section of Clarendon County on the north end. And my job as a assistant solicitor, as a prosecutor is to represent the interest of South Carolina, to represent the interest of the community.

Now, the Supreme Court has said that the duty, the job of a solicitor is not just to seek convictions. It's not just seek convictions for all the cases that come into our office. The job of a solicitor is to ensure that justice is done. And make no mistake about it, that's your job as well to see that justice is done in this case.

The burden -- and you'll hear this phrase a lot throughout the course of this trial. By the way, I don't mean to be the **bearer** of bad news, but this case is probably going to last about three days and there's reasons for that. And number one is that the defendant has significant rights. The defendant has rights that have to be protected, so we have to go through the process to make sure that those rights are protected and honored. And there's a lot of to evidence to present to make you all aware.

It's going to take probably three days to get

50

all the evidence presented to you all and make sure the defendant's rights are protected. But the burden of the solicitor is to present the case. The burden of the State of South Carolina is to prove the elements of the crimes charged beyond a reasonable doubt. You may hear that phrase a lot. So I'm just going to tell you what it means, but before I do that, I want to say that if at any point during this trial I say anything in regards to the law that contradicts what Judge Cothran tells you with respect to the law, then you need to disregard what I say and apply the law you hear from Judge Cothran.

But, ladies and gentlemen, I submit to you that proof beyond a reasonable doubt is proof that would leave you firmly convinced in a defendant's guilt. Firmly convinced the crimes which Ms. Brown, Tammy Brown is charged with you all heard before when Your Honor read the indictment. Those two counts of felony driving under the influence. That's different than just regular driving under the influence. Felony driving under the influence that means somebody was injured. Two counts, one involving death and one involving great body injury. Very quickly felony driving under the influence is defined as when a person while under the influence of alcohol and or drugs drives a vehicle and does an act forbidden by law, in the driving of that vehicle which act proximately

caused the death or great bodily injury. And the facts of the case are these back on the August 30th 2014, around midnight Ms. Brown was on her way home. She been out drinking with friends. She been taking tequila shots. She had got behind the wheel of her vehicle to drive home and she even made a drink for the road. She took a drink to the road with her as she drove home that evening. She's the only occupant of her vehicle. She came up around the Home Branch intersection of Highway 261 coming from Paxville towards Manning where Home Branch T's into Highway 261. If you have been that way, you might recall that that's a 45 mile per hour zone coming over the crest of the hill there and there's a sign one that says 45 mile per hour zone. You got to slow down because it's an intersection. She was going at least 65. You'll hear testimony in this case. And as she came to the Home Branch Road intersection, she hit another vehicle in the rear. She rear ended a vehicle. I'll go ahead and tell you the occupant of that other vehicle were heavily intoxicated as well.

Law enforcement responded. They conducted an investigation determine that Ms. Brown had hit second vehicle with such force as to bend the steel frame a pickup truck into a 90-degree angle. She hit the rear of the vehicle with such force as to bend steel frame into a

52

90-degree angle killing the driver of that vehicle and severely injuring his passenger. He never recovered from his injuries.

South Carolina highway parole has accident investigation team that's called MAIT multidisciplinary accident investigation team. They responded. They investigated, came out, took measurements. Investigation to determine how this accident happened to reconstruct the accident. They made two important findings. Number one is that the victims they didn't pull out in front of Ms. Brown. They didn't fail to yield the right of way. They couldn't see Ms. Brown when they pulled out. They didn't violate any laws in turning on to Highway 261. And number two if Ms. Brown had not been speeding this accident would not have occurred. Matter of fact, if she had she been speeding, she wouldn't have even had to hit the breaks. You will hear testimony. This accident would not have occurred.

Ladies and gentlemen, you're going to hear that testimony from the officer's involved, from all the personnel, first responders involved, from chemist, toxicologists, as to Ms. Brown intoxication. You're going to hear that from this witness stand. You're going to see the evidence from the photographs and videos. What I ask you to do is to pay close attention to that evidence. And

at the end of the case I'm going to ask you to apply the evidence to the law of the case and to render a true and just verdict. And I submit to you a true and just verdict in this case as Tammy Brown is guilty of two counts of felony driving under the influence. Thank you.

MR. BARR: Please the Court, Judge.

THE COURT: Yes, sir.

MR. BARR: Mr. Durant. Ladies and gentlemen, I introduced myself earlier this morning. It wasn't a very good introduction, but the judge did tell you as he was telling you who represents Ms. Brown he told you my name. And my name is Charles David Barr and I practice law in Kingstree, that's my home. I been practicing law over there now for quite a few years probably about 39 years. And I represent Ms. Tammy Dianne Brown.

She is the person that's been described to you as the defendant. And she's the young lady that's seated next to me. And you know as I sat there listening to Mr. Durant's opening remarks to you and that's what they were. They were introductory remarks of what their design to do is essentially to give you a theory of what the prosecution has in mind in terms of trying to establish or trying to prove to you that Ms. Brown did in fact commit the offenses of felony DUI death resulting in one case and serious bodily injury or great bodily injury resulting in

54

the second case.

Now, let me just say that on behalf of Ms. Brown, we're not even conceding to you that anybody died. It's element of the offense of felony DUI involving death and it's an element that the prosecution is going to have to prove to you and they going to have to prove it to you beyond a reasonable doubt. So we're not conceding anything. In fact, His Honor will instruct you at the appropriate time that at this juncture in the course of this trial there is some law in South Carolina as in many other states regarding the status of the defendant and that status of the defendant applies to what you will hear later on in the case. When I say the status of the defendant, Ms. Brown is presumed innocent.

Now, that's not -- it's not something that I concocted over in Kingstree, but it's a legal presumption that's in our laws. Now, if you notice when you were qualifying as jurors, we were hugging together there at the defense table and, of course, also at the prosecution table because we believe that in terms of qualification of people, what you want to do you is want to screen people. You heard the judge asking you voir dire questions about your beliefs and about how you in particular about drinking alcohol because this case involves drinking alcohol.

Now, whether we like or not, it is not unlawful in South Carolina to take a drink and drive. It's only when you consume such a quantity of alcohol and or drugs or a combination thereof that your ability to operate your vehicle is materially and depreciate impaired. Now, in this case, the defendant is charged with two offenses. I will say that the Solicitor correctly quoted the law to you because what those offenses require is that in order to find that Ms. Brown guilty, you'll have to find beyond a reasonable doubt that she was operating her vehicle under the influence. And while operating her vehicle under the influence, she either neglected to do something that the law imposes a duty upon a person to do or she violated some law and that that action on her part is approximate cause of the collision which they're claiming killed one of the persons in this incident.

Now, as to whether or not the other defendant or the other person was severely injured, again that's an element of the offense and the prosecution has to prove that to you and prove it to you by a standard that we call beyond a reasonable doubt. I learned a long time ago don't make promises to juries that you can't keep because sometimes they hold you to that.

Now, the Solicitor told you a few minutes ago -- and I don't want to get too far into the facts of this

56

case because as I said Ms. Brown maintains that she did not commit these offenses. Now, Mr. Durant irrespective of how much he claims to know about the facts, he wouldn't out there that night when this occurred or early that morning. He wasn't there. He didn't see a thing, probably in the bed sleep. And I don't know that they'll be anybody that will come here in front of you and tell you that they saw what happened. But now he did say, he did say this much I notice that when he was talking about the mistake that Ms. Brown made that is taking too much alcohol and that's what he claims. He actually said too much tequila and got a drink for the road, that's what he said. He also said, well, yeah, the two people in the other vehicle were severely intoxicated, that is the driver as well as the passenger. Now, he said that the speed limit on that road was 45 miles an hour. I don't think the evidence was going to show that, but that's what the prosecutions told you. And I think that Ms. Brown was probably driving at a reasonable speed when she made contact with the vehicle that was up in the road in front of her.

Now, you may hear some testimony with regard to how this actually occurred I don't know, but I can tell you from where I'm sitting as a defense lawyer and as a lawyer for Ms. Brown, I do want you to remember that she

doesn't have to prove anything. His honor has read to you and told you what is in the indictment and the indictment is a charging paper. It has not evidentiary value at all. It's a charging paper. He had told you what's in the indictment and the indictment describes what the defendant is actually charge with. But with respect to that indictment in addition to the burden of presumption of innocence, we have talked briefly about the standard of proof that requires -- that is required in terms of finding Ms. Brown guilty.

Now, ladies and gentlemen, before I sit down, let me just tell you that that presumption of innocence is a powerful presumption. It does not require the defendant to prove anything. It requires absolutely the prosecution to prove each and every element of the offense that she is charged with and prove each and every element beyond a reasonable doubt.

The Solicitor allude to one and at the appropriate time his honor is going to tell you from this bench exactly what the law says a reasonable doubt is. I can tell you right -- it's the kind doubt that -- well, it must be firmly convinced that the prosecution -- and you can speculate all day, I tell you nine times out of ten the 12 of you all sitting here will never ever know what really happened out there and that seldom have occurred.

58

Now, what the law -- the law does not charge you with the responsibility -- the law charge you with the responsibility of deciding whether or not the prosecution has convinced you by competent evidence that they proved the defendant's guilt beyond a reasonable doubt.

Now, if you're not convinced at the end of the day that that has been prove to you, his honor will instruct you that your charge is to find Ms. Brown not guilty. That's what your charge is. And that's what you took an oath to do. You took an oath to sit down and to listen to the evidence and to be impartial judges, to be jurors and decide with no ax to grind whether or not the prosecution has met their burden. And, ladies and gentlemen, I show you at the end of the day if you discharge that duty and that responsibility. And his honor is going to tell you that in our jury system at the end of day you gone have to come back with a unanimous verdict, that's what they require. Your verdict must be unanimous, that means that you all must agree that the prosecution has met their burden. And if you should decide that they have not done that, then you must come back with a verdict of not guilty. Thank you.

MR. DURANT: State call Billy Ward.

THE COURT: If you come around to be sworn, put your left hand on the Bible and raise your right hand.

MR. DURANT: Your Honor, I ask you give the court reporter time to mark these.

THE CLERK: Raise your right hand and place your left hand on the Bible and repeat your name please.

THE WITNESS: Billy Ray Ward.

THE CLERK: You solemnly swear that the testimony that you're about to give will be the truth and nothing but the truth so help you God.

THE WITNESS: I do.

MR. DURANT: Your Honor, the State intends to introduce a series of photographs in State's 1 through 12 I believe without objection.

MR. BARR: No objection, Judge.

THE COURT: Okay. State's 1 through 12 is in evidence without objection.

(WHEREUPON, State's Exhibit1-12 Nos. were admitted into evidence.)

MR. DURANT: Thank you, Your Honor.

WHEREUPON,

Billy Ward,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Mr. Ward, if you would, tell the jury where you work?

A Where I work, sir?

Q Yes, sir.
A Clarendon County fire department. I'm the captain with the Clarendon County fire department, been there about 10 years.
Q Been there for ten years when you working back in August of 2014?
A Yes, sir, actually I was off duty that day responded as a volunteer with the fire department.
Q Tell the court what you responded to that evening?
A We got a tone out. When we get a call, it tones out. We got a vehicle accident on Highway 261 near Home Branch intersection unknown entrapment. I arrived on scene approximately few minutes after midnight. I found a two-car vehicle collision involving a small pickup truck, which had run head on into a tree in a sedan type vehicle. There was two occupants in the small pickup. The driver -- both occupants were unresponsive unconscious when we arrived on scene. The driver was not breathing at the time when we first arrived on scene. The passenger he was unresponsive, but he was still breathing when we got on scene. The vehicle accident it was a lot of separation about 200 feet between vehicles. One was the sedan the passenger vehicle at the closer to the intersection of Home Branch Road and Highway 261 and the pickup truck had went forward about 200 feet and run head on into a tree.

Q Now, you mention that -- well, first of all, were you the first responder that arrived on scene?
A One of the first. There was another volunteer that got there probably about a minute before I did, but he didn't have a radio to give a scene size up. So when I got there, that's -- I took control of the radio.
Q Anybody else EMS or law enforcement on scene yet at that time?
A There's bystanders.
Q Just bystanders?
A Yes.
Q Were they out of their vehicles?
A Yeah, there was several people. They was already standing around vehicles as soon as we pulled. They were kind of describing what we had two people in this car unresponsive unconscious and Ms. Brown was at her car.
Q Okay. Now, Mr. Ward, tell me about the condition again that a jury again about the condition of the occupants of the pickup truck when you arrived on scene?
A As I said, the driver was unconscious, unresponsive not breathing. I think there was a bystander maybe a nurse. I can't exactly remember, but it said that they wasn't breathing and didn't have a pulse, but the passenger they was unconscious, but they was breathing at the time when we arrived there. And EMS they arrived

probably a minute after I got there.
Q Did you actually assist or check the vitals of either one of the passengers?
A No, sir, I didn't.
Q But were they unresponsive?
A Yes.
Q Both of them?
A Both were unresponsive.
Q What about the driver of the white vehicle, was that individual on the scene at the time?
A Yes, and when I arrived, we figured out there was two vehicles. One of the volunteers, I can't exactly remember who it was sent them to go check on Ms. Brown said she was out of the vehicle walking around. So we focused all our attention to the two individuals in the truck. And shortly after that EMS got there took over medical part.
Q All right. Were you still on scene when law enforcement arrived?
A Yes.
Q Okay. Tell me what other responsibility -- what else did you assist with on the scene of the accident?
A We're -- our primary focus in the fire department in a wreck like that is the extraction part. Due to the damage of the vehicle, we had to do extended extrication using our tools, cutting the doors off. I think we

actually had to -- I know we had to pull the doors off. The dash was impacted in on both the victims. We had to remove all that to get them out.

Q To get the bodies -- to get the victims bodies out of the pickup truck?

A Yes, sir.

Q Okay. The fire department had to cut some pieces of the vehicle in order to get the bodies out; is that right?

A Yes, sir.

Q I'm going to make one last ditch effort to get this projector up and running. Let me go ahead and show you these series of photographs first let me show you State's Exhibit 1. If you would just describe for the jury what you see there?

A That's we're going 261 toward Manning about the intersection of Boyd Road. It's where the white sedan was found in the roadway of Boyd Road at approximately two to 300 feet up the road was the pick up truck against the tree on the edge of the roadway.

Q And is this the location and the condition in which you found the white vehicle when you respond to the scene that evening?

A Yes, sir.

Q State's Exhibit 2 what are we looking at here? State's Exhibit 2 this is just another angle closer to the

white vehicle; is that right?
A Yes, sir.
Q Let me ask you what is this item on the ground beside the white vehicle?
A Looks like part of her bumper maybe.
Q But whatever that is that was on the scene when you arrived?
A Yes, sir.
Q Again this is the location that you found the white vehicle when you arrived at the scene?
A Yes, sir.
Q Now, is this y'alls fire truck out here?
A That should be our rescue and our engine should be right behind it and that's the vehicle -- the pickup truck beside the tree.
Q Now, if you would point that out to me now. You said the pickup truck that was struck is visible in this photograph?
A Yes, sir, but the lights is -- the big tree, the only tree, the first tree in front of the white vehicle is where the small pickup ended up at off the roadway.
Q Let me show you State's Exhibit 4 what are we looking at here?
A That's the white sedan.
Q This is the front end of the white sedan?

A Yes, sir.
Q Where you found it?
A Yes, sir.
Q Is it the five -- the same thing?
A White vehicle.
Q Side of the white vehicle. Let me show you State's Exhibit 6 what are we looking at here?
A Right in front of the white vehicle where it's heading towards where the small pickup truck is upside the tree.
Q Is seven just a closer shot of that pickup truck?
A Yes, sir.
Q Let me show you State's Exhibit 8 what are we looking at here?
A That's the driver of the pickup truck.
Q Okay. Is this the condition and the location in which you found them when you arrived at the scene?
A Yes.
Q And again was he responsive at all?
A No.
Q Showing you State's Exhibit 9 this appears to be the rear end of the black pickup truck?
A Yes, sir.
Q And again this is where you found it at the crime scene?

A Yep.
Q This is exhibit ten another angle of the pickup truck?
A Yes, sir.
Q Eleven and 12. Now, State's Exhibit 11 is that -- would that be fair to say that that is after the driver and the other occupant of the pickup truck had been extricated?
A Yes, sir. We extricated the passenger vehicle. They was in EMS care. They left the scene before we could move the deceased driver. We had to wait on the coroner to arrive on scene and highway patrol had to go through there series of events.
Q Now, were you still at the scene when the coroner arrived?
A Yes.
Q And do you know whether or not -- who was the coroner? Who came out there from the coroner's office?
A Hayes Samuels.
Q Mr. Samuels himself responded to the scene?
A Mr. Samuels himself responded.
Q And you were still there when Mr. Samuels got there?
A Yes, sir.
Q Do you know what result, if any, Mr. Samuels made after checking on the driver of the vehicle?

A I do not.
Q Was anybody else from the coroner's office out there?
A No.
Q Were you still at the scene when highway patrol arrived?
A Yes, I was at the scene when they arrived and an officer arrived, but not when the MAIT team arrived.
Q Prior to the coroner arriving at the scene, do you know whether or not anybody -- whether the driver's body had been moved?
A No, sir.
Q No, sir, it hadn't?
A No, it has not been moved.
Q It had not been moved.
A I mean, it may have been. EMS may have moved it just to get their monitor on it to see if they still had a rhythm, but other than that it had not been moved him.
Q All right. So the driver's body would have still been located inside of the pickup truck when the coroner arrived?
A Yes.
Q What about the passenger?
A We had extricated the passenger and EMS had took them to the hospital.
Q Okay. The passenger had some signs of life still?

A Yeah, had signs of life when the left with EMS.
Q Do you know how he was transported to the hospital?
A He went from the scene in the ambulance, but once they got to the hospital, I don't know if he was put on a helicopter there and flew somewhere or not.
Q Did you or anybody else from the fire department had any further involvement in this case?
A Not that I'm aware of.

MR. DURANT: All right, sir. Mr. Ward, that's all the questions I have. Please answer any that Mr. Barr has for you.

MR. BARR: Madam court reporter, identification Defense Number 1 through 5.

(WHEREUPON, Defendant's Exhibits Nos. 1-5 were marked for identification only.)

CROSS-EXAMINATION

BY MR. BARR:
Q Now, Mr. Boyd -- what did you say your name was?
A Mr. Ward.
Q Mr. Ward. I see. And you work for the fire department?
A Yes, sir.
Q Now, when you got call to this accident scene, you got there and the photographs that's been entered into evidence did you take those photographs?

A No, sir, I did not.
Q But you looked at them?
A I looked at them just then when they were presented.
Q Well, you just testified a few minutes ago as to what they depicted in the photographs?
A Yes, on scene. The photos depicted what I were what I seen on scene.
Q I see. Well, let me let you look at Defense -- what's been marked and identified as Defense 1 through 5 for identification and tell me whether you looked at those as well?
A They were looked at and they were not. And it was blurry. And I'm almost positive I looked at them.
Q These you looked at these two?
A I did not look at nothing in the daylight.
Q So when you were testifying just a minute ago regarding the photographs that you did look at that were taken that night, first of all you didn't take the photographs; is that correct?
A Yes, sir, that's correct.
Q So you were just telling the ladies and gentlemen of this jury what appeared to be in the photographs?
A Yes, I was there that night and I was not there when the photograph was taken, but the photographs described what I seen on scene.

Q I see. And you indicated that you went to the vehicle that the men in the pickup truck were passengers?
A Yes, sir.
Q Okay. Now, in terms of what you found, you said you found two people in the vehicle and they appear to you or did they appear to you to be unconscious?
A Yes, they were both unconscious.
Q Now, of course, if one of them was deceased, you don't know that do you because you not qualified to make that kind of diagnosis, aren't you?
A No, that's correct. EMS makes that decision.
Q So now as far as it took the people in the vehicle even though you said that they appeared to be unconscious, you don't know whether they were unconscious before the collision in the road drunk or how long they were there, do you?
A No, sir, the only thing is that's the way I found them.
Q That's how you found them. I see. Now, I'm going to redirect your attention to what's been marked into evidence and offered into evidence as State's Exhibits 1 and 4 and ask you to take a look at those. You've already talked about them.
A I look at them.
Q Yes, sir. Now, in -- let me have them for just a

second. In State's Exhibit Number 4, now I believe you said when you got to the accident you found the white vehicle in the location where it is now; is that correct?
A That's correct.
Q Now, there is an object on the right side somewhere near passenger door on the right side of the white car. Do you know what that was?
A Looking at another picture it looks like it may have been a tool box.
Q Tool box from the pickup truck. Of course, you weren't able to determine that it was a tool box, right?
A Looking from a different view, it is a tool box, that's correct.
Q It's a tool box. Now, there is road sign that's that you can see on the side of the road. I think it might be Boyd Road. Is that -- can you see that?
A That's correct.
Q And would you not agree that that vehicle was probably a couple of yards beyond Boyd Road?
A Yes.
Q And Boyd Road is a little dirt road that you can go back into and go to a whole bunch of people houses back there on Boyd Road?
A Yes.
Q You ever been back there?

A It's been a couple years.
Q I see. Now, would you not agree that. Now, would you not agree that that photograph does not show Home Branch Road, does it?
A No, it does not.
Q And would you not agree that in terms of the actual location of Home Branch Road if you were traveling -- in this vehicle I believe is traveling south on Highway 261; is that correct?
A Going toward Manning.
Q Yes, sir, going south. Now, would you not agree that if you were traveling north in the other lane of traffic, you'll come to Home Branch Road on the right side?
A Yes, Home Branch would be on the right side.
Q I see. All right. Now, did you take a look at State's Exhibit Number 4? Now, you looked at and you told us what you -- what was depicted in that photograph. Now, you're looking at the reverse side of the tool box, aren't you?
A Yes, sir.
Q And I know that there appears to be some liquid in the road. Did you see that? Look like maybe oil, antifreeze, did you see that in the road?
A On the night of the wreck, I never -- another one of our first responders went and checked on that vehicle. I

never made it to actually look at that vehicle that night just looking down the road. I never actually walked up to the vehicle that night. I sent another one of your first responders to check on the victim of that vehicle and to check that car.

Q Now, I notice when the officer -- when the highway patrolman standing on what would be my right side of the vehicle now, I notice it doesn't appear to be any kind of liquid on that side and all the liquid seem to be drained over there on the left side. Did you see that?

A As I said, the night of the accident I never walked and actually got that close to the vehicle to look at it.

Q You didn't pay it any attention?

A No, sir.

Q I'm about through here. I'm going to redirect your attention to something that you did see. And I'm referring to State's Exhibit Number 1. Did you have occasion to see the tire tread marks in the road? They lead right up to the back of the little white car. Did you see that?

A I notice it in the picture. Like I said, I did not notice it that night of the accident.

Q I don't want to get these mixed up. Now, I think Hayes Samuel, the coroner, came and did his investigation whatever the coroners do. He got there before you left;

is that right?
A Yes, sir.
Q And, of course, in South Carolina, coroners come around -- and how long you said you been working as a fireman?
A Ten years.
Q You've had occasion before to work automobile accidents where the car coroner comes on the site?
A Yes, sir.
Q Coroner comes on and they'll pronounce somebody dead and that's apart of their job, isn't it?
A Yes, sir.
Q You ever seen any one of them examine anybody?
A Not on scene.
Q They just pronounce them dead?
A Correct.
Q All right. So now you -- if either one of the occupants of the pickup truck was dead, you don't know how long he was that way, do you?
A No, sir, I do not.
Q In fact, you don't know how long he had been in the pickup truck, do you?
A No, sir, the only thing we go by is when we receive the call.
Q Yes, sir. Yes, sir.

MR. BARR: Thank you, sir. I have no further questions.

MR. DURANT: No redirect, Your Honor.

THE COURT: Thank you, sir. You can step down.

(WHEREUPON, the witness leaves the witness stand.)

MR. DURANT: The State would call Bucky Mock.

THE COURT: Okay.

THE CLERK: Raise your right hand, place your left hand on the Bible and repeat your name please.

THE WITNESS: Bucky Mock.

THE CLERK: You solemnly swear the testimony you're about to give will be the truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Bucky Mock,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MCMILLAN:

Q Mr. Mock, good afternoon. If you would please tell the jury where you work?

A I am now the coroner of Clarendon County.

Q How long have you been the coroner?

A Since January 18th.

Q Since Mr. Samuels passed away?
A That is correct.
Q Of course, that's Hayes Samuels who was coroner here for decades before you took office in January?
A Correct.
Q Okay. And how did it come about that you became the coroner in January?
A I have worked as a deputy coroner for Hayes Samuels and for coroner Randy Stevens for 21 years.
Q So you actually had been in the coroner's office during that -- throughout that period of time for 21 years?
A I worked as a deputy coroner on a as call basis. And after the coroner died, the county administrator had me be acting coroner until the governor's appointment.
Q Okay. Now, as the new coroner and prior deputy coroner, are you the records custodian for all the records of the coroner's office?
A That is correct.
Q Okay. And have you had occasion to examine the records with respect to a traffic collision that occurred back on August the 30th 2014?
A Yes, I have.
Q And based upon your examination of those records, do you know who responded to that accident scene from the

coroner's office?
A The records states that the Hayes Samuels responded to that accident.
Q So Mr. Samuels went out there himself. And do you know where the accident occurred according to the records?
A The records states that the accident occurred on Highway 261 between Home Branch Road and Brandom Road.
Q That's here in Clarendon County?
A That is correct.
Q Which is why Mr. Samuels was assign to investigate it?
A Yes.
Q Okay. And do you know what time Mr. Samuels would have gone out there?
A I got the time that the accident happened, but I don't have the actual time that the coroner got there.
Q According to Mr. Samuels' records, what time did the accident occur?
A 2356.
Q Which would be 11:56 p.m.?
A That is correct.
Q And do you know whether based on the records, whether Mr. Samuels pronounced any of the parties involved at the scene whether or not he pronounce anybody as deceased?
A The record states that the time that he pronounce the

person was 2356.
Q And who was that person?
A It was Guillermo Lopez-Arenas.
Q And based upon the records, do you know whether or not Mr. Samuels would have made contact with Mr. Lopez-Arenas next of kin?
A In Mr. Samuels notes, it says -- it's got the next kin name and phone number, but there's no note that he actually talked to them or not.
Q Okay. So at some point that evening, he got contact information for next of kin?
A Correct.
Q Identified this individual and pronounced that individual as deceased?
A Yes.
Q Okay. Do you know whether or not Mr. Samuels gave an opinion as to the cause of death?
MR. BARR: Judge, I think I'm going to object to that. I think even if he had gave an opinion he's not qualified. And I'm going to object to that. I don't know that he did give an opinion, but if he gave one, he certainly wasn't qualified to do that.
MR. DURANT: And, Your Honor, I guess, I would just respond briefly that that's the coroner's job death. Every death certificate produced by the coroner's office

includes a cause of death.

MR. BARR: Judge, they do that sometimes, but they just hadn't gotten sued for it yet. They're not qualified. They're not qualified to determine cause of death.

THE COURT: You all come up here.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, I need to send you to the jury room. Don't discuss the case yet. I will get you back out.

(WHEREUPON, the jury retire to the jury room.)

THE COURT: While up at the bench, the objection was made that the coroner's determination for cause of death, that he's not able to cross-examine as to how he arrived at that. And for the record, the coroner's report says the cause of death is a broken neck and trauma to the thoracic and chest. Either one of you all want to be heard on it.

MR. DURANT: Judge, again the State's position is that the coroner has statutory authority to make that finding and determination and as the custodian of records of the coroner's office.

THE COURT: I understand that. And normally he

has that authority, but normally as far as it goes, you know, the defense got a right to cross-examine him about how he came up with that cause of death. You know, if he had an autopsy and some pathologist says that they found this is the cause of death, but I don't have anybody to cross-examine him to determine the cause of death. I mean, I don't know how you determine that he had a broken neck. If he was here, he could cross-examine him. He say I examine the body. I been doing this 40 something years or 50 years and his neck was broken, but I don't have it. All right. Unless, you got some epiphany, I'm going to take a few minutes and go back and look at this thing.

MR. DURANT: Judge, I guess, I would just question -- it seems like the analysis turned out or whether or not it's an issue, I guess I would make the argument that it's not testimonial if that finding is made by the coroner for purpose of a death certificate which is in every case it's not -- it's testimony used in a trial of the case.

THE COURT: Then what is it for?

MR. DURANT: For a death certificate.

THE COURT: You hadn't put in a death certificate. This is the coroner's report. The coroner is not here to ask about cause of death.

MR. DURANT: It's the same cause of death on the

death certificate is not the same.

THE COURT: It is the same. You don't have a right to cross-examine him on he reach that conclusion. You know, I understand it's unusual, but you got a coroner that can't testify. I don't know.

MR. DURANT: Just so the record is clear, Judge, Mr. Samuels obviously passed away in January of this year.

THE COURT: Right. Let me think about this and I'll be back in a few minutes.

(WHEREUPON, a break was taken.)

THE COURT: State vs. Griggs, State vs. Westmoreland based on those two cases, I don't think the opinion on the cause of death of the coroner's report is admissible. In fact, also he's not here to be cross-examined as to how he arrived at it. Okay.

MR. DURANT: Yes, sir.

THE COURT: You can move forward with your next question.

MR. DURANT: We ready for the jury, Your Honor.

THE COURT: I didn't know if you had any questions outside the presence.

(WHEREUPON, the jury came into open court.)

MR. DURANT: May it please the Court.

THE COURT: Yes, sir.

BY MR. DURANT:
Q Before we broke, I had asked you a series of questions about the way Mr. Hayes Samuels coroner's report was issued in this matter, of course, you are the custodian of records for. And I believe you testified that an individual name Guillermo Lopez-Arenas was pronounced dead by Mr. Samuels at 11:56 p.m.; is that right?
A That's correct.
Q I believe you also testified Mr. Samuels report list a time of the accident is 11:56 p.m.; is that correct?
A A place the time of occurrence was 11:56, that is correct.
Q All right. So the time of death and the time of the occurrence is both 11:56 p.m.?
A Yes, sir.
Q According to Mr. Samuels' report?
A Yes.
Q And does Mr. Samuels report also include the merit as to where the deceased party was located in the vehicle?
A No, it doesn't.
Q Okay. Do you have a copy of the coroner's report with you?
A Yes.
Q Direct you to the back page narrative section. If

you would just tell the court -- tell the court Mr. Samuels determine in his narrative?

A The narrative it says the deceased is a 38 year old Hispanic male that was driving ---

MR. BARR: Objection, Your Honor, hearsay.

MR. DURANT: Your Honor, I believe it's hearsay exception would be that it's the public record is maintained by Mr. Mock as the custodian of records for the coroner's office.

MR. BARR: Your Honor, I don't think he has testified that he was the custodian of records for the coroner's office.

MR. DURANT: Your Honor, I can ask that question again.

THE COURT: I thought he did testify to that. Let me see that report.

MR. DURANT: Your Honor, and if it please the Court, I'll be glad to rephrase my question to narrow the question.

BY MR. DURANT:

Q Mr. Mock, based on Mr. Samuels' report, where was the deceased individual located in the vehicle?

MR. BARR: Your Honor, it's still hearsay. He's testifying to what Mr. Samuels said.

THE COURT: I understand that Mr. Samuels is not

here. He is deceased. But if it's in his report he was in the vehicle.

A It states the decease was driving the vehicle.

THE COURT: Okay. Well, that part of the report is hearsay because that is not his observation. At the time the coroner arriver where he was located was his observations.

MR. DURANT: That's the question.

THE COURT: I understand that, but that wasn't the answer. Can you ascertain from the report where his body was located in the vehicle?

THE WITNESS: No.

THE COURT: Okay.

MR. DURANT: That's all the questions I have, Judge.

THE COURT: Mr. Barr, do you have any questions?

CROSS-EXAMINATION

BY MR. BARR:

Q Now, you say you were Hayes Samuel's deputy?

A I was one of his deputies that's correct.

Q And you when he went out to this accident scene were you with him that -- early that morning?

A No, I wasn't.

Q So would you not agree that with respect to Hayes Samuels report that you be testifying to, you don't know

anything about the reliability of the information that's contained in the report that you testified to?
A As custodian of the records, all I can do is testify by what's on the record.
Q But you don't know anything it?
A No, I don't.
Q With respect to the time that he pronounced death, Hayes Samuels 2356?
A That's what it says in the report.
Q Okay. What time did he say the occurrence occurred?
A In the report?
Q Yes, sir.
A It says 2356.
Q Same time?
A Correct.
Q Now, do you have any knowledge of Hayes Samuels going out to do an investigation? Do you know how long it took him to get there after he was called?
A I don't know that, sir.
Q You did assist him on occasions as his deputy coroner?
A I did many cases as deputy coroner where I worked the case and wrote the report.
Q You would agree that at least as to the report he was supposedly died at the same time he was pronounce dead,

the time was the same?
A That's what the report looks like.
Q Now, of course, you know that couldn't possibly be, could it? Hayes Samuels would have had to be there at the time the death occurred and he wasn't there then, was he?
MR. BARR: All right. Thank you, sir, nothing further.
THE COURT: Anything further?
MR. DURANT: Just to clarify one point.

REDIRECT EXAMINATION

BY MR. DURANT:
Q Mr. Mock, if you would look on the coroner's report, I guess it's the fourth line down that states place of death.
MR. BARR: Your Honor, object it's going beyond the scope of cross-examination.
MR. DURANT: I hadn't asked a question yet.
MR. BARR: Well, you referred to the line on the coroner's report which I did not ask about anything on that line.
THE COURT: Ask the question.
MR. DURANT: If I could just ask the question, Your Honor.
BY MR. DURANT:
Q Mr. Mock, if you look at the fourth line down says

place of death out beside it it has a time?
A Yes, sir.
Q What is that time?
MR. BARR: Objection, Judge.
THE COURT: What's the ground?
MR. BARR: The place of death is beyond the scope of cross-examination irrespective of what time it is.
THE COURT: I understand that, but he didn't ask him what the place of death was. He ask him on the form where it says place of death is there a time written down. He's ask him about time. And you ask him about time. I'll allow the question.
BY MR. DURANT:
Q Mr. Mock, is there a time listed out beside the place of death?
A Yes, sir, it's 2356.
Q And what does that time on the form correspond to?
A That one says place of death and list the place of death.
MR. BARR: Judge, he's asking for an opinion and he's not qualified to give an opinion. His opinion is irrelevant. He's asking him to look at it and compare the time of the -- as to where death occurred and his opinion as to what that is is irrelevant.

THE COURT: He ask him what was on the report. He can testify as to what's on the report.

MR. BARR: He asked him what it correspond to, Judge.

BY MR. DURANT:

Q Mr. Mock, let me rephrase. Based on -- you familiar with the form?

A Yes.

Q You used this form before?

A Yes.

Q Okay. You mentioned that you been out to several scenes by yourself working as a deputy coroner?

A Many.

Q And do you use this report when you go out to a scene?

A Yes.

Q Okay. Out beside the place of death where it list the time, what did he usually put in that block for the time?

A When I fill out a report, I put the time that I feel the death occurred.

Q Okay. That's the time of death?

A Correct.

Q Okay. So that portion of the4 form notifies or includes a notation as to the time of death. What is time

of death as noted on Mr. Samuels' form with regard to this accident?

A The time of death is the same 2356.

Q 11:56 p.m.?

A Correct.

MR. DURANT: That's all the questions I have.

THE COURT: Thank you, sir. You can step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Ladies and gentlemen, I got some matters of law that I got to take up outside of your presence and they're probably going to take the balance of this afternoon. So I'm going to send you home and ask you to be back at 9:30 in the morning. Don't discuss this case and allow anyone to discuss it with you. And don't talk about it with your family because if they like my family, they might have an opinion as to what you ought to do and they hadn't been here. I'll see you back at 9:30. I need you to be here. If you have an emergency, you need to call us. Because if you're not, I got to send somebody looking for you because I can't get started until all of you show up. Have a great evening. See you in the morning.

MR. DURANT: Your Honor, before the jury leaves, may I approach?

90

THE COURT: Yeah.

Hold on just a minute.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen, it's 10:30 now and not 9:30, okay. I'll see you all back at 10:30 in the morning.

(WHEREUPON, the jury is excused for the day.)

MR. BARR: Judge, so that you will be aware of where we're going. In addition to the suppression hearing that is the Jackson vs. Denno hearing and hearing on the -- that was made during the transportation to the detention center, we will also move to suppress the -- move to quash the search warrant as an additional basis for our motion to suppress the blood test results. It is the position of the defense that the affidavit supported the search warrant defense issue.

THE COURT: Okay. All right.

MR. DURANT: Judge, we prepared to go forward and argue that suppression.

THE COURT: What time do you want to start?

MR. BARR: I though we was going to do it tomorrow.

MR. DURANT: We'll be prepared in the morning

regarding that issue. I'll have the witnesses that are necessary here.

THE COURT: What time do you all want to get started in the morning? I don't have any idea how long it's going to take. You all know more about what the witnesses going to say than I do.

MR. DURANT: Well, in regards to the -- two of the witnesses are the same for both the Jackson vs. Denno issues and the suppression issues. The only additional witness would be Judge Locklair the magistrate that signed the search warrant. Those will be the three witnesses. Judge, I would hope we can handle it in an hour.

THE COURT: Okay. So what time do you all want to start back in the morning?

MR. DURANT: 9:30.

THE COURT: Okay. All right. I'll see you all at 9:30.

MR. DURANT: An hour sounds find to you, Mr. Barr?

MR. BARR: Maybe an hour and a half.

MR. DURANT: Start nine o'clock, Judge, that's fine.

THE COURT: We'll start at nine then.

MR. BARR: You waking me up early.

MR. DURANT: You need to go to bed before

92

midnight.

MR. BARR: I wouldn't have to stay up until midnight if you all wouldn't throw all of this paper and stuff at me I can go to bed at a reasonable time.

THE COURT: So we done with this case for the day?

MR. DURANT: Yes, sir, Your Honor.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on May 15, 2018.)

(WHEREUPON, State's Exhibits Nos. 13-45, 48 were marked for identification only.)

THE COURT: Okay.

MR. DURANT: Your Honor, prepared to go forward -- back on the record, of course, with State vs. Tammy Dianne Brown indictment 2014-GS-14-408. I'm prepared to go forward on the issues of the defendant's voluntariness or the defendant's statements, as well as a suppression hearing, with respect to blood sample and urine sample that were taken from the defendant. Your Honor, in the interest of just court efficiency two of my witnesses overlapped and so what I would propose as to the proceed be to call those law enforcement officers and question as to each issue and then have argument on each issue in turn following testimony.

THE COURT: You got any objection to that, Mr.

Barr?

MR. BARR: No, sir.

THE COURT: All right, call your first witness.

MR. DURANT: The State would call Trooper Jeffrey Minnix.

THE CLERK: Do you solemnly swear to tell the truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Jeffrey Minnix,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION IN-CAMERA

BY MR. DURANT:

Q Trooper Minnix, if you would just briefly or quickly tell the Court where you work?

A I work in Sumter and Clarendon Counties of South Carolina.

Q For who?

A For South Carolina Highway Patrol.

Q I know you're not in uniform today. What's the reason for that?

A I broke my ankle several weeks ago and I'm on sick leave right now.

Q So you're not allowed to appear in uniform while you're on sick leave?

A Yes, sir.
Q You still employed by the highway patrol?
A Yes, sir.
Q You expected to return to work in a couple weeks?
A Yes, sir.
Q Trooper Minnix, were you assign to investigate the accident that we're here in court about that occurred back on August 30th of 2014 on Highway 261 in Clarendon County?
A Yes, sir.
Q Were you the -- you were the actual investigating trooper assign to work the case?
A Yes, sir.
Q What time did you arrive on scene?
A I believe it was about approximately 1223.
Q Am?
A Yes, sir.
Q Okay. With the following day the 31st?
A Yes, sir.
Q Okay. And what is the estimate time as to the actual accident?
A The estimated time was going to be 2356, which is 11:56 on August 30th that night.
Q Just before midnight August 30th?
A Yes, sir.
Q You weren't the first one that arrived on scene?

A No, sir, I was not the first responder.
Q Okay. Who else was on scene when you got there?
A If I'm not mistaken, I believe fire was on scene, EMS, and there was a deputy there. They had secured the scene to keep bystanders from interfering.
Q Sheriff office deputies?
A Yes, sir.
Q Okay. So other first responders. Was EMS already on scene?
A Yes, sir, I believe so.
Q The fire department, EMS, the Clarendon County sheriff's office, deputies were all on scene when you arrived?
A Yes, sir.
Q Did you have another trooper with you?
A Yes, sir, I did.
Q And who was that?
A Corporal Dubose.
Q Was she asked to ride in the vehicle with you?
A Yes, sir. At this time I was still on what we call FTO and the training program we do a two-month ride along with our training officer. And she was my training officer at the time.
Q Okay. So Trooper Dubose was actually with you in your vehicle when you arrived on scene and did she assist

you with the investigations?
A Yes, sir.
Q Tell the Court what you did when you got there?
A We arrived on scene. I activated my body mic and my camera were on. When we got out, we went over to the pickup truck was the closest vehicle to us, so we approached that. We talked to EMS -- correction we talked to fire first and they informed us that the driver of the vehicle was DOA at that time. And they were extricating the passenger of the vehicle. We then walked down to the other vehicle that was involved in the collision which was some distance away. While we were walking down there, I was taking pictures. And when we got to the vehicle, we just kind of walked around the vehicle to see what kind of damage was done. They told us that the driver of white vehicle was in the ambulance which was off of Boyd Road.
Q Who told you that fire department?
A Fire department.
Q Okay.
A They had basically informed us that the ambulance was parked on Boyd Road at the intersection there and EMS was taking care the driver of the vehicle.
Q At some point did you have conversation with the defendant?
A Yes, sir, I went into the ambulance at that time. I

went in EMS was taking care of the driver of the vehicle. I asked her her name.

Q Before you get there, what was the purpose in speaking with her at that point?

A Just trying to figure out what was going on, what had happened during the collision because at that point in time we had a rough idea of what had happened, but we like to interview the people that were actually involved in it just to kind of confirm our findings of what we're seeing.

Q Okay. Tell the Court about your conversation with the defendant?

A When we spoke to the driver of the vehicle, she identified herself as Tammy Dianne Brown, spoke to her, asked her where she was coming from. She told me she coming from a friend's house. At that point in time I can smell a strong odor of alcohol beverage coming from her person. I asked her if she had anything to drink. She said, yes, she had two tequila shots. Then she quickly changed it to, no, she had two wine coolers instead. I was like okay. I asked her what was in the clear cup in the vehicle at the time. And she said a friend of hers made her a drink to go. She believed it was a wine cooler. I said okay. At that point in time EMS was ready to take her to the ER, so I exited the ambulance and they proceeded to get ready to take her to the ER.

Q Now, at any point during this conversation, was she advised of her Miranda rights?
A No, sir.
Q Okay. Was she arrested at this point?
A No, sir.
Q Was she in custody?
A No, sir.
Q Prior to speaking with her, do you believe that you had reason to arrest her or place her in custody?
A Prior to speaking to her, no, sir.
Q Okay. Was she deprived -- is her freedom any way about law enforcement at that point?
A No, sir.
Q Was anybody else there present with you during that conversation?
A Just the EMTs in the ambulance.
Q Okay. And again the conversation took place in the back of the ambulance?
A Yes, sir.
Q Tell me about Ms. Brown did she have any apparent injuries?
A If I'm not mistaken, she did have some scratches and some scrapes on her. They were more concerned about any sort of internal injuries and so that's why they were trying to get her out of there as quickly as possible to

the ER.
Q All right. After speaking with Ms. Brown in the ambulance, you said the ambulance left and took her to the hospital. Did you convey that information to Trooper Dubose who was there with you?
A Yes, sir, I did.
Q Immediately?
A Yes, sir, as soon as I left, I walked back over to Corporal and I explain to her what consisted of the interview. I told her, you know, what Ms. Tammy Brown had told me. And we continued to work the collision after that.
Q Okay. So you stayed at the accident scene, continued to work the collision. And EMS had gone with Ms. Brown to the hospital?
A Yes, sir.
Q Okay. And law enforcement didn't go with her to the hospital?
A No, sir.
Q If at some point thereafter after finishing your investigation or after continuing your investigation for a time at the scene, did you then go to the hospital and speak to Ms. Brown again?
A Yes, sir.
Q Okay. Tell the Court about your interaction with

Ms. Brown at the hospital?

A Once we got to the Clarendon Memorial ER, we went in. We spoke to Ms. Brown again. Again we asked her, you know, to kind of clarify some of the aspects of what happened. She told us that the individuals had -- were trying to pass somebody and it been a head on collision they hit her.

Q Let me back up for a minute. Before you spoke with Ms. Brown at the hospital, did you advise her of her Miranda rights?

A No, sir. She still -- she was not placed under arrest at that time.

Q Okay. Continue to tell me about the conversation with Ms. Brown at the hospital?

A As soon as she got done relating her story of what happened, that's when we told her she was under arrest for felony DUI. We read her Miranda rights to her. I do have a card that I carry. I did read them off the card. Then she was read her implied consent rights. At that point in time excuse me -- she had agreed to provide a blood sample. Once we told her she was being placed under arrest for felony DUI, she decided she didn't want to provide a blood sample any more. She became belligerent. She started yelling that she didn't kill nobody. Nobody died out there how could she kill somebody if they hit

her. At that point in time ---
Q These statements were all after Miranda?
A Yes, sir. And after her implied consent rights were already read. So Corporal Dubose left to go secure a search warrant. I stayed at the hospital. I was not in the actual trauma room. I was just outside of the nurses station. And basically she just kept ranting for, I guess, approximately about an hour or so until Corporal Dubose arrived.
Q Was anybody with her?
A No, just the nurses were with her.
Q Let me back up to the Miranda rights that you read to her. You said you read them off of a card?
A Yes, sir.
Q You keep that card with you in your wallet?
A Well, I keep it actually in my hat band, yes, sir.
Q Okay. You don't have that card with you today, do you?
A No, sir, I don't.
Q Did you advise her that she had a right to remain silent?
A Yes, sir.
Q Did you advise her that she had a right to an attorney?
A Yes, sir.

Q And to have an attorney there present with her during questioning if she so desired?
A Yes, sir.
Q Did you advise her that if she could not afford an attorney that one would be provided for her?
A Yes, sir.
Q Did you advise her that anything that she said could and would be used against her in court?
A Yes, sir.
Q Did you advise her that at any point if she wanted to stop the questioning she could do so?
A Yes, sir.
Q Okay. And did she appear to understand those rights?
A I believe so, yes, sir. They appeared to be, yes, sir.
Q All right. And again she continued to speak with you after having been advised of those rights?
A Yes, sir, not just to me but more ---
Q In your presence?
A In my presence, yes, sir.
Q So Corporal Dubose left to go get the search warrant?
A Yes, sir.
Q Okay. And at some point she returned to the hospital with the search warrant?
A Yes, sir.

Q Was the defendant's -- was the blood and urine sample taken from her at that point?
A Yes, sir, she was read the search warrant. She was served the search warrant. A blood sample and urine sample were both taken.
Q In your presence?
A Yes, sir. The urine sample wasn't taken in my presence. It was actually taken in Corporal Dubose's presence, but the blood sample was taken in mine.
Q Corporal Dubose is, of course, a female officer?
A Yes, sir.
Q Okay. Now, after placing her under arrest, reading her her Miranda rights and implied consent rights and serving the search warrant upon her and taking her blood sample, what did you do with Ms. Brown?
A We then transported her to Clarendon County detention center.
Q She didn't require any further treatment from medical personnel?
A No, sir.
Q Okay. So you -- did you transfer her yourself in your patrol car?
A Yes, sir, I did.
Q And is that patrol car equipped with a recording device?

A Yes, sir.
Q And it's pointed towards the passenger?
A It was an older system. It was the VHS system, so the cameras it's a single occular camera. So when we got in, I have to turn the camera around to face the passenger. So, yes, I turn the camera around and it was facing her for the duration of the drive from the hospital.
Q I want to show you what's been marked as State's Exhibit 47. It's a felony DUI Tammy Brown disk two. You recognize that?
A Yes, sir, that's my handwriting.
Q Okay. Tell the Court what that is?
A That's going to be the actual video from the -- the trip from the hospital to the detention center.
Q Okay.

MR. DURANT: Your Honor, I ask permission to publish this to the Court for the purpose of this hearing.

(WHEREUPON, DVD disk played for the judge.)

THE COURT: Okay.

BY MR. DURANT:
Q Trooper Minnix, is that video is it a fair and accurate representation of your trip from the hospital to the jail with Ms. Brown that evening?
A Yes, sir.

Q Is that video altered or edited in any way?
A No, sir.
Q At any point during any of your conversations with Ms. Brown, did you threaten her or coerce her in any way?
A No, sir.
Q At any point did she ask you to -- advise you that she didn't want to answer your questions or ask for an attorney?
A No, sir.
Q To the best of your knowledge, were her statements given to you given freely and voluntarily?
A Yes, sir.

MR. DURANT: Trooper Minnix, that's all the questions I have, just answer any Mr. Barr has for you.

CROSS-EXAMINATION IN-CAMERA

BY MR. BARR:

Q Trooper Minnix, I'm Charles David Barr and I practice law in Kingstree?
A Yes, sir. How you doing, sir?
Q I don't think we've ever met before.
A No, sir. How are you?
Q Now, you are currently employed by the South Carolina Highway Patrol?
A Yes, sir.
Q And what is your rank?

A I'm a trooper first class, sir.
Q And how long have you been employed with the highway patrol?
A Since January 2014.
Q So you got probably about almost ---
A Almost five years, yes, sir.
Q Almost five years. And you -- I noted during those five years you have had occasions to investigate automobile accidents?
A Yes, sir.
Q Okay. And as far as the area where you are assign to, what area are you assign to?
A Sumter and Clarendon Counties.
Q Sumter and Clarendon County?
A Yes, sir.
Q Okay. So are you familiar with Highway 261 from McCall's farm to Paxville?
A Yes, sir.
Q And are you familiar with the various road signs that appear on the road to control traffic?
A Yes, sir, as far as speed limit signs and stuff like that, yes, sir.
Q Speed limit signs?
A Yes, sir.
Q Is it fair to say that all the speed limit signs as

far as you know they are on a white poster with the black trim?
A Most of them, yes, sir.
Q And have you had an occasion to travel from Paxville back to Manning?
A Yes, sir.
Q Do you know how many speed limit -- posted speed limit signs there are from Paxville back to Manning?
A I would estimate probably three to four. I couldn't be absolutely sure, sir.
Q Now, the three or four that you know are they all white posted signs with the black trim?
A Most of them, yes, sir.
Q Well, what other speed limit signs do they say speed limit?
A Those are the only ones that say speed limit, yes, sir.
Q The ones with the white sign and black ---
A Yes, sir.
Q And to the best of your knowledge as a highway patrolman they're there to control the speed limit?
A Yes, sir. Yes, sir.
Q Now, there are some other signs that are on the road between here and Paxville?
A Yes, sir.

Q That are yellow signs.
A Yes, sir.
Q As a highway patrolman, are those signs meant to control speed too?
A Yes, sir, what it is it's coming up to certain intersections they want to reduce that speed coming up to those intersections because it's hard for the people that are coming from those side roads to determine what's happening on that roadway, that major roadway. So it kind of -- they're there to slow traffic down coming into those areas so that individuals have enough time -- have ample time to make a decision whether they're going to enter traffic or not.
Q But those are not speed limit signs?
A As far as I know they are, yes, sir.
Q I thought you said earlier that all the speed limit signs are white speed limit signs were ---
A I didn't say that. I said the ones that say speed limit are white with black lettering, but as far as the yellow signs, the yellow normally means caution and the speed limit drops down to whatever that determination of speed is.
Q They mean caution?
A It's a caution to let people know caution, but then the speed limit is reduced normally in those areas by DOT

for that purpose.
Q Reduce normally. They don't say reduce speed, do they?
A Most of them don't, no, sir.
Q All right. So you were dispatched to the area of Boyd Road and Highway 261 and you were informed that there had been an automobile accident?
A Yes, sir.
Q Okay. You were accompanied by Trooper Dubose?
A Yes, sir.
Q When you arrived at the accident scene, I noticed that you indicated that you had your body mic?
A Yes, sir.
Q And was it working?
A Yes, sir, it was. Would you like me to explain?
Q No, sir.
A Okay.
Q Not yet. I want to know whether it was working?
A Yes, sir, it was working.
Q Now, you indicated to the Court that you when arrived at the scene you had occasion to have a conversation with Ms. Brown?
A Yes, sir.
Q And was your body mic working at that time?
A It was on. Unfortunately, I was so far away from my

vehicle that it did not pick up our conversation.
Q So now you done this before. You've investigated automobile accidents and you questioned the people involved in the accident?
A Yes, sir.
Q You know how to do that, don't you?
A Yes, sir.
Q And according to the purpose of having the body mic, you record the conversation; isn't it?
A Most of the time, yes, sir.
Q Well, that's what you got the body mic on for?
A Yes, sir, but we can't be in control of the technology and the sufficiencies of those technologies.
Q Are you telling us that as a highway patrolman you don't know what the range is in order to activate effectively record a conversation?
A No, sir, what I'm saying is is that sometimes our body mics they pick up. And if we're in a vehicle, they may not pick up. It just depends. This was a VHS system was older equipment.
Q All right. Well, here's the bottom line, Ms. Brown as you said made some statements to you about her consumption of alcoholic beverages and you recorded none of it?
A No, sir.

Q All right. But now based on your recollection, you did say she told you initially that she had some tequila and then she told you that she changed it to wine cooler?
A Yes, sir.
Q And how many wine coolers did she have?
A I believe the number of actual drinks didn't change. She told she had two tequila shots and then she changed it to two wine coolers.
Q Two wine coolers. All right. Two tequila shots and two wine coolers. She changed it to two wine coolers?
A Yes, sir.
Q You asked her about a cup that was in the vehicle?
A Yes, sir.
Q That cup was on the floorboard of the vehicle?
A Yes, sir.
Q And you asked her what was in the cup?
A Yes, sir.
Q And did she respond?
A Yes, sir, she told her friend that made her -- she told me that a friend had made her one for the road.
Q I notice that's what you said -- you said she had made her one for the road?
A Yes, sir.
Q And did she tell you what the friend had made for?
A Yes, sir, she told me that she poured a wine cooler.

Q A wine cooler for the road?
A Yes, sir.
Q Now, did you ask Ms. Brown whether she had dranked any of that wine cooler that she had for the road?
A I can't be sure, sir.
Q So you don't remember asking her that question?
A No, sir, I don't remember asking her that question.
Q So you don't remember asking her the question, so you certainly don't remember her telling you that she drank from the cup drank?
A No, sir.
Q All right. Now, incidentally what happened to the cup?
A Pictures were taken before we even touched the vehicle and then I actually picked the cup up. I smelled it, that's why I can smell there was an alcohol -- some sort of alcohol beverage that had been in it. And the cup was put back on the floorboard of the vehicle.
Q Now, I notice you didn't say anything in your incident report about smelling any cup, did you?
A No, sir.
Q You just left that out?
A Yes, sir, I guess ---
Q It wasn't reported?
A No, sir.

Q All right. Now, was the cup ever analyzed?
A No, sir.
Q Okay. Do you know whether or not the vehicle was confiscated after this accident?
A From my understanding is MATE would have put a hold on the vehicle, so that they can do their investigation, take their pictures and do their initial investigation of that vehicle. So as far as putting a hold on it, I believe there was.
Q So they had their forensic people go over it and go all around it and go all through it?
A Yes, sir.
Q Okay. You don't know about them finding any evidence of alcohol in the vehicle?
A I don't know exactly what their report has it in, sir.
Q All right. So now you then decided to -- when you questioned or talked with Ms. Brown, you said that she was not a suspect at that time?
A No, sir, we were just ---
Q Initially?
A Yes, sir.
Q And she was not in custody?
A No, sir.
Q So you were just conducting an investigation to

determine who the parties were or who was driving. Somebody told you that she had been driving one of the vehicles?

A Yes, sir. We were just trying to confirm that at that time to figure out what happened?

Q Well, now you don't deny that as of the time that you claim that she told you that she had had two wine coolers or had one for the road, you kind of suspected DUI?

A When she told me that, like I said, just from her demeanor and the alcohol beverage odor coming from her person, I was starting to suspect at that point in time ---

Q Starting to suspect?

A Starting to suspect, yes, sir.

Q She was becoming a suspect then, right?

A Starting to suspect, yes, sir.

Q All right. Now, so when you went to question her at the hospital at the emergency room, she was already a suspect, wasn't she?

A We went to verify what she had told me before, so she still was not a suspect. The reason being is my FTO was with me at that point. And so we just wanted to verify and get more -- so that my FTO could help me make that decision whether she was going to be a suspect or not.

Q Well, now you suspected that she had taken alcohol

and alcohol was somehow involved in this collision, but yet you said she was not a suspect when you went and talk to her?

A No, sir, I suspected, but she wasn't a suspect. She still was not being charged at that time.

Q Well, she wasn't being charged, but she was the person driving the vehicle?

A Yes, sir.

Q Allegedly?

A Yes, sir.

Q And you pretty much knew that she was driving the vehicle?

A Yes, sir.

Q And you suspected that she had been taking alcohol and had a bad wreck?

A Yes, sir, but that doesn't necessarily mean that she was intoxicated at that point in time. So when we got to the hospital the corporal who has more experience in these situations -- again I was just two months out of the academy. She had a lot more experience in these situations. She was there she help me determine to make that charge of felony DUI.

Q Did you Mirandize her at that point ---

A Yes, sir.

Q --- at the hospital?

A Yes, sir.
Q Now, you from the time you initially encountered her until the time she got to the hospital, you never offered her any field sobriety test or anything like that?
A No, sir. She was already inside the ambulance and they were getting ready to transport her. There was no need to get her out of the ambulance just in case there were any sort of internal injuries.
Q Well, now you don't know what her health situation was or did you ask somebody?
A No, sir, the EMS was adamant that they were transporting her, so I did not know what her injuries were. I wasn't going to take the chance of getting her outside the vehicle just to give her a field sobriety test.
Q You telling this judge that EMS -- somebody from EMS told you that they were adamant about transferring her?
A Yes, sir, EMS said we're transporting her. I don't argue with EMS.
Q So you didn't ask her anything about -- whether she -- a field sobriety test or anything like that?
A No, sir.
Q All right. So now you and Trooper Dubose who you say had more experience than you?
A Yes, sir.

Q Where was Trooper Dubose when you were talking to -- I notice you said you were up in the ambulance?
A Yes, sir.
Q You went up in there and got in there, right?
A Yes, sir.
Q And Trooper Dubose went in there with you?
A No, sir.
Q So Trooper Dubose was not present at the time that you questioned initially Ms. Brown?
A No, sir.
Q Now, did you go back and tell Trooper Dubose, you know, that woman told me she had two drinks of tequila?
A I explained to Trooper Dubose what the conversation had happened between myself and Ms. Brown. I told her what had transpired in that conversation.
Q When did you tell her that?
A Several minutes after I out of got out the ambulance.
Q So here you are investigating this accident involving one dead man and one man messed up pretty good and you stopped with your investigation and you went had a conversation with Trooper Dubose and tell her what Ms. Brown told you?
A We actually -- we continued our investigation. She was actually taking measurements. I continued to take pictures, but while we were doing that, we conversed, yes,

sir.

Q So now if we bring Trooper Dubose in her now I put her under oath. If she tell the truth, she'll say that you stopped what you were doing and told her about what Ms. Brown had told you.

A Yes, sir.

Q All right. Now, you -- did you ever offer her the breath test?

A No, sir.

Q Never offered the breath test. Did anybody with hospital credentials -- and when I say hospital credentials I'm talking about like a doctor or some qualified nurse or somebody like that. Did anybody like tell you that she could not take a breath test because of some injury that she had?

A As far as I know the nurse made that determination, but she's also -- in a felony DUI case, a breath sample is not required just a blood test. And that's why we went and got a blood test.

Q Well, here's what I'm talking about, I'm talking what you did. Did you ever -- were you ever told by an official with the hospital -- with a doctor or a nurse that she could not -- that there was something wrong with her mouth or she could not ---

A No, sir.

Q So you made the decision alone not to offer a breath test?
A No, sir.
Q Tell us who made the decision?
A The State of South Carolina.
Q The State of South Carolina?
A Yes, sir.
Q And who represented the State of South Carolina when South Carolina made this decision? Who was representing you?
A No, sir. What we have is is we have implied consent rules. We go by those implied consent rules. In those implied rules, a blood sample is required. They're not required to give a breath test, only a blood sample is required. That's why we're required to get a search warrant for a blood sample.
Q So it's your testimony that you alone made the decision not to offer a breath test?
A Yes, sir.
Q All right. Good. Got that cleared up. Now, the blood test you said that decision -- initially she was kind of cooperative and then when you all told her -- when I say y'all, I'm talking about you and Ms. Dubose that she was under arrest, she then said, no, I'm not giving a blood test?

A Yes, sir.
Q Give you the blood sample?
A Yes, sir.
Q Okay. All right. Do you have any recollection -- listen to me now. Do you have any recollection of anything you did to assist her in getting an independent sample -- get an independent test?
A No, sir. We were at the hospital. She was read her implied consent rights. In the implied consent rights, it says that if she would like independent testing since we were already at the hospital all she had to do was ask the nurse because that's all we're required to do is to provide her that assistance.
Q Listen to my question this time.
A Yes, sir.
Q Do you have any recollection of anything you did to assist her in getting an independent test?
A She was at the hospital. I don't take blood.
MR. BARR: Judge, would you direct him to answer the.
THE COURT: You can answer the question and then you explain it. It requires a yes or no answer.
A Okay. No, sir, I did not physically assist her with giving blood or getting blood or anything like that. Again, I'm not a -- I don't take blood. That's not in my

qualifications. So I cannot physically do that. What I did was I made sure she was at the hospital. I read her her implied consent rights from implied consent rights state in there that if she would like to have another person of her own choosing she can do that. Since she was already at the hospital she had that choice. I did not stop her from making that choice.

Q So the answer to my question is, no, I did not. Do you know if Trooper Dubose did anything to affirmatively assist her in obtaining a blood test, independent test?

A No, sir, again same answer she's not qualified to take blood.

Q So you were present at the time and you know of your own knowledge that Ms. Dubose did nothing to assist her in getting an independent test?

A No, sir.

Q All right. Now, listen to my question. From a chain of custody standpoint, after the blood was drawn and I realize you were not present when the urine sample was taken, but when the blood was taken, you were present?

A Yes, sir.

Q And was delivered to you?

A Yes, sir, the two vials were handed to me. I put those two vials inside the case that it comes in. We have a kit, put those two vials inside the kit. I seal the kit

up after I signed my initials on the vials where her name is and everything. I put those two vials in the kit. I seal the kit up, fill the top of the kit out, put the kit inside a plastic bag that comes in that kit. I then put that plastic bag inside the next box. I then seal that up and put my initials on it.

Q You never gave Ms. Brown a sample?

A No, sir.

Q Okay. Now, so you then you got the blood and you getting ready to take it to SLED. Before you got to blood though, you said you obtained a search warrant?

A Yes, sir.

Q Okay. And the search warrant was actually I believe obtained. Trooper Dubose is the one that ---

A Trooper Dubose -- yes, sir, Corporal Dubose is the one that actually -- Corporal Dubose is the one that actually secured the search warrant.

Q Are you familiar with the search warrant?

A Just vaguely, sir.

Q So there's no question that you did not actively assist her in drafting the search warrant?

A No, sir.

Q Okay. And you didn't assist her in relating anything to the magistrate regarding probable cause other than what was in the search warrant?

A Me speaking to the magistrate, no, sir, I never spoke to the magistrate about this.
Q So nothing independent out there that was told to the magistrate as far as you know that's not in the search warrant?
A As far as I never spoke to him, no, sir.
Q All right. You didn't talk to him. So any questions regarding the information that either in or not in the search warrant, it would be your position that Trooper Dubose would be the person that would have to answer those questions?
A Yes, sir.
Q Okay. All right. So who served the search warrant?
A Corporal Dubose actually served if I'm not mistaken. We were both in the room, but if I'm not mistaken, I believe Corporal Dubose actually read the search warrant to her.
Q She read the search warrant?
A If I'm not mistaken, sir, I believe that's what happened.
Q The only visible injury you saw on Ms. Brown when she appeared to have some scratches, right?
A Yes, sir, I can't be absolutely sure. I believe she did have a little bit of blood on her shirt if I'm not mistaken, but, yes, sir, I believe there were some

scratches or such on her arms or something.
Q All right. I just got one or two more. Now, you were beginning to feel like alcohol was involved when you went to the EMR (sic) to speak with Ms. Brown and you Mirandized her at that point and had told her about the implied consent -- give her the implied consent?
A Yes, sir, after a second interview, we then informed her that she was being placed under arrest and having Mirandized. And then at that same time, we did read her implied consent rights to her.
Q That's after the second interview?
A Yes, sir.
Q All right. You read her her implied consent rights. Now, when she left the hospital, left the emergency room and got in the police cruiser, no question that she was physically in custody then, right?
A Yes, sir.
Q And, of course, you didn't Mirandize her again?
A No, sir. I also didn't ask her any questions either, sir.

MR. BARR: I have nothing further, Judge.

THE COURT: Okay.

MR. DURANT: Just maybe one or two follow up.

REDIRECT EXAMINATION IN-CAMERA

BY MR. DURANT:

Q Trooper Minnix, I'm going to show you what's been marked as Court's Exhibit 2. We didn't go over this earlier, but we're kind of expanding the scope of this hearing. If you would tell the Court what that is?

A This is the implied consent rights for a felony DUI.

Q Do you recognize that particular form?

A Yes, sir.

Q Okay. Is that the exact form that you read to Ms. Brown on the evening in question?

A Yes, sir.

Q Okay. And is that your signature at the bottom?

A Yes, sir.

Q What time -- when is it dated and at what time?

A It's dated August 31st 2014. I believe it's going to be 0155.

Q That be 1:55 a.m.?

A Yes, sir.

Q Is that the time that you arrested Ms. Brown?

A Yes, sir.

Q Was Trooper Dubose present with you when you read her her implied consent rights?

A Yes, sir, her signature is on her as well.

Q Do you read directly from the form?

A Yes, sir, it's all verbatim, yes, sir.

Q In its entirety?
A Yes, sir, other than the Spanish version at the bottom.
Q Right. Did Ms. Brown sign, acknowledging that you had read her those rights?
A No, sir, she refused to sign.
Q She refused to sign?
A Yes, sir.
Q And is that notated on the form?
A Yes, sir.

MR. DURANT: Your Honor, I make that Court's Exhibit for purpose of this hearing.

THE COURT: Okay.

(WHEREUPON, Court's Exhibit No. 2, 3 and 5 was marked for the record.)

MR. DURANT: And that's all the questions I have.

MR. BARR: Judge, just so we'll be clear, are we doing the portion of the pretrial and the portion dealing with the failure to do the video now?

MR. DURANT: It's your request.

MR. BARR: Well, I got few more questions for you.

THE COURT: Go ahead.

RECROSS-EXAMINATION IN-CAMERA

BY MR. BARR:
Q You're familiar with the incident site and breath site video requirement for ---
A The breath site which would be the BA room, yes, sir.
Q Okay. Now, did you -- when you went to the incident site and talked with Ms. Brown, did you videotape anything?
A My camera was running. It was unable to pick up anything that happened.
Q Listen to my question. Did you videotape anything?
A My camera was on. Unfortunately, I was unable to pick up anything that happened inside the ambulance.
Q So the answer to my question is I did not videotape anything?
A I was video taping the scene of the collision. As far as my interview with Ms. Brown went, it was too far away from the actual camera to pick up anything that happened inside the ambulance, but my camera was on and my body mic was activated. It was unable to pick up because the range was too far.
Q Now, you wrote it down, didn't you? The solicitor gave it to me. You said that it was physically impossible to videotape the contact of the driver of white car identified as Tammy Brown at the incident due to the fact that she was required emergency medical treatment. Now,

was Ms. Brown -- when you went to the incident site, was she in the EMS at the time?
A Yes, sir.
Q And you only noticed some scratches that she had?
A As far as I can recollect, yes, sir.
Q Now, the affidavit that you wrote explaining why you didn't conduct the video it's sign by you; is that correct?
A Yes, sir.
Q And you prepared it?
A No, sir, I did not prepare.
Q Who did?
A I believe the Solicitor's office prepared it for.
Q I believe they did too?
A Yes, sir, but that's what happened. I did read it and I did approve it.
Q You read it and approve it?
A Yes, sir.
Q You know why I ask you that?
A Go ahead, sir.
Q Because it said that it was impossible to conduct a breath test site. You know what that mean breath test site wasn't never any. I don't think you would have wrote that in there if you had done this, would you? Because there was breath test?

A No, she was taken to BA room, the blood alcohol test room at the jail.
Q The person that actually took the blood from Ms. Brown do you know who did that?
A I couldn't tell you her name. I believe it was the actually nurse or somebody that normally draws blood for the ER. I'm trying to think of the actual term they use for that.
Q You don't know anything about her qualifications or anything to draw blood?
A No, sir, I do not.
Q Okay. So you don't know -- did you know her personally?
A No, sir.
Q So do you know of your own knowledge whether she was authorize to draw blood from somebody?
A I believe she was authorize. I just don't know what her qualifications were, no, sir.
Q She had on nursing clothes or something like that?
A She was the -- I don't know if it was the nurse or whoever it was that draw the blood for them, but whoever it was would have been person that normally draws for them.
Q Just somebody that appeared to look like somebody working in the hospital and ought to be able to draw

blood, but you don't know?
A I don't know.
Q Okay. Did you sign Court's Exhibit Number 3 the SLED form that you all used? Did you sign that?
A Yes, sir.
Q That's your signature?
A Yes, sir.
Q All right. You took custody of the sample?
A Yes, sir.
Q And you were present when the blood was drawn, but you were not present when the urine sample -- of course, it wasn't analyzed any how?
A Yes, sir.
Q So now a blood sample had requested for her independent test? This is the one you sign, right?
A Yes, sir.

MR. BARR: I have no further questions.

MR. DURANT: No further questions.

THE COURT: All right. You can step down.

(WHEREUPON, the witness leaves the witness stand.)

MR. DURANT: Call Trooper Dubose.

THE CLERK: Raise your right hand and place your left hand on the Bible and repeat your name please.

THE WITNESS: Jennifer Paige Dubose.

THE CLERK: You swear the testimony you're about to give will be the truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Paige Dubose,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION IN-CAMERA

BY MR. DURANT:

Q Trooper Dubose, if you would tell the Court where you work?

A South Carolina Highway Patrol.

Q How long you work there?

A Twenty-one years -- going on 21 years.

Q Twenty-one years you say?

A Yes, sir, I graduated patrol school in January of 1998.

Q Have you been assign to Clarendon County throughout the entirety of that period?

A No, sir, when I came out of patrol school, I was station in Florence County. I was station there until 2001 I believe. And I got transferred back home to Clarendon. And at that point in time we were in troop seven. And then in 2006 we joined with troop one. And instead of districts it became a troop concept. They

joined us with Sumter County and was considered post A and I been there ever since.

Q All right. You were working in Clarendon County back on August of 2014?

A Yes, sir.

Q And were you the training officer for Trooper Minnix at that time?

A Yes, sir.

Q Were you riding with him on the evening of August 30th 2014 when he responded to the accident that led to these charges?

A Yes, sir.

Q Okay. Tell the Court what you did when you got to the incident scene?

A We -- this was Labor Day weekend. We were doing a holiday enforcement plan. We just cleared up from a driver's license check point on Raccoon Road at Silver Road. Myself and Trooper Minnix was on the way to SC 260 to hold another driver's license check point when we received a call of a collision with injuries. At that point in time we were still on Raccoon Road, but we were towards the lower end of Raccon Road towards 260. We traveled Raccoon Road north towards 261. Prior to our arrival at the scene at the time Sergeant Darren Wilson who is with our Ace Team was out with us at the previous

driver's license check point. He arrived at the collision scene first and he made radio contact with Trooper Minnix. He asked which units were responding to the collision. He made radio contact and advised that there was possibly one fatality in the accident. We arrived on scene. We were coming from the abandoned area. When we arrived on scene, the road way was blocked. The fire, EMS and I believe a sheriff's deputy or some form Clarendon County Sheriff's Department vehicles were there. Trooper Minnix position his vehicle to secure the scene. The first vehicle we came up on was a dark in color pickup truck.

Q Before you go any further, let me stop you there. You mentioned there obviously other first responders that had arrived before even Trooper Minnix. How far away from the accident scene did you all have to park when you got there?

A We parked as close as we could due to fire and other first responders had the roadway blocked. And there was also traffic that had been backed up that was headed towards Paxville that couldn't go any further, so they were turning traffic around. I don't know the exact feet as far as from Trooper Minnix car to the first vehicle involved which would have been the black pickup. If you're looking at a football field, I'd probably say maybe 30, 40 yards from where Trooper Minnix parked to where the

pickup truck was.

Q Now, the audio-video-recording equipment that Trooper Minnix's car was equipped with at that time, the audio portion is that linked to the video in the car?

A It is. And I'm not sure which year Trooper Minnix's car was at that time, but him just graduating out of the academy he had an older model car. And even in 2014, we had not upgrade our systems to the DVD system. So it was a watch guard VHS system. There's a small charging dock in the car that's hooked into the camera system. That charging dock has a range antenna approximately maybe three inches long. And that's what the signal from the body mic bounces back to that charging dock that's in the vehicle and transmits and records over the system in the car.

Q And the body mic and microphone attached to the trooper's person?

A Yes, it's attached to his belt.

Q It continues to record as it gets out of the vehicle?

A Correct. Whenever we initiate our lights, any kind of traffic stop where we initiate -- the blue lights turn on, our body mics and cameras turn on. And they can be initiate or turned on by pressing the body mic as well, but you cannot turn it off once it's turned on. Unfortunately, there's no way to turn it off unless you

turn your lights off and turn it off in your car.
Q All right. What kind of range does the mic have?
A It just depends. From my experience, it depends on the training. It depends on, you know, the area that you're in. We have a lot of issues with the foot pursuits running out of range of the body mic and also entering any buildings or any type of structures that would block the signal of the mic back to the vehicle.
Q Okay. And can you give me an estimated range and feed or yard as to how far a body mic would go on an average terrain, level terrain?
A Average terrain approximately -- I don't know, I'm just doing a football field. I'm sorry, but I would say probably 70 yards maybe or 60 yards, 70 yards.
Q All right. Have you had a chance Trooper Minnix's video from the incident scene?
A I have not.
Q Okay. Have you heard his testimony that he was not within range of his vehicle to record his statement given by Ms. Brown in the back of the EMS?
A Correct, yes, sir, I heard his testimony.
Q All right. And base on your experience would that be unusual?
A No, sir.
Q Okay. It was based on where you all had parked

circumstances surrounding this incident how far y'all were away from the ambulance would it be unusual for that body mic not to have picked up that recording, that conversation?

A No, sir, not that type of distance.

Q How far away was the ambulance from where y'all parked?

A I'd say at least 150 yards maybe.

Q So it was a good distance away?

A Yes, sir.

Q Okay. When you arrived on the scene, you mention you did some inspection of the scene and inspection of the vehicle at the scene. At some point did Trooper Minnix leave your side to go and speak with Ms. Brown in the back of the balance?

A Yes, sir. When we arrived like I said, Sergeant Wilson who was with another division at the time was on scene. We relieved him. He had his vehicle parked in the same area that we were, so he left. Since, it was a holiday weekend our first sergeant, which was PK Floyd at the time and our sergeant Joe Ham, they were out at the -- they were conducting road checks with us. So they both responded to the scene. Myself and Trooper Minnix went to the first vehicle which we came to which was the black pick up. Fire department and EMS were working on getting

the passenger out of the vehicle. And I observed the -- what appeared to be driver or a male subject slump down in the floorboard of the driver side.

Q Okay. I'll ask you about your other observations at the scene?

A And I was getting to why he left. He -- the fire department says another vehicle involved, so he went down there when our supervisors arrived and my supervisor arrived. I went and spoke with them while Trooper Minnix was in the ambulance and I saw taking measurements trying to secure the scene.

Q Okay. After Trooper Minnix spoke with the defendant, Ms. Brown, in the back of the ambulance, did he relay to you her conversation with him?

A Yes, he did.

Q Okay. And what did he tell you about that conversation?

A At some point in time after he spoke with Ms. Brown, he approached me and advise that he had talked to another driver. He gotten her identification and that he had smelled an odor of alcoholic beverage coming from her. He stated that she had admitted that she had been drinking and where she was coming from and the amount of alcohol she said she consumed prior to driving.

Q Okay. And had you also during your inspection of the

vehicle observed what appeared to be open container of alcohol in the vehicle in her car?

A That would have been after he informed me of the situation. We took photos of the vehicle and inspected the vehicle and that's when we -- that's when I saw the clear Solo cup on the floor board.

Q All right. Did it upon inspection appeared to have had alcohol substance in it?

A Yes, sir, sometime after that I don't know exactly at what point. Trooper Minnix had picked up the cup. He smelled it and he also let me smell it because I was his training officer just to confirm that it was a alcoholic beverage.

Q And based on your experience did it smell like alcohol?

A Yes, sir.

Q And at some point Ms. Brown was transferred to Clarendon Memorial and then you and Trooper Minnix responded to the hospital to speak with her further; is that right?

A That's correct. After she was transported, the other officers who were on scene secured the scene for us to leave. We went to the ER and spoke to Ms. Brown in the trauma unit of the hospital.

Q Okay. And when you spoke with Ms. Brown at the

hospital, were her Miranda rights read to her at that point?

A At first they were not. We were still in the process of investigating -- I wanted to confirm Trooper Minnix's -- I wanted to confirm that I smelled the odor of alcohol, the level of her impairment just because he was still in training. He was a fairly new officer, so I spoke with Ms. Brown as well and both made a determination of her impairment.

Q Okay. You spoke with her -- tell me about your conversation with her before Miranda at the hospital. What questions were asked of her and what did she say?

A As far as I remember, we went back over what happened, how she thought the collision had occurred. I was just observing her demeanor and her -- the way she was acting. As far as I remember, we asked her, you know, what happened. She said that she was -- she wasn't sure somebody came in her lane when she hit them and about her consumption of alcohol I believe at that time. She stated either wine coolers or wine. She had two. Made sure we had all her information as far as her name, date of birth and all that stuff correct. And then that's when myself and Trooper Minnix we asked him in his opinion as far as what charges he would make if I wasn't there. And then I just confirmed him that he would have made -- I believe

that she was impaired, so we went forward and asked her to give a sample.

Q So at that point the decision to arrest her had been made?

A So we asked her if she would give a blood sample. And at some in time after that was asked, she was read her Miranda warning and also her implied consent rights. After the imply consent rights were read, she became very irritated start yelling that, you know, she didn't kill anyone because it was read to her that it resulted in death. She refuse to cooperate as far as blood sample was concerned. So I contacted my supervisor at the time and advised him that we would be needing to secure a search warrant for her blood. And at that time he made some phone calls and found who out who the on call judge was for Clarendon County. And he contacted me back and gave me a couple numbers. I believe one judge that was called was advised -- we were advised to contact Judge Locklair. So I spoke with her over the phone and explain the incident and what other facts surrounding the incident that I would be needing to secure a search warrant.

Q And when you spoke with Judge Locklair over the phone, you mention that you had explain to her the facts surrounding the incident. What facts did you explain to her?

A Again, I woke her up this is probably 2:30, 3 o'clock in the morning. And I advised her we had a collision in Clarendon County on 261. I advised her it was involving two vehicles and the -- one subject was pronounced dead on scene. And the other subject was in critical condition and was transported by air to Florence. I advised her that the driver -- we believe the at fault vehicle was -- had an odor of alcohol beverage coming from her person. She admitted to you consuming alcoholic beverages prior to operating a vehicle. I explain to her what was told to me as far as at first she had stated she had taken two tequila shots. Then she changed it to two wine coolers. I also explain to her that upon my observations at the hospital the subject, you know, appeared to be intoxicated. She had bloodshot eyes and her mannerisms was that of an intoxicated person.

Q Okay. Did at some point that evening did you go and meet with Judge Locklair in person?

A I did.

Q Or that morning rather, I'm sorry?

A I did. Once it was relayed to my supervisor that we needed to secure a search warrant, he got in touch with our MAIT team and he was en route. I'm not sure if they were on scene at that time or not. And they sent me a copy of a search warrant and it was on a word document.

And I filed in the particulars as far as this accident was concerned and I met with Judge Locklair at her residence to secure a search warrant.

Q Let me show you what's been marked as Court's Exhibit 1 do you recognize that?

A Yes, sir.

Q That search warrant relevant to this case?

A Yes, sir.

Q And that's the search warrant -- does it bear your signature on the affidavit section?

A That's my handwriting there and that's my signature.

Q Okay. Let me just kind of review it. So we got the cover page here. The description of the premises and the property sought to be acquired by the search warrant. It appears to be signed by -- is that Judge Locklair's signature here?

A Yes, sir.

Q She sign it in your presence?

A Yes, sir.

Q And again -- and it's dated August 31st, 2014?

A Yes, sir, in the early morning hours.

Q What time was it roundabout when you met with Judge Locklair at her house?

A It was after three. I'm not sure the exact time.

Q After three a.m.?

A Yes, sir, around three.
Q Okay. And then it's an affidavit section of the search warrant and the reason for the affiants belief that the property sought is on the subject premises, the name below it says Corporal JP Dubose. Is that your signature?
A Yes, sir.
Q And your address and phone number?
A Yes, sir.
Q Okay. Sworn to subscribed before me is that Judge Locklair's signature?
A Yes, sir.
Q Did she in it in your presence?
A Yes, sir.
Q Okay. And there's a return attached to the search warrant. It looks like the search warrant was executed on August 31at at 3:15 a.m.; is that right?
A Yes, sir. Whatever's time on there is correct. I don't remember exactly. It's around three when I met with her, but by the time I got back hospital...
Q And tell the Court what was actually obtained from Ms. Brown?
A Two vials of blood and one container of urine.
Q Okay. So actually two vials were actually obtained two vials of blood?
A Yes, sir.

Q And one container of urine. And then inventory was made in the presence of Corporal JP Dubose and Trooper Minnix; is that right?
A Yes, sir.
Q And returned to Judge Locklair when?
A September the 4th.
Q Okay, 2014. So within ten days the return was made to Judge Locklair?
A Yes, sir.
MR. DURANT: And I pass this up for the Court to review Court's Exhibit 1.
BY MR. DURANT:
Q Now, Trooper Dubose went actually went to meet with Judge Locklair at her house, did she put you under oath and swear you in?
A Yes, sir.
Q Okay. You met with her at her residence outside the residence, inside. Do you remember?
A On her back porch.
Q On her back porch at three in the morning?
A Yes, sir.
Q Okay. And did Judge Locklair ask you any questions about how or why you suspected the defendant to be under the influence?
A She asked me over the phone and also when we got to

her residence we -- I just discussed, you know, what we had found.

Q Okay. Did you tell her ---

A The same facts that I gave her over the phone.

Q Did you tell her under oath about smelling alcohol coming from the defendant's person?

A Yes, sir.

Q About her having admitted to drinking or to consuming alcohol that evening?

A Yes, sir.

Q And about the opening container in the vehicle?

A I don't remember if I told her about the open container or not. I do remember -- I don't think that I would have conveyed the open container, but I'm not 100 percent sure.

Q But you're certain you told her about the smell of alcohol from her person and that she had admitted to both you and Trooper Minnix that she had consumed alcohol that evening prior to driving?

A Yes, sir.

Q After Judge Locklair signed the search warrant, did you then assist with -- you took it back to the hospital and executed it?

A Yes, sir, I returned to the hospital and I served a copy on Ms. Brown and read her what was to be searched and

what we were requesting as far as the SLED toxicology kit.
Q Okay. And then were blood and urine samples obtained by hospital personnel, medical personnel at that point?
A They were.
Q Okay. And do you remember who that person was?
A I don't remember the name of the person. It was ---
Q You know whether it was a nurse or phlebotomist?
A We told the nurse that we needed a blood sample, but the person who came in and took it I'm not sure. I have to look at the SLED -- the paperwork -- the collection report.
Q At any point during your conversation with Ms. Brown upon reading her -- I guess, let me ask it this way. When you read her her implied consent rights, one of the rights that's listed on that form advises her of her right to have a qualified person of her own choosing conduct independent test at her expense and that the officer upon request must provide affirmative assistance?
A That was read to her.
Q That was read to her. At any point did she verbalize and request to you or in your presence to have someone conduct an independent test of her blood?
A No, sir.
Q Okay. Did she ask for any assistance to have that done?

A No, sir.

Q Okay.

(WHEREUPON, a short break was taken.)

THE COURT: It's 20 minutes to 11. I got a jury sitting out there in the hall.

MR. DURANT: I understand.

THE COURT: How much longer you think this is going on to take?

MR. DURANT: Judge, I've just got a couple more questions and I'll be done with this witness.

THE COURT: And then you got another witness?

MR. DURANT: Yes, sir, Judge Locklair.

THE COURT: What about you, Mr. Barr? I need to send the jury out and tell them to come back in an hour or put them in the jury room?

MR. BARR: Judge, I like to cross examine this witness and I don't know who we got next, so I'm sure I'll be cross examining them too.

THE COURT: You can send them to lunch and have them come back at one or 1:30.

MR. DURANT: That's fine. Of course, we got to argue and Your Honor's got to make a ruling as to the issues too.

THE COURT: So what time do you want them to come back at two?

MR. DURANT: At 1:30.

THE COURT: Tell them come back at 1:30.

(WHEREUPON, Court's Exhibit No. 4 was marked for the record.)

BY MR. DURANT:

Q Let me show you Court's Exhibit 4 do you recognize that?

A Yes, sir.

Q Tell the Court what it is?

A It's a SLED urine blood collection report.

Q Okay. And does it indicate who collected the sample?

A Angela Floyd.

Q And it includes some statements that have to be checked beside them. One of those statements that's checked is that the subject is under arrest for a violation of 56-5-2945 which is, of course, the felony DUI statute and a blood or urine sample as requested. And then there's another line below it says a blood sample is requested by the subject for an independent test. Is that why it appear to be checked as well?

A There's a check beside it or up under it, but that's not the -- I fill this form out. The smaller checks were mine. And as you can see where it says this section to be collected -- be check a sample or collection. The phlebotomist or Ms. Angela Floyd she checked there and

there. And I think she checked here by mistake because she though she was on that section.

Q Okay. But to your knowledge or in your presence, did the defendant did she verbalize any request to you to have independent test done?

A No, sir.

Q Okay. What was done with the blood samples?

A They were sealed, place in SLED evidence toxicology kit and sealed and ready for transport. They were transported to the Sumter Patrol office and placed in evidence.

Q And eventually to SLED for testing?

A Yes, sir.

Q Okay. Are you aware if at any point thereafter Ms. Brown came forward and said, hey, I want to get my independent test done?

A No.

Q Did she ever to your knowledge did she ever contact highway patrol again and inquire as to whether or not she could have independent facility, independent analyst, make an analysis of the blood sample that was take that morning?

A No, sir, it wasn't to me.

Q Okay. As far as you know, all SLED procedures for the collection of the blood-urine samples were they

followed?
A Yes, sir.
Q All right. And as to the obtaining and the handling of those samples?
A Yes, sir.
Q Okay. Were they collected in a clean uncontaminated vial had not been previously used?
A Correct. The SLED toxicology kit is sealed whenever we get it and it's an integrity seal. The seal would have broken and the urine container and both vials would have been -- if the seal's not broken never been used.
Q And then, of course, it been up to the phlebotomist to follow all the proper procedure for collecting the blood sample?
A Correct.
Q Such as prepared her skin and placed in an unused, uncontaminated vial and so forth and secured the vial?
A It was done in our presence and we did observe that she did not use -- she used the betadine wipe that was in kit. She did not use alcohol.
Q So non-ethanol wipe for her skin?
A Correct.
Q You don't use alcohol wipe to blood sample when you're trying to test alcohol?
A Correct.

Q And then the blood-urine sample were they placed in a seal packaged or container of some sort?
A They were. The same kit contains the urine and blood. And then there's an integrity seal or a shipping seal that goes over it.
MR. DURANT: Trooper Dubose, that's all the questions I have. Please answer any Mr. Barr has.

CROSS-EXAMINATION IN-CAMERA

BY MR. BARR:
Q Trooper Dubose, now if I'm not mistaken, the vehicle that you rode in to get to this incident scene was being driven by Trooper Minnix?
A Yes.
Q As he rode to the incident scene, he had his audio and video equipment on at the time, didn't he?
A I believe while we were en route and when we were notified that there was one subject decease on scene -- I have not reviewed the video, but what normally happens is we would then turn on our lights, siren and video equipment to make sure -- we were able to arrive on scene as soon as possible.
Q Well, there's actually a video perhaps you hadn't seen it, it's a long video of his vehicle traveling to the scene.
A I haven't seen it, but if there's a video then, yes,

sir, it would have been activated.
Q Okay. Now, do you have a recollection of the route that he took to get to this scene?
A I know that we were on Raccoon Road near 260. So I'm not sure if we took 260 up to 261 or if we traveled. I believe traveled Raccoon Road up to 261.
Q Okay. So you came in on the west side of the collision?
A The east side, the Manning side.
Q The Manning side, yes, sir. All right. And State's Exhibit Number 1 and State's Exhibit Number 40. I'm going to show you number one first. And as you recollected does that photograph depict Highway 261 at the time of this incident from the west side?
A This photo was taken after we had left the scene. This is a MAIT photo, but it would depict the west side of the collision looking back towards Manning.
Q Take a look at this photograph which is Exhibit No. 40, that's the east side?
A This is also the MAIT photo and this is also the west side.
Q Okay. Now, at the time that you arrived, if I'm not mistaken, Trooper Minnix parked his vehicle on the right side of the road?
A I know that we were on the Manning side. As far as

his location in the roadway, I'm not sure.
Q Okay.
A We were not on the side of the pictures that you showed me.
Q Now, at the time that you entered or the time that you got to the incident site, did you know exactly what it is what you were gone find when you conducted your investigation?
A When we arrived?
Q Yes, ma'am.
A No, sir.
Q And in terms of where Officer Minnix parked, you could have gotten closer to the EMS vehicle if you wanted to, couldn't you?
A No, sir.
Q What was keeping him from getting -- have you looked at the video?
A No, sir.
Q Okay.
A We're taught to position our vehicles to secure the scene. And at that point in time Trooper Minnix positioned his vehicle so that no other vehicles would pass his vehicle and disturb the scene.
Q Did he park his vehicle on the side of the road or was he parked in the highway?

A I'm not sure, sir.
Q Okay. You don't remember where he parked, but yet you remember that he was parked in such a way he couldn't get any closer to the EMS vehicle?
A Correct.
Q Okay. Now, the vehicle that you were riding in was not your vehicle it was Trooper Minnix's vehicle; is that correct?
A Correct.
Q And he's the one that's accustomed to the use of the mechanical devices in that vehicle?
A Yes, sir.
Q He's the one that drives it?
A His experience in that vehicle for the entire time I was present up until that point. Our training program he would have ridden with me for six weeks and then he would have started driving his own vehicle.
Q Now, he said he was working for the highway patrol about four years?
A Yes, sir, I'm not sure his exact date of employment.
Q So now did you have your blue lights and siren on when you got to the scene?
A Prior to us arriving at the scene, if we had them on, we would turned them off prior to making -- prior to placing a vehicle in park.

Q Do you remember what, if any, vehicle obstructed you from getting closer to the EMS vehicle?
A I remember there was a fire truck that had their rescue lights on. There was also numerous rescue personnel as far as volunteer firemen.
Q Now, they were not in the roadway on the paved portion of the road?
A I'm not sure. I just know that they were on scene prior to our arrival.
Q I'm taking a look at Court's Exhibit Number 4, which is the South Carolina law enforcement division urine blood collection report?
A Yes, sir.
Q Okay. And I'll ask you whether you know this woman Angela Floyd?
A I do not.
Q Okay. Do you know the person that draw the blood?
A Personally, no, sir.
Q Do you know whether or not they were licensed or trained or do you know anything about it?
A Yes, sir, they were employed by the Clarendon Memorial Hospital system.
Q How do you know they were employed by the hospital?
A They showed up in scrubs with a badge.
Q Showed up in scrubs. So in as much as whoever it was

that draw the blood, appear to have a hospital uniform on in scrubs, would it be fair to say that you thought that they were authorized?

A I thought they were what I'm sorry?

Q An authorized person to draw blood?

A Yes, sir, because we had notified the attending nurse for Ms. Brown that we needed a blood sample. So she had contacted a hospital staff to come and draw that blood sample.

Q Did you know anything about the credentials of the person who drew the blood?

A I do not.

Q If I had put on a pair of scrubs and walked in there with a badge and a hospital identification -- well, let's do it this way, now, you didn't sign this SLED collection report, did you?

A I don't remember. I have to look at it again.

Q Well, I'll let you look at it again.

A Yes, sir, right here.

Q That's your signature?

A That's my signature.

Q Okay. And in response to some questions the Solicitor asked you, you indicated that there certain sections of this report you filled out?

A Yes, sir.

Q Show me what you filled out please, ma'am?
A I filled out all the biological information up here on top. I will have check that the subject was under arrest for felony DUI. And that they were informed of their writing and advised of in writing of her implied consent rights. I would have checked that the subject is under arrest for violation of 56-5-2945 and a blood sample is required or requested. And I checked ---
Q Is requested for what?
A You want me to read ---
Q I just want you to read that line that you were reading there when you said a blood sample is requested.
A Okay. So subject is under arrest for or in violation of section 56-5-2945 or 50-21-113. And pursuant to section 56-5-2946 or 56-21-116 a blood sample and or blood samples are requested.
Q How about the check mark that says a blood sample is requested by the subject for his or her independent test?
A That's not my check mark.
Q That's not your check mark?
A No, sir.
Q Now, if it's not your check mark and there's only two people that wrote on this form, how do you suppose that got on there?
A The collector if I could show you here?

Q Yes, ma'am.
A It says this section would to be checked by sample collector. As you can tell, those are larger check marks which matches the one that was checked up there. So I believe that Ms. Floyd might have checked by her name by accident instead of here and there.
Q By accident. Where did you get that from? I know if that was accident why in world -- have you gone to Ms. Floyd and said did you make an accident on the SLED report?
A No, sir, but I can tell you that's not my check mark.
Q Well, if it's not your check mark, you must agree that it must be by the person who filled out the form with you, is it not?
A That's not Trooper Minnix's check mark, so it had to be Ms. Floyd's check mark.
Q Had to be Ms. Floyd's check mark. And Ms. Floyd is the person that you and Trooper Minnix believe to be the official person to collect the woman's blood; isn't it?
A Yes.
Q All right. Now, I notice that -- this section -- there's a check mark here in this section and it says sections to be checked by sample collector?
A Yes, sir, that would have been Ms. Floyd.
Q So that would have been Ms. Floyd?

A Yes, sir.
Q Now, she says using a non-ethanol prep blood sample was collected into a use or unused, uncontaminated vial given to the arresting officer and she checked that didn't she?
A Yes, sir.
Q Of course, you don't know anything about. You did answer a question in response to the question the Solicitor ask you, but you don't know anything about the vial, do you?
A It was in a SLED tox kit that had an integrity seal on it.
Q Well, I mean, you don't know whether it was contaminated or not, do you?
A It's assume that it's not if it has an integrity seal.
Q Well, listen so your testimony is it had an integrity seal?
A Yes, sir.
Q Where it hadn't been opened?
A Correct.
Q And it had an integrity seal?
A Yes, sir.
Q Now, number two the second one says that a human sample was collected, that was also collected?

A Yes, sir.
Q Okay. Now, notice it says this -- using this non-ethanol prep blood sample collected an unused, uncontaminated and given directly to the arresting officer or the subject requesting the sample for his or her independent collection -- after collection?
A That's correct.
Q Now, who were these blood samples given to?
A They were given to Trooper Minnix and myself.
Q Were any one of them ever given to Ms. Brown?
A No, sir.
Q And you took both of them and carried them to -- and have them sent to SLED, didn't you?
A That's correct.
Q You took both sample?
A We get two vials, yes, sir.
Q Okay. Now, I tell you that I ask Trooper Minnix the same question I'm going to ask you. What, if anything, affirmative did you do to assist Ms. Brown in getting her sample analyzed by an independent examiner?
A Nothing.
Q All right. Now, you been doing this a long time, haven't you?
A Yes, sir.
Q How many years?

A Twenty-one.
Q Twenty-one?
A Yes, sir.
Q Did you read this form before you signed it?
A Yes, sir.
Q Now, if you had read it before you signed it, you would have certainly seen scene that there was a check mark that says I want an independent test. If you read it, you would have seen it, wouldn't you?
A It's not in the box, but, yes, sir, I would have seen the check mark.
Q It's not in the over the box?
A As you can tell, my check marks on there are precise and in the exact boxes they need to be in.
Q So now if you had read it, are you telling the judge at this point that you read this and you didn't see the check mark that's represented by a blood sample requested by an independent for an independent test?
A I probably saw a check mark, but since Ms. Brown did not request a blood sample, they did not have anything to do with the form.
Q Well, you said she didn't request it, but why do you suppose the medical examiner made the check mark?
A As I said, you have to ask her, but it looks like it might have been a mistake. She's checking ---

Q What about it looks like to you that might have been a mistake? Moreover, did you read it before you signed it?
A Yes, sir, 100's of times.
Q And I don't see on here where you got -- Ms. Lloyd make a mistake checked the wrong box. You don't have that on here, do you?
A No, sir, because the box isn't checked.
Q Well, I think the judge will make the decision about that.
A Okay.
Q Now, let's talk about the search warrant. Now, before you went to Judge Locklair to get the search warrant. You said you had a conversation with her on the telephone?
A That's correct.
Q And your conversation took place after somebody else -- one of your superiors spoke to her on the telephone?
A I don't believe so, no, sir. They had given me a phone number to call.
Q So you initiated the contact with Judge Locklair to get the search warrant?
A That's correct. I'd call to see if she was available to do the search warrant for us.
Q Okay. Now, would this be the first time that you'd

ever obtained a search warrant?
A As far as for felony DUI, it might be, sir. I've gotten other search warrants for vehicles and property. This was back in 2014 when they had just had a ruling as far as obtaining search warrants for blood. It use to be we could take it without a search warrant?
Q Incidentally, as far as your interaction in this whole investigation, did you ever do an incident report?
A No, sir.
Q You never did one?
A I was placed as an assisting officer on Trooper Minnix's incident report.
Q So as far as Trooper Minnix's incident report, it is initial line of the highway patrol as to the nature of what they did in the course of their investigation?
A It is an incident report to explain the incident as far as Trooper Minnix was concerned, the charges that were filed.
Q Well, if I went to your file cabinet now wherever y'all keep the records and pull open the file cabinet and look for this the report for this incident, his incident report is what I would find in the file cabinet; isn't it?
A You find a case file, yes, sir, with everything to do with the case.
Q Yes, ma'am. You didn't write anything to put in the

file, did you?
A No, sir, except it has my signature on it.
Q Except the paperwork that had your signature on it. Now, this affidavit that you signed that contained the search warrant, who supplied the information to go in the affidavit?
A I contacted my supervisor at the time and they got in contact with our MAIT team which sent me a copy of a search warrant. We didn't even have the documentation as far as a word document to obtain one. So our MAIT team sent me an e-mail with the attached search warrant document and the particulars as far as this case was concerned was typed in by me as far as the defendant's name.
Q Well, tell me this much, the reasons for -- believe that property sought is on the premises -- on the subject premises who typed in that?
A I have to look at it, sir. I'm not sure.
Q Take a look at it. It's the same one that the Solicitor showed you a few minutes ago.
A This would have been my -- I would have type this section, sir, and also that section.
Q So you have a independent recollection this day of having typed in this information where it says the affiant believes that the property -- that's the reason for

believing the probable cause, that's your doing?
A Yes, sir. That's the format that the MAIT team sent to me.
Q The format?
A Yes, sir.
Q Well, I'm talking about the format. I'm talking about what is written in there in English. That your name is down here as the affiant having sworn to. Now, did you write this in here, this information in here or did you not.
A Yes, sir.
Q You wrote it?
A Yes, sir.
Q Now, when you wrote it in, did you know at the time what you intended to tell the judge about why you wanted the search warrant or why you believed the probable cause exist?
A Yes, sir.
Q And you typed it in here?
A I typed the information that was given to me, yes, sir, of how our MAIT team wanted our search warrant to -- what it wanted to contain.
Q Well, what about what you were swearing to the judge that you knew to constitute probable cause?
A That was conveyed in that and also verbally.

Q Verbally?
A Yes, sir.
Q Now, I noticed that you had some question -- Mr. Durant ask you about your having been under oath when you went to talk to Judge Locklair?
A Yes, sir.
Q And the judge put you under oath and got this sworn affidavit from you; is that correct?
A Yes, sir.
Q She notarized your signature?
A Yes, sir, she signed the form.
Q But she notarized it. Has not date on it, but it's notarized; isn't it?
A I'm not sure what you're talking about notarized, but she did sign the search warrant, yes, sir.
Q Is this a copy of the affidavit that you signed, is that your signature?
A That's my signature, yes, sir.
Q And you signed that?
A Yes, sir.
Q And the date that it was supposedly signed by you is not on there, is it?
A No, sir, but it does have Judge Locklair's name on the side.
Q It's got a name on it, but there's no date there, is

it?
A Not beside it, no, sir.
Q So when do you suppose she notarized this?
A She signed it that night in front of me, sir.
Q I remember sitting down in this courtroom just a few minutes ago when you told Mr. Durant what you left out of the search warrant or left out of this affidavit why you believe that there's probable cause to draw this woman's blood Ms. Brown. Now, what I want you to tell me is why do you believe that there's probable cause, what is that probable cause based on other than what you've got in this affidavit?
A I have an affidavit that she was believed to be under the influence. The reason why she was believed to be under the influence was she admitted to drinking. She smelled of alcoholic beverage, had bloodshot eyes, glassy eyes, and her demeanor was that of an impaired person in opinion and my experience of law enforcement.
Q And it is your testimony today that you gave that information to Judge Locklair after she swore you in?
A Yes, sir. It was given to her over the phone and because it was -- like I said, I woke her up at whatever time in the morning. Once I got on her back porch, I had to print the search warrant out from my in-car printer. Once I got on her back porch, she looked it over to make

sure it look like everything it suppose to be because like I said that was -- that was me doing a search warrant at three o'clock in the morning something that we're not accustom to. She ask me the information on the document was true and I confirmed that. And then I went into the reason why I was requesting a search warrant.

Q Why did you not include those reasons in the affidavit that you had Judge Locklair sign?

A Sir, I thought that the believe to be under the influence -- I didn't go into the details of why I believed that she was under the influence, but that I did put that law enforcement believed that she was under the influence in the affidavit.

Q Do you have anything in writing this day, any notes or anything, anywhere to indicate that that information that you believed that she was under the influence -- that she smell like alcohol? Do you have any of that in writing anywhere where you made a note of it to establish that you in fact told Judge Locklair that?

A Did I make a note that I told Judge Locklair that?

Q Yes, ma'am.

A No, sir, I didn't make any notes as far as that's concerned. There was other notes taken in as far as Ms. Brown's demeanor and the situation as far as her smelling of alcohol and what she admitted to drinking.

Q Who took those notes?
A I believe Trooper Minnix in my presence.
Q What happened to the notes do you know?
A I believe they're in the case file, sir.
Q Are they in the incident report?
A Our incident reports do not -- there's no way to attach files to our incident reports.
Q Ma'am?
A There's no way to attach files to our incident reports. These are handwritten notes and they would not be attached to an incident report.
Q Handwritten notes regarding the investigation concerning this case?
A Correct.
Q Did you gave them to the Solicitor?
A I'm not sure if the Solicitor has them or not. It's in the case file that's in our office. I can look through what he has and tell if he has them or not.
Q I just got one more question I believe. Is it your testimony that when you got to Judge Locklair's residence she then swore you in?
A Yes, sir.

MR. BARR: Thank you, ma'am. I have no further questions.

MR. DURANT: No redirect, Your Honor.

THE COURT: You may step down.

(WHEREUPON, the witness leaves the witness stand.)

MR. DURANT: The State will call Judge Locklair.

(WHEREUPON, a break was taken.)

THE CLERK: Raise your right hand. Do you solemnly swear to tell the truth and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am. Robin Carol Locklair.

WHEREUPON,

Robin C. Locklair,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION IN-CAMERA

BY MR. DURANT:

Q Ms. Locklair, good morning still?

A Good morning.

Q Of course, you been in the courtroom this morning for the testimony that's been given thus far in this pretrial hearing or this suppression hearing with regard to a search warrant that was issued for the defendant Tammy Dianne Brown's blood and urine samples back on August 31st of 2014?

A Yes, sir.

Q Have you seen a copy of that search warrant?

A Yes, sir.

Q And I believe it's been introduced as a court's exhibit. And does that appear to be a true and accurate copy of the search warrant?
A Yes, sir.
Q And did you actually make the copy?
A Yes, sir, I did.
Q All right. Tell the Court just for the Court's information how is that search warrant stored, the original stored now?
A I have the original at my home in my office. I keep all my search warrants in three ring binders that are approximately four inches wide. And this particular warrant I had to fold several times because it was generated on thermal imaging paper. The kind that you use to use in like second generation fax machines. It's extremely delicate in the sense that if it's exposed to UV light directly or heat or extreme moisture, it will degrade the paper and make it unlegible.
Q All right. But this is again is this a true and accurate copy of the original search warrant?
A Yes, sir.
Q All right. Have you reviewed the original before coming testify to verify?
A Yes, sir.
Q Do you remember meeting with law enforcement to go

over the search warrant back on August 31st of 2014?
A Yes, sir.
Q Do you remember about what time day or night it was?
A I received a call initially from Trooper Paige Dubose with the South Carolina Highway Patrol at approximately 2:20 a.m. At which time she inform me that there had been a vehicle fatality and that the individual charged with causing the accident they had a reasonable suspension to believe that she was under the influence of a substance particularly alcohol.
Q But, I guess, before we go any further, I should have ask this at the outset. We all know who you are, but just so the record is clear tell the Court what do you do for a living?
A I am a summary court judge with the Clarendon County magistrate's court here in South Carolina.
Q And how long have you been a magistrate judge here in Clarendon County?
A Almost six years.
Q So 2012?
A Yes, sir, July 2nd on 2012 to be exact.
Q And is one of your duties as a magistrate judge, a summary court to review applications for a search warrant?
A Yes, sir.
Q Okay. Do you do that as apart of your regular

business as magistrate court judge?
A Yes, sir.
Q In regards this particular search warrant, you mention that you first got a phone call from Trooper Dubose South Carolina Highway Patrol she called at you home and look you up?
A Yes, sir.
Q Okay. And did she tell you what the underlying facts were, what the basis was for the search warrant?
A Yes, sir.
Q What did she tell you if you recall?
A That there had been a vehicle fatality accident that had occurred within the county and that the person attributed with causing the accident was believed to be under the influence of a substance.
Q Okay. Did she gave any other information as to the how, the why, that they knew or they suspected that this defendant was under the influence?
A She briefly mentioned on the phone at that time that, you know, during the course of their initial investigation on scene, that there was strong odor of alcohol emanating from the defendant's person.
Q Okay. And did Trooper Dubose then come to your house and actually meet with you in person to apply for a search warrant?

A Yes, she did.
Q Okay. When Trooper Dubose came to your house, do you recall whether or not you placed her under oath?
A Oh, absolutely.
Q Is that something that you always do?
A Yes, sir.
Q Whether it's three o'clock in the morning or three o'clock in the afternoon, you always place the officer under oath?
A Yes, sir.
Q So in this case you know from habit that you would have placed Trooper Dubose under oath?
A Yes.
Q When she presented you the search warrant, did you read it?
A Yes.
Q And did you ask her any additional questions then under oath as to how or why that she suspected that the subject, Ms. Tammy Brown, was the under influence of alcohol?
A Yes, sir.
Q And what did she tell you if you recall?
A She told me that upon encountering the defendant that Trooper Minnix smelled a strong odor of alcohol emanating from her person and that while during the course of his

investigation, he encountered her and she indicated that she had been drinking that evening?

Q Okay. And, of course, you also had the additional facts that she was the driver of the vehicle that was believed ---

MR. BARR: Judge, he's leading the witness.

THE COURT: Yeah, you are.

BY MR. DURANT:

Q Did you have additional facts as to the accident itself as to how it was caused?

A Just that she was attributed to the causation of the accident and that the -- I guess, the operator of the other vehicle was presumed dead.

Q Okay. Were you told that Ms. Brown was driving the vehicle?

A Yes.

Q Okay. And was it based on those facts, the facts that were presented to you in the affidavit of the search warrant itself as well as the old testimony provided to you over the phone and then under oath again at your house that the search warrant was issued by Your Honor?

A Yes.

MR. DURANT: Your Honor, that's all the questions I have. Would you answer any that Mr. Barr has.

CROSS-EXAMINATION IN-CAMERA

BY MR. BARR:

Q Judge, customarily when you issue a search warrant and the information that's contained in the search warrant in your opinion did not constitute probable cause for the issuance, do you usually allow amendments to the affidavit orally?

A I allow the officer to add a supplementation as to why they need it, to establish the probable cause orally because they are under oath and that would suffice.

Q And when they do this supplementation, do you any time require that that also be in writing?

A No, sir, I don't require it to be in writing.

Q Of course, you been a judge a long time and I know that you are thoroughly familiar with the procedure of issuing a search warrant?

A Yes, sir.

Q And you're thoroughly familiar with the process of the affiant swearing that there's probable cause to believe et cetera. I know you're familiar with that.

A Yes, sir.

Q And, of course, would you not agree that in terms of what is stated to you in the affidavit of the basis for the issuance of a search warrant, that's important information, isn't it?

A Absolutely.

Q And in order to review the accuracy -- the issuance of a search warrant, would you not agree that there ought to be some record of what was presented to you as the basis for probable cause?
A If this is the only search warrant that I've ever issued in the middle of the night for a vehicle fatality, I feel like the specifics surrounding the issuance of this warrant should be remotely fresh.
Q Should be what?
A Remotely fresh or easily remembered.
Q I see. And, of course, would you not agree that in order to determine whether or not sufficient information was presented to you at the time the search warrant was issued, the only thing that the court would have to rely on is what is written on the piece of paper?
A That and the search warrant log.
Q Search warrant log?
A Yes, sir.
Q You have a search warrant log?
A Yes, sir.
Q And does that log contain information that's supplemental to what is presented in the affidavit of the original search warrant?
A No, sir, I did not make any additional notations. I did however note that the search warrant was requested for

blood samples and or urine for one Tammy Dianne Brown in relation to a vehicle fatality.

Q So then in order to determine whether or not a search warrant is sufficient, that is the sufficiency of the information contained as a basis for their belief that there's probable cause to the issuance of a search warrant. You do recognize the importance of having that information in writing?

A Yes, sir. I do recognize that it is important to make notations. However, as an officer of the court, I also feel like oral testimony that's provided under oath should also suffice.

Q Oral testimony provided under oath?

A Oral.

Q Oral testimony?

A Yes.

Q Provided under oath should also suffice?

A Uh-huh.

Q So then essentially what you're saying is that you believe that the reviewing judge should believe the under oath testimony of the issuing magistrate?

A Yes, sir.

Q Of course, as a judge yourself, you would agree that if there was some writing as is required to be placed in the affidavit, then we would never get to the issue of

whether or not the oral testimony is accurate, wouldn't we?
A Yes, sir, I agree ---
Q If you have it that way?
A Yes, sir, I agree that if the affidavit itself was overly detailed, then there would be no reason to challenge this.
Q Now, you have looked at in preparation for your appearance here today, you looked at the reason for Ms. Dubose's belief that the -- what she was seeking would be sufficient for what the purpose is that's stated in the warrant. You looked at the warrant, the affidavit the warrant itself?
A Yes, sir, and I just reread the section that you noted as well.
Q Any reason why you didn't insert the date that the affidavit was given to you?
A Just that as I previously stated this particular warrant was issued on thermal imaging paper. The length of that document is approximately about the length of my leg. This particular section fail at the very end of that sheet of paper, that's extremely long. While I did catch the section where signature of a judge was needed, I did not pay attention to dating it just simply because the defendant was already at the hospital and I know that in

instances where you're a doing blood alcohol analysis, that time is of the essence and I was trying to number one establish that there was probable cause for the warrant in question and number two that, you know, all necessary signatures were in place and there's two parts to a search warrant upon issuance that requires a signature. And if you see right above it on the search warrant itself, I've signed it, date it, and indicated where the search warrant can be found. And if you look directly underneath, there is a fold mark and then the affidavit continues. So that collaborates the fact that as I previously stated the warrant itself was issued on thermal imaging paper.

Q Judge, I just got one last concern and I'm sure as I said being a judge and certainly as a defense lawyer representing people who are charged where a search warrants are very important, I am sure you can understand that we're not trying to impugn your integrity, but it's just very important when an issue that's now that's important where we're having to rely on something that we have no control over by way of what is not written in the actual search warrant itself which was presented to us as a basis. Of course, we get this search warrant in response to a discover request.

A Yes, sir.

Q And when we get the response to discovery request

with this search warrant, we don't get the benefit of the testimony that's going subsequently come in.

A Yes, sir.

Q So that's why we're doing this this way.

MR. BARR: Thank you, ma'am. I have nothing further.

MR. DURANT: I have no further questions, Judge.

THE COURT: Okay. You can step down. Thank you.

(WHEREUPON, the witness leaves the witness stand.)

MR. DURANT: Your Honor, that's all the witnesses I have.

THE COURT: Okay. Mr. Barr, do you have any witnesses?

MR. BARR: Yes, sir, Ms. Brown.

THE COURT: Okay.

THE CLERK: Raise your right hand, place your left hand on the Bible and repeat your name please.

THE DEFENDANT: Tammy Dianne Brown.

THE CLERK: You solemnly swear the testimony you're about to give to be the truth and nothing but the truth so help you God?

THE DEFENDANT: Yes, ma'am.

WHEREUPON,

Tammy Brown,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION IN-CAMERA

BY MR. BARR:

Q Ms. Brown, do you have a recollection today of having been taken into custody?

A Yes, sir.

Q And being charged with the two offenses ---

A Yes, sir.

Q --- which you are charge in this case?

A Yes, sir.

Q And do you have a recollection of having gone to the emergency room where blood was drawn for a blood test examination?

A Yes.

Q And at the time that you gave the blood samples what, if anything, did you tell the person drawing the blood from you?

A I told them that I needed my proof.

Q Need what?

A My sample.

Q That you needed what now?

A Excuse me what you say?

Q What, if anything, did you tell that person drawing the blood?

A That they could draw my blood and she was telling me that I can get my own and I told her okay.
Q She told you you would get your own?
A Yes, sir.
MR. DURANT: Object to leading, Your Honor.
THE COURT: Okay.
BY MR. BARR:
Q With was the purpose of getting your own sample?
A To see what it said.
Q Did you trust the hospital to provide an accurate sample?
A Not really. I know that, you know, they was gone do the job and everything, but I still needed my own.
Q All right. Did you -- you probably don't have a recollection of this gentleman -- of course, you seen in court today Officer Minnix and Officer Dubose, do you recall them?
A I remember him. I don't remember her.
Q Did either one of these two people in anyway assist you getting an independent examination or independent test?
A No, sir.
Q Did they have any discussions with you at all?
A No, sir.
MR. BARR: I have no further questions.

CROSS-EXAMINATION IN-CAMERA

BY MR. DURANT:

Q Ms. Brown, good morning.

A Good morning.

Q You told Mr. Barr that you remember, you have some recollection of the events that night?

A Yes, sir.

Q Okay. So your memory has not been impacted by your impairment that evening then, has it?

A No, sir.

Q Okay. You weren't so impaired as to blacked out or to render any statements you gave to law enforcement as involuntary, did you?

A No, sir.

Q Okay. So everything you told law enforcement that evening was voluntarily given; is that true?

A Yes, sir.

Q Okay. Had at no point law enforcement threatened you, coerced you in anyway to speak with them that evening?

A Not that I remember.

Q Not that you remember. But again you got a pretty good recollection of the events?

A Some.

Q Okay, some recollection. You told Mr. Barr a minute

ago when he was asking you questions that you told law enforcement and medical personnel that they could take a sample of your blood; is that right?

A The nurse, I told the nurse she could have.

Q You told the nurse?

A Yes, I told her she could have.

Q Is it your testimony now that you actually consented to the samples being taken?

A I remember holding my hand and saying go ahead and take my blood, yes.

Q But law enforcement had talk to you about that and had discussed the need to obtain a blood sample from you nurse you?

A The nurse did.

Q Okay. But let me just clarify that your testimony today that you consented to the sample ---

MR. BARR: Objection, Your Honor. He's misleading the witness. He knows that law enforcement obtained a search warrant in order to get the witness because in order to draw the blood because she clearly indicated before -- she didn't intend to give them blood.

MR. DURANT: Your Honor, the witness testified ---

THE COURT: Hold, hold, hold, wait a minute. The question is proper. You can ask it.

BY MR. DURANT:
Q Ms. Brown, on direct you told Mr. Barr that you consented to your blood sample being taken; is that true?
A The nurse came in and said that she was taking my blood I said okay.
Q You said okay. You did not refuse to give a blood sample?
A I thought that was properly what they usually do take your blood in the emergency room.
Q Okay. All right. So you didn't have any objection to her taking the blood sample then?
A No.
Q All right. And then there was some discussion according to your testimony to Mr. Barr about getting a blood sample for your own taking, for your own testing and I believe you told me that you learned of that -- told Mr. Barr that you learned of that through the phlebotomist, through the nurse that took the blood sample; is that right?
A Yes, I don't -- it was like they were just telling me they was gone take my blood and they give me a sample and I said okay.
Q Okay. But before we get to that point -- and because they took your blood, I think, according to the information that's been provided about 3:20 -- let's see

3:21 a.m. does that sound about right to you?
A I don't remember.
Q Okay. And according to the information that has been provided, you are actually arrested in this case at 1:55 a.m.?
A I don't remember.
Q Okay. So would you agree that there was some lengthy period of time that elapsed between the time that she was arrested and concurrently read those implied consent rights. You remember some conversation about those?
A No, no, sir.
Q Remember law enforcement telling you that you were under arrest for felony DUI and telling you that by law they had the right to take some samples of blood and urine samples from you and that if you resisted or instructed in any way that evidence would be admissible at trial. You remember them telling you about that?
A No, because the only time I remember them coming -- that I was reading my rights was I was in the jail and I was laying down and sleep when the two came in there.
Q Okay. Well, I guess, let me just clarify then, so would you agree then based on your earlier testimony that the first time you ever mentioned wanting an independent sample was when the phlebotomist came and actually stuck the needle in your arm?

A She told me that they were gone me some blood samples and I can have my own done. And I heard my doctor's voice in there and I was like, yeah, I'm gone go ahead and let him do it because Dr. Sy (sic) was in the hospital at the time. I already knew I was gone let him do it.
Q Okay. So at no point prior to that did you tell the law enforcement officers that you wanted an independent testing done?
A They told me they was gone do it and I agreed.
Q Okay. Did you tell them that you wanted a particular doctor in the hospital?
A No, I was thinking that's what I was thinking to myself when they was saying that they was gone do. I had my own doctor ---
Q Okay. So now we're getting into what you were thinking to yourself not as to what you actually communicated to law enforcement. You didn't actually tell law enforcement what you were thinking?
A No.
Q So these were internal thoughts about I'm in this hospital with people that I trust. I want somebody here to test my blood. That was an internal thought. You didn't actually convey that to law enforcement, did you?
A I told -- when they told me that they was gone take my blood and I had a right to have my own done, I said

okay. I hold my hand like this and turn my head. I don't like to see my blood drawn, so just turn my head and hold my hand out and that's what happened.

Q That was it?

A That's what I remember.

Q That was the entirety of the conversation?

A She took my blood.

Q So now let me just clarify they told you the -- by they, I think you said earlier the nurse or the phlebotomist, she said you had a right to get your own sample taken. You said okay and turned your head and that was it?

A They drew my blood and take it wherever they take it, yes, that's what happened.

MR. DURANT: All right. Your Honor, that's all the questions I have.

THE COURT: Anything further, Mr. Barr?

MR. BARR: Nothing on redirect, Judge.

THE COURT: You can step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: All right. Anything else on either side?

MR. DURANT: Nothing further witnesses from the State, Your Honor.

190

THE COURT: You got any further witnesses?

MR. BARR: No further witness.

THE COURT: All right. Do you all want to argue the point?

MR. DURANT: I certainly like to be heard, Your Honor.

THE COURT: Okay.

MR. BARR: I do too, Judge.

MR. DURANT: Your Honor, it's his motion ---

MR. BARR: Well, Judge, with all due respect, there's several issues involved here. And first the issue involves the issuance of whether or not under the totality of the circumstances the reasons given by the arresting officer as to why they didn't do the video as required by South Carolina law whether or not the reason that they given justifies them not doing the video. And quite frankly, Judge, it's our position that it does not clearly under the circumstances Mr. Minnix operating his vehicle blue light and siren when he got to the scene, he could have gone anywhere on that scene that he wanted to go. Moreover as an experienced highway patrolman, he would have you believe that, well, all of sudden -- now, this is as to doing a recording of the interview with Ms. Brown. I realize that technically my equipment wasn't working and therefore I didn't -- in addition to not doing the video,

I don't have any recording of our conversations where she supposedly made some very very detrimental admissions as it relates to her consumption of alcohol. So, Your Honor, I would submit that as far as the rationale and the reason -- and I don't even know that you seen the affidavit that the officer presented to you excuse himself of not doing what the law say he should have done, but be that as it may, our position is that that is no reasonable justification for not complying with what the law says it's supposed to be done in this kind of situation. Now, of course, in terms of what he says about the statements that she made and there's no way, Your Honor, to evaluate the efficiency of those representations because there is no recording.

Now, the next issue deals with whether or not the statements that were given were actually voluntary. And there was some testimony regarding friend -- the Miranda warnings were given and quite frankly, Judge, I'm not gone argue something that I don't -- I'm not gone say that it doesn't have any merit, but I don't think that this issue regarding the results of Jackson v. Denno I don't think is nearly as important as the issue of number one not doing any field sobriety. Number two not offering the woman a breathalyzer test before attempting to extract blood and urine. I think the law is just as clear as day

192

as it relates to offering her a breathe test. And the officer if I remember his testimony he made the decision on his own without being advised by any medical personnel that for whatever reason he would not offer the breathe test. And I specifically asked him what, if any, injuries would he notice that she suffered. Of course, the statutes specifically says that's not the decision that an arresting officer would make, that he has to rely on information that's provided by some other medical -- authorize medical personnel.

Now, speaking of authorized personnel, Judge that brings us to this next issue that I consider that has more merit. The issue of whether or not when a person gives a blood sample whether or not the arresting officer has an affirmative duty to assist that defendant in obtaining an independent test. Now, there was a little bit of razzle dazzle going on here this morning on the witness stand because quite frankly I don't think that the officers actually picked up what they had done or what they had not done until they got in court today. Now, clearly when you look at the Court's Exhibit that we presented of the SLED form regarding collection of blood, the person that supposedly collected the blood received information from the defendant that she wanted an independent blood test. And I don't see how even though

Office Dubose did better -- I mean, Officer Dubose did better than officer Minnix when it came to some explanation, but they both failed when it got to the issue because they both signed this report and they would have had -- if they read it, they would have had to see that the woman had requested an independent test and -- but now they would try to say that, well, she didn't tell us directly, so therefore we had no obligation to affirmatively assist her. Well, that's just not the law.

The law goes beyond that and our Supreme Court made it very clear that an officer not just has a duty, but have an affirmative duty. And if they had read -- they had this information in front of them, had read it and, of course, according to them they assisted in reading it. So they can't come to court today and say, well, no, she never asked us. Well, she asked who thought she was suppose to ask the woman that was taking her blood. Now, when I asked the officer about what did you do with them, of course, they didn't give her any. They gave both vials of blood to Officer Minnix to carry to SLED somewhere wherever he took them to which brings us to the issue of whether or not this person who took the blood was qualified to do so, which is a separate issue. And our Supreme Court treats that as a separate issue. And in this case they both acknowledge that they don't know who

194

this person is that took the blood. That they believe that the person was authorize because the person showed up in some scrubs with some kind of name tag. And our court has specifically addressed that issue where the prosecution fails to establish that the person that took the blood was qualified and in this case they hadn't done that.

Now, the only way to do it would have been to call the person that's -- the lady Angela Floyd to bring her here -- to have her here and have her tell us what her credentials are. Otherwise, to simply say and look on this form and our court has made it clear it's not enough just to say name or license or trained collector. I mean, that's just -- I could have gone in there and put on some clothes for whatever reason as an imposter and start drawing blood under the scenario that the prosecution would have you believe that we could go by here.

So with that in mind, Your Honor, I'm not gone -- the statements that were made in the vehicle on the way to the detention center, of course, I asked the officer whether or not she was Mirandized again. I'm not gone pursue something that perhaps doesn't have a whole lot of merit to it because under the circumstances if she was Mirandized at the hospital, and I'm not arguing against my client, but if she was Mirandized at the

hospital, there may have not have been a subsequent independent interrogation and therefore Miranda would be complied with. But, Judge, I strongly strongly believe that the prosecution has not met their burden with respect to our motion to dismiss and or suppress as a result of not complying with the statute regarding the video taping. And as a result of quite frankly not administer any field sobriety test, not even attempting to offer a -- take a breathe test where there's no apparent reason and the prosecution has offered no apparent reason, legal reason for not offering that test. And clearly where the defendant has made a request for -- to have her own independent test done. They offered no assistance whatsoever in assisting her and they can't say we didn't know and she never told us because it's written right there in front of them on the piece of paper that they both put their John Henry on. Thank you, Judge.

THE COURT: Thank you, sir.

Yes, sir.

MR. DURANT: Thank you, Your Honor. May it please the Court. Your Honor, I guess first as a threshold matter, the hearing that was requested, I guess, really by me yesterday in court was that to deal with the voluntariness of the defendant's statements and then Mr. Barr responded he did decide that we needed a

196

suppression hearing as to a search of the defendant's blood. It would be the State's position that any ruling at this juncture as to whether or not the procedural requirements of the DUI statutes have been met in order for this case to proceed to a jury would be premature. We've had two witnesses to testify thus far in this trial. I don't believe the State has required to produce all of the witnesses necessary to prove change of custody and to have -- she certainly like to be here to prove chain of custody of the blood and to testify as to her training and experience and that SLED protocol was followed in collecting the blood, but I don't believe the State's required to put her up in this hearing at least not at this hearing as requested by Mr. Barr yesterday. When he requested this hearing, it was for the narrow issue of whether or not the search of her blood should be suppressed by nature of the search warrant whether or not the search warrant was sufficient.

Your Honor, we have submitted an affidavit in regards to whether or not the requirements of 56-5-2953 had been met as to the recordings required by the officer. I believe, Your Honor, has the original. We passed it up yesterday. I asked Your Honor to consider that affidavit in accordance with State v. Manning. It's a Court of Appeals case of 2012, that deals with the impossibility

exceptions to the statutory requirements to the video recording of the defendant's conduct at the incident scene as well as the filed sobriety test. Your Honor, I believe the officer's affidavit satisfies those exceptions to those statutes. Of course, he testified in that regard as well and I ask Your Honor to consider that case State v. Manning, that's 400 SC 257 in a 2012 Court of Appeals case.

In regard to the field sobriety test again I believe the affidavit satisfies that requirement. The officer -- the statutes require those test to be taken on video at the incident scene according to the officer's testimony in his affidavit. When he arrived at the incident scene, Ms. Brown was already being attended to by EMS. She was already in the back of the ambulance and EMT personnel informed the officer that they were going to have to transport her to the hospital. So there was never an opportunity for the officer to conduct field sobriety test and that's a proper exception under the rule for when she requires emergency medical treatment.

As far as a breathe test, case law is very clear that in a felony DUI situation a breathe test is not required prior to offering and requiring the defendant to submit to a blood or urine sample. And, Your Honor, I ask you to consider State vs. Long in that regard, that's a

198

Supreme Court case of 2005 South Carolina Supreme Court, that's 363 SC 360 2005 court case State vs. Long which held that the law enforcement officer can order a person suspected of felony DUI to submit to any chemical test without first offering a breathe test. So I ask, Your Honor, to consider that case on that issue. In regards to the search warrant for the defendant's blood, Your Honor, I would concede that the search warrant on its face is defective that the affidavit is -- was essentially a conclusory statement as to the need to obtain a search warrant -- a search warrant of pulling the defendant's blood. It just says that she's believed to be under arrest. I would concede that that's a conclusory statement. However, Your Honor, as Your Honor's very aware a search warrant affidavit which is itself is in sufficient to establish probable cause may be supplemented before the magistrate by sworn oral testimony. Your Honor, I would submit that this is really an issue of form over substance. It's clear based on the officer's testimony that probable cause existed at that point. Before they went to get the search warrant, they had spoken with her in the ambulance. She had admitted to having been drinking, told the officer she had tequila shots and changed story to wine coolers. She smelled of alcohol. There was an open container of alcohol in her

199

car. The officers had all this probable cause to get a search warrant for her blood. Again, the officer -- Officer Dubose testified that she conveyed those factors to the judge both over the phone and then again in person. And Judge Locklair confirmed it. When they came to her -- when the officer came to her house, she placed her under oath on her back porch and asked her the how and the why. Why do you suspect she's under the influence and that she gave her additional factors. Your Honor, according to the case law, that's sufficient. And again we would concede that the search warrant affidavit itself, the written portion is conclusory, but oral testimony is admissible to supplement a defective search warrant affidavit.

Your Honor, I would also ask you to consider making State v. Smith in that regard -- that's a Supreme Court case of 1990 301 SC 371. That's a statement that actually held that conclusory statements give the magistrate the basis to make a judgment are insufficient, but the court then remanded the case and said if it is determine that sufficient oral testimony was provided despite the fact that we had an affidavit of conclusory statement if during the course of the hearing the court determines that sufficient oral testimony was submitted and the lower court judgment was affirmed.

Your Honor, I guess, the next issue would be as

200

to the statements that were given by the defendant in this case. Your Honor, I would submit as well settled law in South Carolina that Miranda warnings are not required if the defendant is not in custody or otherwise deprived of her freedom. And according to State v. Morgan Miranda warnings are specifically not required for admissibility of statements made by the defendant during the course of a routine traffic investigation, the investigation of a traffic accident, which is what was going on here that's what the officer testified. He went to speak to her in the back of the ambulance to figure out what happened, to figure out how this collision occurred, that's when those initial statements were given. According to case law in South Carolina, those are admissible.

Then again I think Mr. Barr essentially conceded that Miranda was given to her at the hospital any statements made by her -- his client after that should be admissible. She testified on cross-examination that she was not threatened or coerced in any way, that any statements she gave to law enforcement were voluntarily given. And she was, of course, advised of her Miranda rights, knew she had the right to remain silent. The statements in the car on the way to the jail were not a product of any interrogation. She is the only one that makes any statement on that video. The officer he's

calling in to dispatch that he's on the way to the jail with her, but doesn't speak to her directly in anyway and doesn't ask her any questions. That's the other requirement of Miranda is that statements be given pursuant to custodial interrogation. There's no interrogation there, so I started to argue that those statements are admissible.

I guess, the final issue would be the independent test. Again, Your Honor, it was interesting to me on cross-examination Ms. Brown testified that the entirety of that conversation in which she believes that she requested an additional independent test was that the phlebotomist told her she could get one and that she turned her head and said okay, that was her testimony. At no point did she tell the officers directly that she wanted it. At no point did she convey any of these internal thoughts in her mind about being at the hospital somebody there do it. She said that's what she was thinking.

The only conversation with respect to her asking for the test was simply an okay response to the phlebotomist when informed that she had that right. That is not a clear and an unambiguous request for the test. She simply said okay. Of course, Trooper Dubose testified as to the form for the collection of the blood. She

202

testified as to that section of the form which by the way, Your Honor, states that check one box, only one can apply. Trooper Dubose testified that she actually checked that the subject was under arrest for a felony DUI. That she believed that was a straight mark and an error as to the other check that that wasn't made by Trooper Dubose as to the request for an additional test. Again both officers confirmed that at no point did Ms. Brown -- and I believe Ms. Brown confirmed that at no point did she ever tell the officers that she wanted an independent test.

Your Honor, even if she did, even if she did, even if that form is sufficient to be that -- to constitute some type of request or an additional test, the statute that requires an affirmative assistance that Mr. Barr keeps talking about is 56-5-2950. If you look at the subsection, that deals with that affirmative assistance that's subsection E 56-52-950 subsection E. And it states that affirmative assistance at a minimum includes providing transportation for the person to the nearest medical facility which performs blood test which was obviously done. She was at the hospital. And if the medical facility doesn't test the blood, they send it to SLED. That's the affirmative assistance that must be given by law enforcement, to take you to a hospital and have blood drawn. And unless she gives them the name of

some independent analyst to test her blood is to send it to SLED and that's exactly what was done in this case, Your Honor. So for those reasons, Your Honor, we would again I think it's premature to handle the other procedural issues with regard to the felony DUI statute, but we certainly would argue at this point there is no basis in the record for suppression of any evidence against Ms. Brown including her blood sample and her statements and so we ask, Your Honor, to deny the motion.

THE COURT: Okay.

MR. BARR: Judge, just briefly in rebuttal, I'm listening to Mr. Durant's argument and it reminds me of the drowning man reaching out the water trying to catch something. The SLED form has been adapted used by the State of South Carolina to reflect issues regarding whether or not a person request an independent test and that form has been filled out in its entirety and you have a copy of it where the form is clear regarding the defendant's indication and her request for an independent test. This business about some check mark in error, I've never heard anything like that, that's some kind of last minute -- I don't know where that came from, but be that as it may, the document speaks for itself. And you know and I know and everybody that's just an disingenuous rationale for something that where it clearly indicates

204

what the desire is. And, Your Honor, to say, well, she was in the hospital or whatever. When the officers read that form and this woman is in custody, they have an affirmative obligation then to go forward and do something to assist her in getting this test done. We would submit that they didn't do that. Thank you.

THE COURT: Okay. As far as the affirmative obligation that they have, isn't it true that their obligation is to take her to a facility where she can get her blood drawn. Normally, she's arrested or someone's arrested and then the breathalyzer -- I don't believe that the breathalyzer results are accurate. And they won't have an independent test and the police officer has an affirmative duty at that point to take them because they're in custody, they can't go themselves to some facility to have that test, but once they take her to the facility, is that not the only obligation they have.

MR. BARR: Judge, she didn't go to the facility, but she was under arrest.

THE COURT: I understand, but she's at the facility when they under arrest. They didn't keep her from giving a blood test. Normally, she's at the jail doing a breathalyzer. So what else could the police had done? In any cases at all to say the affirmative defense -- I mean, affirmative obligation goes pass the statement

to the facility. You don't meet a case that says -- I mean, she's already at the hospital. She testified that the nurse came in and took her blood. What else could the highway patrol could have done?

MR. BARR: They could have made arrangements with some personnel even at that facility at least present her with an opportunity to have the independent test done. The State of South Carolina on this case want to rely on what the police have done in this case and get the reverse, then that's their business. But I would submit that they're required to do more than what they did in terms of just ignoring her request. And in fact they wasn't even -- appear as they wasn't even made aware of it.

THE COURT: Okay. Well, what else should they have done? What else should they have done do you think?

MR. BARR: What else -- you mean what the officer could have done?

THE COURT: Yes, sir.

MR. BARR: They could have first of all find out, well, where do you want the test done. I mean, do you want to go -- quite frankly her experience in the emergency room wasn't too good. She may have wanted it done somewhere else even though she said that she thought that Dr. Sy was there.

206

THE COURT: And she saw him and she could have asked Dr. Sy to do it. I mean, what else could a highway patrolman could have done?

MR. BARR: They could have see that she got to Dr. Sy. How she gone get to Dr. Sy just break loose from them.

THE COURT: He's in the emergency room and she's in the emergency room.

MR. BARR: Judge, she's in the emergency room and she's in custody. I think the Supreme Court's going to require more than that.

THE COURT: And my question to you is can you have any cases where they have a require more than that?

MR. BARR: I look up one over lunchtime, Judge. I know I've read some in preparation, but I just don't remember the exact one.

THE COURT: See that you can find one when we reconvene.

MR. BARR: Yes, sir.

THE COURT: 1:20, 1:25 I'll see what I can find let you all know.

MR. DURANT: Thank you, Judge.

THE COURT: Thank you.

(WHEREUPON, a lunch break was taken.)

THE COURT: Okay. You ready?

MR. DURANT: Yes, sir.

THE COURT: On the issue of the video based on the affidavit I have, I think that it's satisfies the requirement on the video. At the time the police officer arrived, she was receiving medical treatment from emergency medical treatment in the ambulance. At that time her condition, she was being treated by EMS in the ambulance based on the severity of the wreck. They were not aware if she had any internal injuries or not. They were transporting her to the emergency room to make that determination. Even though in hindsight, she didn't have any internal injuries and at that time they didn't know that. By the time the trooper arrived, she was in the ambulance being treated on the way to the hospital. So I think based on that the affidavit looking at the totality of the circumstances, the field sobriety test and the arrest did not need to be videoed.

As far as voluntariness of the statement, she admitted on the stand that she was not coerced or threatened in anyway. At the time she made the statement in the ambulance, she was not in custody. She was not under arrest. After she was placed under arrest at the hospital, Miranda rights were given to her and she made no statements at that time. As counsel conceded on the way to the jail, the statement she made on the camera in the

208

patrol car were not a result of an interrogation, was a voluntary statements by her and no one was interrogating her in any way. She was not all on the breathe test was at the hospital by the time the police officer arrested her she was in the hospital. And in State vs. Long, I think, that the blood test was suffice and she did not require to have a breathe test at that time.

Now, as far as the collecting of the blood is concern in the independent test, did you find any cases that said that they had owed her other than assisting her to get a place to have her blood drawn it went any further?

MR. BARR: Judge, quite frankly I didn't get to do a whole lot of research. As far as I got, the case that I found was -- there's language in the case, of course, decided on some other grounds, but it would seem like there is an affirmative duty to assist her in contacting some other independent source to assist her with having a test done. Now, I notice that in this case -- and if you remember the testimony, what happened is they took the two blood samples and the police officer took both of them and didn't give her -- the case I felt dealt with the situation where blood was taken, given to the defendant. It was logged in in the defendant's possession. And when the defendant bailed out, the

test -- the blood was not where it belong. And, of course, in that case the Court said that there would be -- it would be a jury issue as to whether or not the subsequent losing of the blood test, losing of the vial or whether or not that would constitute a deniable of the right to an independent blood test. From my reading of what the limited reading that I did over lunchtime, in a situation we are here where there's no question that she indicated that she wanted an independent test. There's no question that was communicated to the person who drew the blood. There's no question that the person who drew two vials of blood, but instead of one vial going to her both vials went to law enforcement and law enforcement acknowledged that they got both vials and took both vials with them wherever they took them to and they weren't given to her.

THE COURT: The trooper testified that they normally takes two vials of blood, that's what he said on the stand. And based on her testimony she never asked the troopers for an independent test. She was at the hospital unlike if she would have been at the jail. She was there and the only thing she said the nurse came up and said I'm going to take your blood and she said okay and turned her head.

MR. BARR: Judge, now in the context -- and I

210

think that you have look at this in terms of context, but in the context, once they came back with the search warrant and told her, well, we gone draw your blood. And I think on cross-examination she got a little bit mislead as far as going back to this issue of whether she consented to take, but the officers made it very clear that once they told her that she was going to be under arrest she said, no, I'm not going to consent to a test and that's why they went and got the search warrant. So as far as her not consenting to the test or consenting to have blood -- I think the record is clear that she did not intend to consent to having blood drawn, but once it came back and said we gone draw the blood, I mean, under the circumstances I doubt that she could feel that she could stop them from drawing the blood that they got a search warrant for.

THE COURT: I understand, but I'm not taking that she consent. The question I have is whether they gave her substantial assistance in getting an independent test. And normally where that comes up is whether the trooper arrested her or arrested the suspect and taking them to jail give them the breathalyzer and see the breathalyzer get some reading. And they tell you she didn't have anything to drink. I want an independent test and the trooper has to take them to a doctor's office or

hospital or clinic or somewhere to draw blood.

MR. BARR: Once they took the blood and she was not given a sample which they could have given her a sample, most people don't know to run them down and ask them to give you a sample -- to give you one of the samples so that you could have your blood drawn. But again it goes to the issue of what the officer knew or should have known at the time and whether or not they should have taken some steps to at least contact somebody that could assist her in having an independent test done.

THE COURT: I was determine as a result of the statute and I think they complied with the statute as far as giving her substantial assistance. Now, you can -- this form comes into evidence you can obviously offer it to the jury, that she checked an independent and didn't get and whatever weight the jury wants to give that, but I think they complied with the statute.

Now, as far as the search warrant is concerned and that's not one of the issue that you brought up and you were arguing with me, but I think as the State has conceded the search warrant on its face is defective. It does not contain probable cause. However, the search warrant was supplemented based on testimony the trooper took to the magistrate that night that the defendant in fact admitted to drinking and smelled the alcohol on her

212

breathe. And it was a container of alcohol in the car or a cup and it was clear it was alcohol. And the magistrate testified that they told her that night, Trooper Dubose told her that. And so I think based on that there is sufficient probable cause even though the warrant is defective on its face. As far as the person authorized to take the blood, that was technically not an issue before me. And if the State can't prove that, then I would revisit that before whatever goes to the jury, but at this point we will visit that in the testimony to see if they can in fact do that or not. If they can't do that, then I'll reconsider the blood results go to the jury.

MR. BARR: Yes, sir.

THE COURT: Anything else?

MR. DURANT: Not from the State, Your Honor.

THE COURT: Okay. Are we ready for the jury?

MR. DURANT: Yes, sir.

(WHEREUPON, the jury came into open court.)

THE COURT: Mr. Solicitor.

MR. DURANT: The State calls Dr. Mark Reynolds.

THE COURT: All right.

THE CLERK: Dr. Reynolds, if you would step to me please. I need you to raise your right hand and place your left hand on the Bible and state your name please.

THE WITNESS: Mark Andrew Reynolds.

THE CLERK: Do you solemnly swear the testimony you're about to give will be the truth and nothing but the truth so help you God?

THE WITNESS: I do, yes.

WHEREUPON,

Dr. Mark A. Reynolds,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MCMILLAN:

Q Dr. Reynolds, thank you for being here this afternoon. Due to scheduling, we're having to take a little bit out of order, but I thank you for being here today. If you would, would you please tell the jury where are you employed?

A I'm employed at McLeod Regional Medical Center in Florence, South Carolina.

Q And what do you do at McLeod Health in Florence?

A I'm the trauma surgeon. I'm a general surgeon who is trained to take care of traumatized patients.

Q And how long have you been practicing there in Florence at McLeod Health?

A Since September of 1997.

Q And how many years have you been in medicine overall?

A I was -- I graduated from Temple University School of Medicine in 1986.

Q Okay. If you would, would you will you tell the jury and the Court a little bit about your educational background?

A Well, I went to Temple University undergraduate. I went Temple University Medical School in Philadelphia, Pennsylvania. I was trained in general surgery for two years at Temple University hospital. And then spent the rest of my general surgical training at the graduate hospital of the University of Pennsylvania in downtown Philadelphia. I went on to two years of trauma and surgical critical care training at the University of Louisville in Kentucky. Subsequently, I went to the University of West Virginia and University in Morgantown, West Virginia where I was assistant professor of surgery for three years. Thereafter, I was recruited to come and head up the trauma program at McLeod Regional Medical Center in Florence.

Q So would you say your specialty, your area of practice is trauma surgery?

A It is, yes.

Q And are you board certified in that area of practice?

A I am board certified in general surgery.

Q And have you ever been qualified as an expert in a trial before?

A I have, yes.

MR. MCMILLAN: Your Honor, at this time I would like to offer Dr. Reynolds as an expert in the field of trauma surgery.

THE COURT: What says the defense?

MR. BARR: Judge, I'm familiar with Dr. Reynolds.

THE COURT: Okay. And the Court so finds he's certified.

BY MR. MCMILLAN:

Q So, Doctor, you were working back in Florence on August of 2014?

A Yes, I was.

Q Okay. And during that time did you have a chance to see a patient by the name of Mr. Arturo Murrieta-Blas?

A Yes, I did.

Q And were you the attending physician?

A I was, yes.

Q When was Arturo admitted at Florence McLeod Health?

A He was admitted on August 31st, 2014.

Q And what was he admitted for?

A He was admitted for multiple trauma as a result of a motor vehicle crash.

Q And do you know where he came from?

A Well, I don't have any independent recollection of these events. I can state from the record that created

at the time. That he was involved in a high speed head on motor vehicle collision. And he was transported by helicopter from the scene. It was 30 to 40 minutes extrication from the automobile. He was found in the floor well.

Q Okay. So he was airlifted to Florence?

A He was, yes, sir.

Q You don't anything specific about the car accident itself?

A I do not, no.

Q And what was Mr. Arturo's condition upon his admission Florence McLeod Health?

A He was extremely ill. He was totally unconscious. He had -- he required intubation at the scene by the helicopter crew. He was unresponsive and extremist.

Q All right. How long was Mr. Arturo admitted at McLeod health?

A He was admitted from August 31 and discharged on October 22.

Q And during that time what, if anything, diagnosis were given to Mr. Arturo as a result from this car accident?

A Well, multiple injuries including subdural hematoma, subarachnoid hemorrhage, cerebral contusion, cerebral edema, fracture of the orbital floor bilaterally, fracture

of the nose, fracture of ethmoid sinuses, laceration of the face with extensive evulsions. He had multiple rib fractures. He had dysphasia, malnutrition and cephalopathy, respiratory failure.

Q And if would you, would you explain for the jury the general nature of all those injuries?

A Well, his major injuries were concentrated around the head and the face. He had blood inside the skull over lying the brain. He had what we call midline shift when he had a right sided subdural hematoma, that means that he had some bleeding on the brain on the right side that was cause his brain to shift to the opposite side indicating a significant pressure on the brain. He also had cerebral contusion meaning that the brain itself was contused. He had facial fractures.

Q When most of his injuries being to the head, so it's fair to call all these types of injuries a severe traumatic brain injury?

A Yes.

Q And what are the concerns that that type of injury arises in your mind?

A Well, the initial concern was that he was in potentially going to die from his major traumatic brain injury. As a result, Dr. Brandon who is a neurosurgeon on staff at that time, had took the patient to the operating

room and removed a portion of his skull. And in fact evacuated the hematoma and decompressed the brain. And he placed the skull flat in the abdominal wall about there.

Q So how many procedures did Mr. Arturo go during his time at McLeod health?

A He was on the way to extensive work on his face by Dr. Tumey. Repair of the multiple facial lacerations and facial fractures. The rest of his stay was essentially to recover from his injuries and we provided supportive care and prolonged ambulatory support. He was essentially completely unresponsive for several weeks. I performed a tracheostomy, that is placed a tube into the trachea to breathe for him. I placed a feeding tube right into his stomach so that we could feed him. Eventually had replacement of the skull, the cranial flap that was replaced on October 3rd. And at that time he was sent to the floor and he was beginning to recover.

Q So you testified earlier that he was unconscious upon arrival?

A Yes.

Q Did he eventually regain conscious?

A He eventually did according to the notes I have here, yes.

Q Okay. And what was condition when discharged from McLeod Health.

A Well, he was -- he required a lot of help. He was able to communicate particularly with his wife. He was cooperating with the therapy. He was able to eat a pureed diet with thin liquids. He was able to walk with assistance. He was able to perform most of the activities of daily living such as toilet and washing and et cetera with some assistance. And at that time he was discharged home, that was on the 22nd of October.

Q Now, and with a traumatic brain injury of this degree is there any prognosis or probability that disability could arise?

A It's likely to be significant disability.

Q And now after seeing Mr. Arturo's injuries from this wreck, can you give an opinion with a reasonable degree of medical certainty -- I believe you testified to this earlier as to whether this type of traumatic brain injury carries with it a substantial risk of death?

A It does. Without the life saving measurements perform by Dr. Brandon and myself and the staff at the intense care unit, he would not have survived.

Q And also in your opinion is the loss of brain function Mr. Arturo suffered as a result from this incident is that loss a permanent loss?

A Yes, it is.

MR. MCMILLAN: Thank you. No further questions.

Please answer any questions from the defense.

THE COURT: Mr. Barr.

CROSS-EXAMINATION

BY MR. BARR:

Q Doctor, I know that you would have offered. Can you look at your medical records and tell me whether or not there was ever any toxicological test ordered for Mr. Arturo when he was first admitted to the hospital?

A I have no independent recollection of that. I don't have anything to positively identify in the chart here, other then it states in the history and physical of the urine drug screen that it is negative and alcohol is .237.

Q What is alcohol .237? What does that mean?

A That means his alcohol level was 237, which is elevated above the legal limit.

MR. BARR: All right. I have nothing further. Thank you, Doctor.

THE COURT: Anything further, Mr. McMillian?

MR. MCMILLAN: Nothing on redirect.

THE COURT: You may step down. Thank you.

(WHEREUPON, the witness leaves the witness stand.)

MR. DURANT: The State calls Trooper Jeffrey Minnix.

THE CLERK: Raise your right hand and place your

left on the Bible. Repeat your name please.

THE WITNESS: Jeffrey K. Minnix.

THE CLERK: Solemnly swear the testimony you're about to give will be the truth and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

WHEREUPON,

Jeffrey Minnix,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Trooper Minnix, good afternoon. If you would tell the jury where you work and how long you been there?

A I work for the South Carolina Highway Patrol Sumter and Clarendon Counties for the last four and a half years since 2014.

Q All right. Now, you obviously not in a highway patrolman uniform today and what's the reason for that?

A I broke my ankle two weeks ago.

Q On the job?

A No, sir.

Q And as a result out on?

A Yes, sir, I'm on sick leave. Yes, sir.

Q It's policy for highway patrol you can't appear uniform if you're out on leave?

A Yes, sir.
Q But you still employed by the highway patrol?
A Yes, sir.
Q And when you're expected to return to work?
A Anywhere from four to six weeks.
Q Okay. You had been with the highway patrol for four years now?
A Yes, sir. My actual hire date was January 24, 2014.
Q Okay. So were you working then for highway patrol back on August the 30th of 2014?
A Yes, sir.
Q Were you assign to Clarendon County back then?
A Yes, sir.
Q And as that -- in your role as a highway patrolman here in Clarendon County, did you have occasion to respond to a traffic collision in the early morning hours of -- would have been, I guess, the 31st now after midnight on August 31st 2014?
A Yes, sir.
Q Okay. Where was that?
A It was on -- located at 261 between Home Branch and Body Road.
Q Okay. Is that here in Clarendon County?
A Yes, sir.
Q When was the call received?

A The call was received I believe sometime around midnight. We arrive on scene approximately 12:23, 0023 in the morning.

Q You say we who is we?

A Corporal Dubose and I. I was still on FTO at the time.

Q What is that?

A Field training observations. So I was actually -- the highway patrol is required to go through two months of basically -- we do several shifts of a ride along with a FTO officer. Then we do another anywhere from a month and a half to two months depending on where the shifts work out with that officer riding in the passenger seat with us. So at that time I was just completing my FTO portion of my training phase.

Q So you had a more experienced officer riding with you at the time?

A Yes, sir.

Q Okay. And you all would have arrived at 12:23 after midnight on the 31st?

A Yes, sir.

Q Were you the first officer with the highway patrol to arrive on scene?

A No, sir. Darren Wilson who is a -- one of the officers from the -- I believe he's one of our motor

officers. I don't know him very well. I didn't know him at the time at all. Again, I was new. So he -- he was actually the first one to arrive on scene.

Q Were there other first responders from other agencies on scene?

A Yes, sir. There was fire and EMS were on scene. And Clarendon County Sheriff's Department had a deputy on scene as well.

Q Okay. Tell the jury what you found when you arrived on scene?

A When we arrived on scene, I located -- I was able to maneuver my vehicle as close as I could to the actual scene itself. Unfortunately, with the way EMS correction fired and the other officers on scene had parked their vehicles, I could not get around them. So I parked my vehicle a little ways back. We got out of the vehicle, grab my camera, went around, and that's when we noticed the first vehicle was a pickup truck -- a black Dodge pickup truck up against a tree. We started making our way over to that vehicle and we notice fire was out with them trying to extricate the passenger of the vehicle. The driver of the vehicle they had the door open. You can see he was deceased at the time. He was basically curled up underneath the steering column of the driver side of the vehicle. I spoke to another firefighter and he said the

other vehicle was down the road. Look down the road and it was a good bit -- it's a little bit dark out there especially when you got all the lights behind you. And we were just able to make out a little white vehicle off to the roadway. So we -- I made my way down there, walked around the vehicle. Notice there was heavy front-end damage to that vehicle. What I assume would be the tool box from the pickup truck was next to the vehicle of the little white vehicle there in the roadway, walked around the vehicle. While I was looking through the vehicle, I notice there was a clear plastic cup on the floorboard, took several pictures of it just so we could know where it was located for future reference. Picked the cup up, took a pretty good smell off of it and it had a real strong odor of some sort of alcohol had been in it, put the cup back, about that time another fire fighter came up to the scene. I asked where the driver of the vehicle was. They informed me that they were actually in the ambulance that was located on Boyd Road, which is a little dirt road just off to the side. And so I walked over there, got up in the ambulance. And they were busy taking care of the driver. They're busy taking care of the driver of that little white car. I spoke to the driver of the white vehicle asked her name. She was able to give me her name. It was -- she identified herself as Tammy Dianne Brown. I

asked her where she was coming from she told me she was coming from a friend's house. At that point in time you could smell a strong odor of some sort of alcohol beverage coming from her person. I asked her if she had anything to drink she told me she had two shots of tequila. She then changed that pretty quickly to two wine coolers. I said okay. I asked her what was in the clear cup that was on the floorboard of the car and she said her friend had made her one for the road. I asked her what was that. She said it was a wine cooler she made it for the road. About that time, EMS basically told me, hey, look we're trying to get her out of here. I got out of the ambulance and I went back. I inform my corporal of what my suspicions were at that time, that I did think she was -- that there was a possibility that she was intoxicated. We continued to actually work the collision scene to finish taking pictures. Trooper McCoon showed up and marked the scene for us. The corporal I was talking to our first sergeant and our sergeant who showed up at the scene. By that time they had extricated Mr. Blas who was the passenger in the vehicle. We were waiting for the corner to arrive to -- so that they could extricate the driver of the vehicle Mr. Arenas. Afterwards, we -- my corporal and I left the scene. We went to Clarendon Memorial ER. We went in we spoke to Ms. Brown again. Basically at that

point in time we did that so that the corporal who obviously has many more years experience than I do so she could get verification of what was going on with the situation. At that point in time Ms. Brown was informed she was being placed under arrest for felony DUI. She was read her Miranda rights, read her implied consent rights. She up until that point she had agreed to provide a blood sample. Once we told her that she was being charged with felony DUI involving death, she refused to provide a blood sample, became belligerent. The corporal went to secure a search warrant for her blood. I stayed at the hospital just to kind of -- make sure if she was released that she was in custody. The corporal was able to get back. During the time that she was gone, I was not actually physically in the trauma room. I was just outside of it. But you could hear Ms. Brown in there, you know, carrying on making statements about how she didn't kill anybody. And that basically the biggest statement was that, you know, she was saying that they hit her, that it was an oncoming collision. It was head on. That they were trying to pass somebody and they slammed into her. So after she was -- after the corporal got back, the phlebotomist was able to take her blood. She was then put in handcuffs and transported to Clarendon County Detention Center.

Q All right. Trooper Minnix, you gave us a lot of information there, so I'm going to go over some of it a little bit greater detail. I was hoping to show you some photographs from the scene when we take a break in a minute with the Court permission to get the equipment in order. But before we do that, let me first talk to you about the dash cam video. Is your car equipped with a camera?

A Yes, sir.

Q All highway patrol -- law enforcement cars at this point are essentially equipped with cameras; is that right?

A Yes, sir.

Q Okay. Is there an audio feed for the camera as well?

A Yes, sir.

Q And how does that work?

A Well, what it is is anytime that our blue lights are activated, our body mic and our camera are automatically activated. The way the system in the car that I had that worked, I had an older vehicle when I first -- of course, I just graduated from the academy, so they're not going to give you a newer vehicle. So I had an older system in my car. It was a VHS system. The way that works is is there's a little stand, that's a charging stand that also has an antenna on it. The body mic that we wear goes

through there and then routes up to the camera system, which is located on the roof -- the ceiling of the vehicle. And then that in turn records to the VHS system, which is located -- there's fault in the trunk of the vehicle.

Q Okay. There is unlimited range with that microphone that's attached to the camera?

A No, sir, it's very limited range. Again, it's an older technology, so it's pretty limited its range.

Q Okay. What I'm getting at is is the you mention some statements that were given by Ms. Brown, I believe, you said she was in the back of your ambulance with EMS at that point?

A Yes, sir.

Q There was some statements given by Ms. Brown with respect to this accident and with respect to having consumed alcohol earlier in the evening. Is that recorded?

A No, sir, it was not actually. But the scene was recorded, but it was not able to pick up the actual initial interview with Ms. Brown.

Q Why is that?

A The distance between my vehicle and the ambulance was just too great not to include the fact that all the noise in the area, the fact that you're trying to go through the

another vehicle because I was in the back of the balance with her. So it just wasn't able to pick up that interview.

Q So when you arrived was Ms. Brown already with EMS?

A Yes, sir.

Q She was already in the back of the ambulance?

A Yes, sir.

Q Okay. As an aside, did she admit to you that she been driving the car?

A She never physically told me that she was the driver. I asked -- I got to think about it for a second. I asked who the driver was and I believe that EMS basically said she was the driver. And I asked her what her name and date of birth was and she told me Tammy Dianne Brown. She didn't disagree with the fact they had identified her as the driver.

Q But she later gave some statements as far as how the accident happened that she had been hit head on?

A Yes.

Q Okay. Let me show you what's been marked as marked State's Exhibit 46. It says felony DUI Tammy Brown disk one. Do you know what that is?

A Yes, sir, this is actually going to be the video of the actual collision scene.

Q This is a video from the dash cam of your parol car

at the actual accident scene?
A Yes, sir, the video that it's going to show is actually out the front windshield.
Q Okay. So if the camera actually stationary that stays in your vehicle the whole time?
A Yes, sir.
Q So you walk around, you got the microphone attach to you and it feeds back the same system, but the camera is stable inside the vehicle.
A Yes, sir.
Q Trooper Minnix, have you had occasion to look at the video, to view this video?
A I believe I've reviewed it twice.
Q Okay. Does it appear to be a fair and accurate representation of the video from your patrol car that evening?
A Yes, sir.
Q The equipment in working order?
A Yes, sir.
Q Has it been altered or edited in any way?
A No, sir.
MR. DURANT: And, Your Honor, I ask to submit State's Exhibit 46 into evidence.
THE COURT: Any objection?
MR. BARR: Without objection.

THE COURT: It's in without objection.

(WHEREUPON, State's Exhibit No. 46 was admitted into evidence.)

(WHEREUPON, video being played for the jury.)

BY MR. DURANT:

Q Trooper Minnix, I'm going to stop it right there and ask you one question. I don't know if you testified earlier, but where were you coming from when you got the call?

A We were on SC 260. We had just been at a driver's license check point on Raccoon Road. And so basically what had happen was, they gave out the collision on our radio, turned around and started heading towards 261. A few minutes afterwards, they notified us that it was actually going to be a possible fatality. So at that point in time -- any time there's a fatality we try to get there as soon as possible. So I activated my lights and siren and that's where the camera kicks on right there is where they just given us out the fact that it's possible -- what we call a ten seven, but it's a fatality. So I activated lights and siren and as soon as I do that, of course, automatically the camera comes on and all the mics are operating.

Q So coming from Raccoon Road in Manning through the traffic circle?

A Yes, sir.
Q Is the date and time stamp on the video accurate?
A Yes, sir, I believe so.
Q 8-31-14 00 1337 that be 1213 in the morning?
A Yes, sir.
(WHEREUPON, video starts playing again for the jury.)
BY MR. DURANT:
Q This is your arrival at the accident scene here?
A Yes, sir.
Q Okay. Tell the jury why you stop her?
A It's a little tight fight to try and drive through here. At this point time, you know, the vehicle is right here the black truck. So we didn't -- I don't know what's further on down the road. So I'm just going to stop here, so that's where we thinking the collision is here. Plus it's a tight fit, so we're not going to take the chance I'm to start scraping, you know, paint off my car. Pulled over to the side here and basically this is where the vehicle stayed from the duration of time. We were out there on the collision scene.
Q Now, the vehicle that -- were both the vehicles involved were traveling toward Manning; is that correct?
A Yes, sir.
Q So towards the direction as you were coming from?

A Yes, sir.
Q Okay. So they would have been coming toward you?
A Yes, sir.
Q You seen some photographs of the vehicle and one that's off to the side on the road in front of a tree. And the other still in the roadway. So they would have been -- I guess if you're looking on the roadway on your side, the left-hand side of the road?
A Yes. Well, those lights are pointing -- they're actually pointing that direction right there. The vehicle is like just on the other side of this truck right here.
Q Now, tell the jury about this sign?
A So you're coming into an intersection. This is out here in the county is considered a major intersection. You're on a South Carolina highway road S.C. 261. You're coming up to another major road Home Branch which gets a lot of traffic on it. So what the DOT has done is is they put what they call a cautionary speed limit sign in there. What that means is is that you have to slow down to 4t miles per hour when you're going through these intersections like this. Same thing for when you're making turns around curves and then pops up with numbers on the curve. They say 35 miles an hour. It's not that you can't take that at 55 miles an hour, it's just that you shouldn't 55 miles an hour you need to slow down to 35

miles an hour. That's what that means right here is you going 45 miles an hour going into this area right here. The reason being is you've got sight line for people coming off Home Branch at 55 miles an hour. By the time they see you, they may already be half way in the lane and they can get T-Bone or something like that. So they want people to slow down a little bit in those areas.

Q Now, as far as highway patrol is concern what is your understanding of the legal affect of the sign?

A Those are the official speed limit signs in the area.

Q So it's mandatory speed limit?

A Yes.

Q It's against the law to go fast in a 45?

A Yes.

Q Again, this is the road that T's off pursuant to the signs of Home Branch Road?

A Yes, sir, that be Home Branch.

Q All right. You can have a seat back. Before you go -- I'm sorry about that. Can you tell me from the video where the ambulance is with respect to your car?

A Okay. So if you go down the road your ways, a little dirt road Boyd Road, I don't know if anybody is familiar with that. It's a little dirt road, that's where the ambulance was parked on. It was actually on Boyd Road and so they actually got some pretty decent pictures where

Boyd Road was in relation to her car and pictures that actually showed this way about how far the distance was.

Q Okay. So that's where the ambulance would have been parked?

A Yes, sir.

Q Did you ever get any closer than where you're parked now?

A No, sir.

Q This where your car stayed parked until you left?

A Yes, sir.

Q Okay. You can go ahead and have a seat back up and I'm going to play some more of the video for the jury.

(WHEREUPON, video continued.)

BY MR. DURANT:

Q Based on the quality of the audio at this point, it's difficult to understand at all anything that you have said or any of the conversation or anybody at the scene?

A And that's from the way the body mic works is it picks up everything. So now you are out there with all this equipment. You got the fire trucks are out there. They've got generators running. They got lights running. They're trying -- all the hydraulic equipment they are using. All that's been picked up on that body mic. And plus you're talking. All other vehicles that are running. It picks up all that. So that's why unfortunately in

these kind of situations this isn't the -- especially with this equipment that we had at the time. It was not the best situation.

Q Is the quality of the audio substantially the same throughout the remainder of the video?

A Yes, sir.

Q Okay. I'm not going to ask the jury to sit through that at this point, but again that's the only equipment you had to work with at that time?

A Yes, sir.

Q That's the best you had?

A Yes, sir.

Q Okay. Now, Trooper Minnix, you mention that you had a conversation with Ms. Brown in the back of the ambulance as she was being attended to by EMS?

A Yes, sir.

Q Okay. First of all, tell me about your initial observations of Ms. Brown when you approached her?

A When she was in the back of the ambulance, she had some scratches on her from my recollection. I don't think from -- I don't believe she had any kind of scratches around her face or anything like that. I think mostly from her arms or so, but I do believe there was a little bit of blood on her at that point in time. Again, her eyes were bloodshot. Unfortunately, in an ambulance like

that, there's light, but it's still pretty hard unless you really get up in somebody's face to tell. So from a distance, I can kind of tell that they were a little bit bloodshot, but I wasn't absolutely sure. So after I started talking to her even from about an arm and a half length away, you can still smell the alcohol, that smell of alcoholic beverage from her person. So that was kind of why I started asking her about had she been drinking.

Q And when you went over there to meet with her to begin with, what was your purpose?

A Just basically just to interview. We were just trying to figure out what happened. At that point in time from seeing the pickup truck, seeing her car, we kind of had an idea, but there's always something happened. So we wanted to make sure that what she was telling us matched up with what we were seeing at the scene. So that was the initial interview -- that was the initial interview.

Q And tell the jury again about the questions you asked and the responses you got from Ms. Brown in the interview that evening?

A Again, after speaking to her asking her for her name and date of birth, after I noticed the smell of alcohol beverage coming from her, I asked her if she been drinking. She said yes. I asked her how much she said two tequila shots. Again, she changed it pretty quickly

to two wine coolers. Afterwards, I asked her what was in clear cup in the car on the floorboard of the vehicle, she said that her friend made her one for the road. I asked her what was in the cup she told me it was a wine cooler. So that was pretty much where it ended because EMS was trying to get her to the hospital to check for internal injuries at that time, what's why I didn't really delve into any more questions about anything else.

Q Okay. Did you offer her any -- what's commonly referred to as field sobriety test at that point?

A No, sir.

Q Okay. Tell jury what field sobriety test are?

A Field sobriety test is a standardized set of test that they determine can help benefit law enforcement in making a determination of whether somebody is appreciably impaired. What it does is is there's a -- what we check for vertical and horizontal nystagmus, which is a involuntary muscle spasm in the eyes, that -- really you can't -- I mean, there's nothing you can do about it. If you been drinking, the more you drink the more your eyes are going to start drinking when you get to what we maximum deviation. So that's what we're actually looking for when we're watching your eyes. We're not looking for you to follow our finger. That's one portion of it. We are looking at walk and turn where we're trying to make

sure you can put heal to toe. That you can count the number of steps. That you can listen to directions. That you can turn properly that kind of thing. And there's the one leg stand which is basically balance and direction following. So those are part of the field -- the standardized field sobriety test.

Q Why didn't you offer those to Ms. Brown?

A The reason I didn't offer them to her was for the simple fact that she was already in the ambulance. I'm not going to get her out of the ambulance. Again, I don't know what her injuries are, even EMS was unsure. I'm not going to say, hey, why don't you jump out of the ambulance do these test for me, so I can make sure that you're not inebriated.

Q After meeting with Ms. Brown back of the ambulance what did you do?

A I went over and met with Corporal Dubose. I explain to her what, you know, I thought was going on. At that point in time we finished up doing what we were doing for the scene marking the scene, taking pictures. We had to wait for the coroner to arrive, so that he could get the -- Mr. Arenas who's the decease the driver out of -- from the vehicle. Once we did all that, the first sergeant and the sergeant secured the scene to wait for our MAIT investigator. And we went to the Clarendon Memorial.

Q Let me ask you about the victims, you mention that when you arrived that the fire department was in the process of extricating trying to get the victims out of the Dodge -- the pickup truck?
A Yes, sir.
Q Okay. And were they both incapacitated when you arrived on the scene?
A Mr. Blas was the passenger of the vehicle. They were extricating him. He was as far as I know he was unresponsive. Mr. Arenas he was pronounced dead. He was the driver of the vehicle. He was -- like I said when we walked up there, you could actually see he was -- he was stuffed underneath the driver steering column of the vehicle.
Q Was the victim identified at the scene?
A They were identified. Mr. Arenas was actually -- the family members actually gave us the wrong information originally.
Q For the driver?
A For the driver Mr. Arenas. Several days later his step daughter came by the office with his birth certificate and gave us the right information. So we had to change the report to reflect that.
Q Is that the reason that some of your reports reference a Mark Maradio (sic) or something to that

effect?
A Yes, sir.
Q But you verified it later and his actual name was Guillermo ---
A Guillermo Arenas, yes, sir.
Q And the passenger was identified as what now Arturo?
A Blas.
Q Is that the same individual that you heard Dr. Reynolds testified as to treatment earlier?
A Yes, sir, I believe so.
Q Al right. Tell me what happened to Mr. Arturo that evening?
A He was transported to Florence by our area vac and they basically proceeded to operate on him. We do not -- because he was in surgery we did not drive up to Florence to make sure he was okay. We kind of figured they were going to take care of him up there. They didn't need us bothering him.
Q Okay. The driver of that black pickup truck Mr. Guillermo you mentioned he was DOA when you arrived?
A Yes, sir.
Q What does that mean?
A Dead on arrival.
Q And did the coroner later respond to the scene?
A Yes, sir.

Q As to your knowledge was that confirmed?
A Yes, sir.
Q At the scene that he was deceased in the pickup truck?
A Yes, sir.
Q After this point did you leave to go to the hospital?
A Yes, sir, as soon as the coroner okayed it for the fire to extricate the driver of the vehicle, that's when we left to head to Clarendon Memorial.
Q You and Corporal Dubose?
A Yes, sir.
Q Tell the jury what happened when you got to the hospital?
A When we got to hospital, we went in again because Corporal Dubose's experience, she wanted to make sure that what I was get was the same thing as what she was getting. So she -- we interviewed Ms. Brown again. She smelled the same things I smelled the strong smell of alcoholic beverage, bloodshot eyes. And so at that point in time we told Ms. Brown that she was being placed under arrest for felony DUI. And we read her her Miranda rights. And then we read her her implied consent rights. And initially she agreed to provide a blood sample, but like I said, as soon as she found out it was felony DUI involving death. Again, she refused became belligerent. Her comments were

how am I going to be charged with killing somebody when they hit me. You know, I didn't kill nobody out there. That kind of stuff.

Q You mention Miranda rights. Was this the first time you read her Miranda rights to her?

A Yes, sir.

Q Okay. You didn't read them to her at the scene?

A No, sir.

Q When you spoke to Ms. Brown at the scene of the accident, did you have any reason to arrest her for anything?

A No, sir.

Q Did you have any probable cause at that point believe she committed a crime?

A Like I said, sir, at that point in time I kind of -- I had the suspicion that she had been drinking, but, again, I been with the highway patrol for a little under two months at that point. So I wanted to make sure that somebody who had more experience was able to make that determination before I placed her under arrest. So at that point in time that's why I chose not to place her under arrest. And like I said when we got to the hospital, she was not under arrest until Corporal Dubose and I spoke to her for the second time.

Q So after further observation and the conversation

with Ms. Brown, she was placed under arrest at the hospital?
A Yes, sir.
Q Okay. You mentioned upon placing her under arrest, that you read her something called her implied consent rights?
A Yes, sir.
Q What are those?
A Under South Carolina state law basically means that if you drive in the State of South Carolina, you are consenting to give a breathe test or a blood test or a urine test. What that means is is that if you are from Tennessee and you cross the South Carolina boarder and you got alcohol in your system, you automatically consent to provide these tests if we pull you over and if you are involved in a collision. So what that is is those are the implied consent laws are basically what this is the outcome of what will happen if you do not take the test. If you do take the test and provide samples over this certain point, that's what that is is that's just giving you that basically what's going to happen, the circumstances and what your choices are.
Q But that implied consent that can be withdrawn, can it?
A Yes, sir.

Q So an individual that's suspected and that's under arrest driving under the influence can withdraw that consent and refuse to submit to any testing?
A Yes, sir.
Q Okay. You mention your interactions with Ms. Brown at that point after you arrested her and read her those rights tell the jury again about the demeanor and about her response to you upon being read those implied consent rights?
A So we read her implied consent rights. Again, she stated she didn't hit nobody. They were trying to pass her, pass another car and they hit her head on. She didn't kill nobody. Nobody was dead. Those were the kind of statements she was making. At that point in time when she refused to provide a blood sample, Corporal Dubose made contact with Judge Locklair to secure a search warrant. So Corporal Dubose left the hospital went to go get that search warrant. I stayed at the hospital. Again, I was outside the trauma unit, but you could overhear what she was saying to the nurses and basically was the same thing. You know, she was just telling them I didn't kill nobody, how can be I blamed for killing somebody. They hit me, that's the kind of statements she was making.
Q At any point during this period of time, at any

interaction with Ms. Brown that evening, was she threatened or coerced by law enforcement in any way?
A Absolutely not.
Q In your opinion was all of her statements given freely and voluntarily?
A Yes, sir.
Q Okay. When Trooper Dubose -- did she actually secured a search warrant and bring it back to the hospital at some point?
A Yes, sir, she did.
Q And did -- was a blood sample taken -- blood and urine sample was taken from Ms. Brown pursuant to that search warrant?
A Yes, sir. She was read the search warrant. She was served it. A blood sample and a urine sample were both taken. I was present for the blood sample. Corporal Dubose was present for the urine sample.
Q Because she's a female officer?
A Absolutely, yes, sir.
Q One of the advisements on that implied consent right form, I believe you testified you read to her that morning is that the suspect had the right to have additional independent test done at that facility of their own choosing if they so desired; is that correct?
A Yes, sir, it's not a facility of their own choosing.

It's basically if they want independent testing done, what it is is they say I don't trust the machine or I don't trust your test very well. So what we do is we give them that affirmative assistance. We will transport them to the closest medical facility. In this case we were actually at the closest medical facility and so that's all that really means.

Q So if somebody is -- didn't have to go to the hospital to begin with, you took them to have a breathe test done and they requested additional test, you take them to the hospital to get blood drawn?

A Yes, sir.

Q Okay. When you read those rights to Ms. Brown at that point -- what time was that by the way you arrested her?

A I believe she was actually arrested at 0155.

Q 1:55 a.m.?

A Yes, sir.

Q So right at two hours after this accident?

A Yes, sir.

Q Okay. When you read her those rights, did she convey to you any desire to have additional independent test done?

A No, sir.

Q Okay. What time did Trooper Dubose arrive back with

the search warrant?
A I believe it was sometime around 3:20 in the morning.
Q About an hour and a half later, she gets back with search warrant. At any point you mention that you were outside kind of listening to her conversation with the nurses. At any point during that period did she express a desire to have additional independent testing done?
A No, sir.
Q Okay. When Corporal Dubose arrived back with search warrant, you all executed it then at 3:21 a.m. a blood sample was taken from her?
A Yes, sir.
Q Okay. Who took the blood sample?
A The phlebotomist or -- it was either the phlebotomist or a nurse.
Q It was medical personnel?
A Yes, sir. We walked up to the nurses station and basically said we need somebody to take a -- you know, a blood sample from this young lady and they sent somebody in there to take the blood test.
Q Okay. I don't see the form. Let me show you what's been marked as Court Exhibit 4 if you would tell the jury what that is?
A This is the South Carolina Law Enforcement Division urine blood collection report. What this is is -- we fill

this out and then it's signed by an individual that's actually drawing the blood. It goes through different aspects of it what's the subject under arrest for, has the subject been -- have they been advised of their consent rights, what's and then down here it says check the correct one, only one can apply. And it tells basically ---

MR. BARR: Judge, is it in evidence?

MR. DURANT: It's not at this point, Judge. I be happy to put it in evidence.

MR. BARR: I prefer you put it into evidence because he's testifying to the content.

MR. DURANT: I be glad to. Your Honor, I'd ask to admit Court's Exhibit 4 into evidence.

MR. BARR: No objection.

THE COURT: I'm sorry, you don't have any objection?

MR. BARR: No objection.

THE COURT: All right. It's in without objection.

(WHEREUPON, Court's Exhibit No. 4 is now State's Exhibit 49 admitted into evidence.)

BY MR. DURANT:

Q Tell the jury about the form again?

A So it basically just has a bunch of check boxes and

it just goes into check the correct one, only one can apply. Officer has reasonable suspension that the subject is under the influence of drugs or other alcohol and a urine sample is requested. Subject is unconscious or otherwise incapable of refusal and is considered a form. Therefore, a blood sample is requested. A blood sample is requested by the arresting officer because a license medical person has inform the officer that subject is unable to take a breathe test at this time due to any reason. The one that's actually checked on here is by us is subject is under arrest for and or in violation of section 56-5-2945 or 21-113 and pursuant section 56-5-2946 or 21-116 a blood sample or a blood and urine sample is are requested.

Q Let me stop you there, sir. We're talking about this -- kind of the second section down says check the correct one in parenthesis only one can apply?

A Yes, sir.

Q Okay. And there's a check mark in one box beside there's some bullet points list with boxes beside them. It's clearly a check mark in one box says the subject is under arrest for or in violation of 56 -- which is the felony DUI statute?

A Yes, sir.

Q Okay. And that's the reason for the blood draw?

A Yes, sir.
Q Okay. Below that there's a separate bullet point that states a blood sample is requested by the subject for his or her own independent test?
A Yes, sir.
Q And there's a check or some type of stray mark around the box?
A Yes, sir.
Q Okay. Do you know who made that marking?
A No, sir, I do not.
Q Was it made by law enforcement?
A No, sir, it wasn't.
Q Was it made by Ms. Brown?
A I don't believe so, no, sir.
Q Did Ms. Brown actually sign the form?
A No, sir, she refused to sign the form.
Q Refused to sign?
A Yes, sir.
Q She was offered opportunity to sign the form and refused to sign it?
A Yes, sir.
Q How is that notated on the form?
A It says refused to sign.
Q So as part of your ordinary protocol you have submitted that form to Ms. Brown to give her the

opportunity to sign it?
A Yes, sir.
Q Had the form been read to her?
A Yes, sir. She would have been told what was on this form. It would have been read the applicable boxes would have been read to her.
Q Okay. Now, again she had been arrested about an hour and a half before this and read her implied consent rights; is that correct?
A Yes, sir.
Q And during the course of that advisement of rights, she would have been notified of her right to obtain independent testing?
A Yes, sir.
Q Okay. Again at any point during that hour and a half period, did Ms. Brown indicate to you or anybody else in your presence that she wanted an independent test done?
A No, sir, not in my presence.
Q Did she sign the form?
A No, sir, she did not sign the form.
Q And you were there present when the form was offered to her?
A Yes, sir.
Q During that interaction with you and the phlebotomist, you mention that you were there when the

blood was drawn?
A Yes, sir.
Q During that interaction with you and phlebotomist or the nurse, was Corporal Dubose there as well?
A Yes, sir, for the blood and the urine.
Q During that interaction with all of you all at any point did Tammy Dianne Brown request an independent test?
A Not in my presence. I don't believe in Corporal Dubose's presence.
Q At any point did she say wait a minute, I don't trust y'all I want somebody else to test my blood?
A No, sir.
Q Okay. At any point did she say, hey, give me a vial of my blood so I can get somebody else to test it for me?
A No, sir.
Q Tell the court what was done with the blood after it was drawn from Ms. Brown?
A So what I did was we actually have a blood draw kit that is provided for us from SLED. You open it up. It has a seal on it to make sure that everything is sealed up. And so I broke the seal, open it up, took the box out. It's got some sort of disinfectant that is not alcohol. I believe it's like an iodine solution. So we made sure that the person drawing the blood use those as oppose to an alcohol swab, gave her the vials. There's

the tags that go over the vials are in the box with it. Fill those tags out. The nurse gave the vials of blood back. I made sure those were sealed up around it with my signature. They were both placed into the box. The corporal hand me the urine sample, that was placed in this little box. That box didn't get sealed up and sealed off with initials on it. It then goes into a plastic bag that's zip lock. That bag then goes into the original box. That box is then sealed up with another tag put over it with my signature on it.

Q So everything is packaged together?

A Yes, sir.

Q It's individually sealed?

A Yes, sir.

Q And package together into one plastic bag?

A Yes, sir.

Q Tamper proof.

A Absolutely, yes, sir.

Q So if somebody had broken the seal, it be evident?

A Yes, sir.

Q Okay. Who took custody of it?

A I took custody of it. And then we transported it to the Sumter office where it was put into the evidence refrigerator.

Q Okay. You transport it yourself to the Sumter office

and you all have the evidence facility there?
A We got a evidence locker. It's a refrigerator that we keep any type of blood or urine samples in until it can be transported to central evidence facility in Columbia.
Q Okay. Did anybody else come in contact with it from the time that it was taken from Ms. Brown until it got to the evidence facility in Sumter?
A No, sir.
Q It's in your custody the entire time?
A Yes, sir.
Q Was the package -- after it was sealed, did you seal it yourself?
A Yes, sir.
Q After you seal the package, was it ever open again from that point until you deposited it into the evidence facility?
A No, sir.
Q Okay. Did you have ever have any interaction with that package again?
A No, sir.
Q Tell the jury about the evidence facility in Sumter, how that works?
A Basically it's our office. Of course, our office is secured, but it is also inside a refrigerator that is locked and secured. And so once we get there, we place it

in there. We lock the refrigerator back and then we fill out our evidence log that state who -- you know, what time it was put in there and what the case number is and everything that pertains to that.

Q Okay. That plastic wrapping that container would have contained both the blood samples and the urine sample?

A Yes, sir.

Q Okay. Finally, you mentioned -- I don't know if you mention this yet or not. Who transported the defendant from the hospital to the jail?

A I did.

Q Okay. When was that done?

A That was done after the blood test was taken.

Q So after she was arrested at some point it was determine she didn't require any further medical treatment?

A Yes, sir.

Q Was she transported actually that morning?

A Yes, sir.

Q Okay. By you and your patrol car?

A Yes, sir.

Q Okay. Now, this camera that we saw some video from earlier, does that have the capability to record on the inside of your car as well?

A Yes, sir, what it is is it's an older system again, so any time we have somebody that's being arrested that's riding upfront with us, we have to physically turn that camera around and put it on them. The newer camera systems automatically have a camera in front and the rear. But that's what the camera was turned around and face Ms. Brown while she was in my vehicle.

Q Okay. Was a recording actually made of Ms. Brown's transport from the hospital to the jail?

A Yes, sir.

Q Have you had a chance to review that video?

A Yes, sir.

Q Let me show you State's Exhibit 47. It says felony DUI Tammy Brown disc two. Tell the jury what that is?

A This would be the video footage the transport from the hospital to the detention center.

Q All right. Is it a fair and accurate representation of that transport?

A Absolutely.

Q Has it been altered or edited in any way?

A No, sir.

MR. DURANT: Your Honor, I ask to admit State's Exhibit 47.

MR. BARR: No objection.

THE COURT: It is in without objection.

(WHEREUPON, State's Exhibit No. 47 was admitted into evidence.)

BY MR. DURANT:

Q Trooper Minnix, while this is coming up during that transport, during that interaction with Ms. Brown from the hospital to the jail, did you ask her any questions?

A No, sir.

Q Did you make any statements to directly to her that would have elicited a response from her?

A No, sir.

Q In your opinion was the statement that she gave in that -- during that transport freely and voluntarily given?

A Yes, sir.

Q Tell the jury what she said during transport?

A Basically just ramblings, but they were were more ---

MR. BARR: Judge, I'm going to object. The best evidence is listen to the tape and her conversation is on tape and we'll hear it. Then for him to summarize what she says we would object.

THE COURT: Okay. Rephrase the question again?

MR. DURANT: Your Honor, I just ask the officer about statements that the defendant made in the car on the way from the hospital to the jail.

THE COURT: Okay.

MR. DURANT: I think there statements against interest and they're admissible.

MR. BARR: Your Honor, her statement on the tape and he was about play it. I already consented to put it in evidence.

THE COURT: Okay. If anything needs to be explain, it can.

(WHEREUPON, video played for jury.)

BY MR. DURANT:

Q Trooper Minnix, the defendant's statements in that video that somebody was driving fast passing another car and hit her is that consistent with her description of the accident at the hospital?

A Yes, sir.

Q Okay. She claimed that she had been hit head on?

A Yes, sir.

Q Okay. At any point did she give any alternative explanation for the accident?

A No, sir.

Q At any point whether at the accident scene or at the hospital or with a nurse when you were listening to her, at any point did she claim that somebody pulled out in front of her?

A No, sir.

Q Did she give an alternative explanation for the

accident other than her statement that her claim that the other car passing somebody else going fast and hit her head on?

A No, sir.

Q That's the only explanation you ever heard from Ms. Brown regarding this accident?

A Yes, sir.

MR. DURANT: Your Honor, I would ask -- we been in here about an hour and a half now. I would ask for a brief recess to try to get my photo equipment in order to give the jury a break to use the restroom.

THE COURT: We take a break.

MR. DURANT: Thank you.

(WHEREUPON, the jury retire to the jury room.)

(WHEREUPON, a break was taken.)

THE COURT: Okay. You ready for the jury.

MR. DURANT: Yes, sir.

(WHEREUPON, the jury came into open court.)

BY MR. DURANT:

Q I want to go ahead and just show you a series of photographs most of which the jury has already seen regarding this incident.

MR. DURANT: First State's 13, Your Honor, I'm not sure it's been admitted into evidence yet or not.

MR. BARR: I don't have any objection.

THE COURT: Okay.

(WHEREUPON, State's Exhibit No. 13 was admitted into evidence.)

BY MR. DURANT:

Q Let me show you State's 13, Trooper Minnix. If you would describe this photograph for us?

A That is going to be coming from Paxville going eastbound on 261. Home Branch is on your left there and where the excuse me -- where the highway patrol on Tahoe on the right-hand side there is going to be I believe Boyd Road.

Q So this is coming -- again, you said from Paxville?

A Towards Manning, yes, sir.

Q That the vehicles were traveling that were involved in the accident?

A Yes, sir.

Q The opposite direction from which you approached the accident scene; is that right?

A Yes, sir.

Q As we get to State's Exhibit 1, tell me what we are looking at here?

A That is going to be Ms. Brown's vehicle. That's the truck tool box that came off of the truck after it was struck. That's Boyd Road on the right-hand side right there, which is where the ambulance was parked.

Q And so if you go back to the last photo, this is her car would have been down here. And again this is Home Branch Road here where the street light is?
A Yes, sir.
Q Okay. During the course of the your investigation, did you determine where the victim's were coming from?
A They were coming from a family member's home on Home Branch Road.
Q Okay. Off of Home Branch Road here, so they would have turned left onto 261?
A Yes, sir.
Q Which direction were they traveling?
A They were traveling east bond towards Manning on 261.
Q Do you know what their end destination was?
A Winter's Hill Road is where they lived, so we assume that that's where they were headed to.
Q So heading from Home Branch Road, again you received information that they were at a family member's house there?
A Yes, sir.
Q Turned left onto 261 and Winters Hill Road would be several miles down on the right?
A Yes, sir.
Q Or maybe not several miles, but some distance down the road on right hand side?

A Yes, sir.
Q Okay. Let me show you State's Exhibit 2. What are we looking at here?
A That's going to be the final resting stop for Ms. Brown's vehicle. Like I said, that's the tool box actually in the pickup truck. If you look down where the lights are on top of the picture up there to the right, that's the truck right there. So that tells you how far that vehicle traveled after being struck. And you can see the skid marks that led up to the white vehicle there and there was a bunch of debris around the vehicle. If I'm not mistaken, there's some tools and stuff.
Q Okay. There's some orange -- looks like a paint mark is on the roadway here?
A Yes, sir.
Q Who made those?
A Trooper McCoon should have made those.
Q And he was on scene along with you?
A Yes, sir.
Q And what's the purpose of the markings?
A What that does is is we mark those so that just in case if MAIT -- if our MAIT investigator can't get out there, that they have some sort of idea that this is -- these tracks right here are for this collision that we're investigating today. So basically all we're doing is

we're marking the scene as to what was where.
Q Okay. Let me show you?
MR. DURANT: This is actually marked as Defendant's Exhibit 1, but I'm introducing it into evidence. I assume no objection.
MR. BARR: No objection.
(WHEREUPON, Defendant's Exhibit No. 1 is now State's Exhibit No. 67 admitted into evidence.)
BY MR. DURANT:
Q Tell the jury -- there's an area here looks like with some orange paint around it.
A Yes, sir.
Q What is the significance of that area?
A That's point of impact.
Q Point of impact?
A Yes, sir, that's where the vehicles actually made physical contact initially.
Q All right. And there's some more paint markings going down this way. What's the significance of those markings?
A Those are the skid marks leading up to the point of impact.
Q So based upon your understanding as to the point of impact, it would have been -- is it fair to say it would have been between Home Branch Road and Boyd Road?

A Yes, sir.
Q Okay. So you would have not gotten to Boyd Road?
A No, sir, that's Boyd Road on the right there. Home Branch is just behind where this picture is.
Q Back here?
A Yes, sir.
Q This is Boyd Road. Point of impact is between the two roads. Again, the vehicles are heading in this direction towards Manning?
A Yes, sir.
Q So if they were coming back towards the bottom of the picture, the impact would have been after Home Branch Road, but before Boyd Road?
A Yes, sir.
Q All right. This is State's Exhibit 18. This another photograph of the area you call referred to as the point of impact?
A Yes, sir.
Q This will be looking back towards ---
A That is Home Branch on the right-hand side. So Boyd Road would be back on the left-hand side over here. This is looking towards Paxville.
Q State's Exhibit 19 what are we looking at here?
A That's basically a overhead shot of the point of impact. Tell the jury what kind of markings these are on

the highway here. Those are actually markings from her car going underneath the pickup truck. What it is is the way when you have an impact like that, that would force those vehicles dig into the asphalt, that's why we know where point of impact is.

Q What do you call those markings?

A Gauge marks.

Q Gauge marks. State's Exhibit 3 what we are we looking at here?

A That's just going to be another shot of Ms. Brown's vehicle. And then if look -- again, if you look further down, you can see just how far the pickup truck is up against that tree.

Q Under the spot light here?

A Yes, sir.

Q Now, there's some markings around the tires of Ms. Brown's vehicle who made those?

A We did, sir. Trooper McCoon made those.

Q Okay. While we're on the subject, tell me who that care belong to?

A Ms. Brown.

Q You ran the information to see who the car is registered to?

A Yes, sir, I'm not offhand, I'm not absolutely positive, but I believe it belong to Ms. Brown.

Q Okay. Would that be reflected on your incident report?
A It should be on the collision report itself.
Q Okay. Is that something that you prepared?
A Yes, sir.
Q Okay. Let me just show you that to refresh your memory. This is State's Exhibit 48 just for the purpose of ID at this point. If you would tell the jury what that is?
A This is going to be the collision report FR310?
Q That's a form that you prepared?
A Yes, sir.
Q Give the details of the accident itself?
A Yes, sir.
Q Okay. And based on that form can you tell who you determine to be the owner of that white vehicle would be?
A Ms. Tammy Brown.
Q What kind of car was it?
A It's Hyundai 1999 Coup.
Q Okay. Let me show you State's Exhibit 4 tell the jury the significance of this photo?
A That's the front end damage done to Ms. Brown's vehicle. If you look over, that's the tool box again from the pickup truck and then you can see just how far her hood was shoved up to the windshield.

Q There was some question yesterday about this photo posed to the fire department Officer Ward in regards to the liquid that appears to be draining from the vehicle toward the right-hand side of the road?
A Yes, sir.
Q You went out to scene?
A Yes, sir.
Q And inspected the scene and probably been on that road several times before. Can you tell the jury whether or not -- is that road entirely flat or is there some crown to it?
A There's a crown to it.
Q Okay. And what's the purpose of crown?
A To let the water run off.
Q So the water doesn't puddle in the roadway, so it drains off to the side?
A Yes, sir.
Q And based on -- by reason of that crown, if any liquid were to spill in the center of the roadway ---
A It would run off to the side.
Q Run off to the side?
A Yes, sir.
Q Okay. Show you State's Exhibit 5 it's a side photo of the defendant's car some markings around the tire here. Who made those?

A Trooper McCoon did, sir.
Q Okay. Is this the location in which you found Ms. Brown's vehicle when you arrived at the scene?
A Yes, sir.
Q It hadn't been moved by law enforcement before this?
A No, sir.
Q Okay. Let me ask you this there were some markings in the area of photos as to break marks. Where those break marks stopped?
A With those tires right exactly where they're at.
Q Okay. They don't continue any further than that?
A No, sir.
Q What's the significance of the break marks stopping at the location at which Ms. Brown's ---
A That tell us that's the final resting place for her vehicle.
Q All right. So this is believed to be the final resting place of Ms. Brown's vehicle after the collision?
A Yes, sir.
Q Okay. I think we're already seen these, but this is State's Exhibit 6 just coming from Ms. Brown's car. Again, I think you testified this is the ---
A Pickup truck, yes, sir.
Q It's a closer shot of the pickup truck down in the ditch there?

A Yes, sir.
Q Let me show you State's Exhibit 8, what are we looking at here?
A That's the driver of the vehicle Mr. Arenas. As you can see, he's underneath the steering column of that pickup truck.
Q And is that where he was located when you arrived on scene?
A Yes, sir.
Q It looks like -- if there was a passenger in the vehicle, he already been extricated at this point?
A Yes, sir, he was extricated at that point.
Q But again when you arrived, both the driver and the passenger were inside the vehicle?
A Yes, sir.
Q Okay. State's Exhibit 9 is just another shot of the black pickup truck involved in the accident?
A Yes, sir.
Q Okay. Ten?
A Yes, sir, another shot of the pickup truck.
Q Eleven?
A Yes, sir.
Q Okay. Finally 12. Tell the jury the significance of this photo?
A If you look closely inside that wheel well there, you

can see there's a beam basically folded like this. That's the frame of the truck.

MR. BARR: Your Honor, objection unless he's qualified to give an opinion regarding crash worthiness of vehicle, I'm going to object to his testimony. He can tell -- he's an officer on the scene, but he's not qualified.

MR. DURANT: Your Honor, I think as a lay witness he qualified to testify as to the frame of the pickup truck that it's bent.

MR. BARR: He asked him what the significance of it was. He's not qualified to give an opinion.

THE COURT: He asked him what the significance of the picture was not the significance of the vehicle. I think he is qualified to testify to what he sees in the picture.

BY MR. DURANT:

Q Let me show you State's Exhibit 30. Tell the jury what's here?

A That's the frame of the pickup truck again. It's been bent to a 90 degree angle.

Q Is this a condition in which you found the pickup truck when you arrived on scene?

A Yes, sir.

Q Okay. Finally, there was some testimony from you

earlier in regards to an open container that was found in the defendant's car?
A Yes, sir.
Q And you discovered that yourself upon inspection of the vehicle?
A Yes, sir.
Q You take a photograph of it?
A Yes, sir, I did.
Q Let me show you State's Exhibit 23. Do you recognize this?
A Yes, sir, that's a photo that I took.
Q And the cup in the floor board there is that the cup that was believed to contain an alcoholic substance?
A Yes, sir.
Q Did you smell it to determine whether or not ---
A Yes, sir, after I took the picture, I picked it up and I smelled it. Like I said, it smelled of an alcoholic beverage.
Q Okay. And again when you spoke to Ms. Brown about that. Did you ask her about the cup?
A Yes, sir, I did.
Q And what did she say?
A She me that her friend made one for the road.
Q So she admitted that she had an open container in the with her?

A Yes, sir.
Q Okay. Trooper Minnix, I've asked you several questions about Ms. Brown and your conversations with her that evening on the road side at the hospital, who the car is registered to. Just for clarify, is the individual that you met with that evening and was identified as the driver of that white vehicle is she in the courtroom?
A Yes, sir.
Q If you would point her out to the jury?
A She's the defendant.
Q Okay. This is her in the white tunic sitting at defense table here?
A Yes, sir.

MR. DURANT: Trooper Minnix, that's all the questions I have. Please answer any that Mr. Barr has for you.

CROSS-EXAMINATION

BY MR. BARR:
Q Trooper Minnix, you and I have met before.
A Yes, sir?
Q I think I'll start where you left off. State's Exhibit Number 23 now as I understand it initially when you arrived at the accident scene -- and, of course, this would be subsequent to the time you had initial conversation with Ms. Brown, you inspected the vehicle

that you thought that she was driving; is that correct?
A Yes, sir.
Q And in the course of your inspection, you found what is depicted in this photograph State's Exhibit Number 23 as a cup?
A Yes, sir.
Q Okay. And you photograph that cup?
A Yes, sir.
Q Okay. Tell the ladies and gentlemen of the jury why you photograph the cup?
A Because I believe it could have been evidence and the fact it was an open container and I just want to make sure it was photographed before I actually physically touched it.
Q So you believe it was evidence?
A Yes, sir.
Q Okay. And you photographed it and said you smelled it?
A Yes, sir.
Q Was there any liquid in the cup?
A I don't believe so, sir, not that I know of.
Q Now, of course, if it was evidence, you photographed it and you were collecting evidence regarding this wreck. Would you not agree that this evidence would be significant?

A If there was actually liquid in it, yes, sir.
Q Well, if you wanted to do a forensic test on it and determine whether or not alcohol had been in it, you could have seized it and had it tested, couldn't you?
A I don't believe they do that that way, sir.
Q Well, if you sent it to SLED forensic lab, are you telling the ladies and gentlemen of the jury that they could not determine whether or not alcohol had been in a cup?
A I don't know if they could or could not. I don't think they do to my best recollection.
Q All right. So at the end of the day do you know what happened to the cup?
A It was left in the car.
Q So now this is tangible evidence that you left in the car?
A It was -- she'd already admitted that there was a to-go cup. There was -- again, there was no liquid in it. So we just left it in the vehicle.
Q Well, you said she admitted it?
A Yes, sir.
Q That's what you say?
A You're absolutely right, I do.
Q Of course, you didn't say that to the ladies and gentlemen of this jury, she didn't say that to them?

A No, sir.
Q Talking about whether or not you can tell us someone other than yourself that smelled the cup and said it smelled like alcohol?
A No, sir.
Q I see. So with respect to whether or not it smelled like alcohol, the only thing that we got to rely on as to the truth of that is your statement?
A Yes, sir.
Q Okay. All right. Now, of course, if it contained alcohol and there was alcohol left in the cub, chances are it could have very well spilled in the course of this wreck?
A Yes, sir.
Q Okay. Now, as far as you know in the course of your investigation -- you know, that SLED lab is amazing. They can take a hair sample and obtain DNA from it?
A Yes, sir.
Q I know you're familiar with that, aren't you?
A Yes, sir.
Q They got a trace lab that you can take fibers, a piece of thread?
A Yes, sir.
Q And analyze it and tell what kind of clothes it is?
A Don't know they can tell you what kind of clothes it

were, but I'm pretty sure they can tell you what kind of thread it was.

Q They can do some serious stuff at that SLED lab?

A Yes, sir.

Q Okay. You would agree that in as much this cup would certainly have some good significance if it were in fact a cup that had alcohol in it. It would been important to maintain the cup or collect it?

A Yes, sir.

Q Of course, you didn't do that, did you?

A No, sir.

Q You overlooked evidence and left it laying on the floor and don't know what happened to it, right?

A No, sir.

Q Okay. All right. You didn't overlook it. You saw evidence. And in this case evidence that you claim would support your allegation that Ms. Brown said that she had alcohol in it and you didn't collect it. You didn't collect the cup?

A No, I did not collect the cup.

Q All right, sir. And, of course, I would think that whoever took the vehicle -- do you know whether or not the vehicle was gone over by people? Ordinarily you have forensics experts that come out and they check for evidence on the scene. They get almost everything they

can find.
A What are you talking about as far as normally -- are we talking about a collision or are we talking about a homicide?
Q This is a felony DUI.
A Okay, hold on. But this is a collision -- at this point in time this a collision. This is not felony DUI. This is a collision. I'm the investigator right here. We don't have forensics or anything like that, okay. So that's where that comes into.
Q Well, when you found out, that there was a claim that death was involved, that turned up the temperature some, right?
A Yes, sir, and that's why the MAIT investigator came out.
Q All right. MAIT investigator always come out when there's a death on the highway, but I'm talking about from the standpoint of investigation?
A No, sir, they don't always come out when there's a death on the highway.
Q They don't?
A No, sir.
Q Well, in the last 39 years that I been involved in it, they usually come out and cordon off everything any time there's a death. Well, maybe they stop doing that,

right?
A Yes, sir.
Q All right. But they did it this time?
A They came out to this one, yes, sir.
Q Do you know today whether or not anybody ever examined the carpet or whatever it is on the floor in this vehicle to see whether or not there was alcohol spilled in the vehicle from the cup?
A No, sir, they did not.
Q Okay. All right. Now, did you -- did you ask Ms. Brown whether she had drank anything from that cup?
A I don't believe so, no, sir.
Q Okay. I don't see in your incident report where you ask her that?
A No, sir, I don't believe I asked her.
Q Okay. So your testimony is that she -- you claim that she told you that she got one for the road?
A Yes, sir.
Q Okay. Wine cooler?
A Yes, sir.
Q And, of course, in the course of your investigation of the felony DUI, you never asked her whether or not she so much as tasted the one for the road?
A No, sir. Not they recall.
Q All right, sir. And in fact unless I'm mistaken you

never asked her how much she had to drink?
A Yes, sir, I did.
Q And she told you?
A Yes, sir, she told me two shots of tequila which she then changed to two wine coolers.
Q Changed to two wine coolers?
A Yes, sir.
Q She told you she had two shots of tequila and then she changed it and said she had two wine coolers?
A Yes, sir.
Q Well, that would have been significant wouldn't you say so for her to say she had two shots of tequila. I don't even know what tequila is. It's a Mexican drink, right?
A Yes, sir.
Q But she changed that and said, no, I had two wine coolers.
A Yes, sir.
Q Well, I know you thought that was significant, wasn't it?
A Yes, sir.
Q I know you did. You take notes?
A Yes, sir.
Q You do an incident report?
A Yes, sir.

Q You did one in this case?
A Yes, sir.
Q I just happen to have it.
A Right here too, sir.
Q Oh, you got it too?
A Yes, sir.
Q I see. Tell me -- first of all, tell the ladies and gentlemen of this jury what an incident report is?
A Incident report is just something that we do that has -- kind of gives us help remember what's going on later on. Obviously, this collision took place four years later then what our court date is today, but it's to help us to remember what was kind of going on during that incident, that's why it's an incident report.
Q It's a narrative report and should be accurate, right?
A To best of our abilities at that time. Sometimes we may forget to put something in there. We try to do them within that time frame within 24 hour time frame, but other things we get involved in sometimes we forget to put something in there.
Q When you say forget to put something in there -- now, of course, these important things that you're doing a narrative of that might come up even in court in a trial?
A We try get the importance things.

Q Try to get important things in there. I know you do. Now, of course, have you looked at that one since -- of course, you don't take look -- tell me whether you got anything in there that about Ms. Brown changing her story and saying that I didn't have two shots of tequila, but I had two wine coolers, is that in there?

A During my initial interview, Ms. Brown she stated she was coming from a friend's house. I asked if she had anything to drink, she told me a couple of tequila shots. I asked what was in the cup of the floorboard and she told me her friend made her a wine cooler for the road.

Q Now, let's get back to my question?

A Yes, sir.

Q My question was is there anything in there about her changing her mind and telling you that she had wine coolers?

A No, sir, but I did have handwritten notes and in there I believe that's where it was.

Q Well, of course, now you know your handwritten notes are subject to discovery, right?

A Yes, sir.

Q You know that if they're subject to discovery, defense lawyers always file Rule 5. You familiar with that?

A Yes, sir.

Q And, of course, if you give those handwritten notes Ms, Durant here ---

MR. DURANT: Your Honor, I object. May we approach, Your Honor?

THE COURT: Yes, sir.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

BY MR. DURANT:

Q Your handwritten notes go down to the -- ask the Solicitor whether he's got ---

A I believe he said he's got them.

Q Let's see them, I want see them? Show them to him to make sure those are his handwritten notes. Those are your handwritten notes?

A Yes, sir.

Q And those notes are handwritten concerning the details of this automobile accident?

A Yes, sir.

Q Let me take a look at them.

A Go ahead.

Q All right, sir. Now, your handwritten notes. It's -- would it be accurate to say that in those notes you indicated that she -- after you asked her about what she had to drink, she quickly changed and told you she had

wine cooler?
A Yes, sir.
Q Okay. Of course, that's not in your ---
A No, sir.
Q That's not in the note that you ---
A It's not in the incident report. No, sir, it's not in the incident report.
Q All right. So are you would agree then that there might be some things that you either saw or found out that not necessarily in the incident report?
A Yes, sir, absolutely.
Q Even might be some that's not even in your notes?
A Yes, sir, it is a possibility.
Q Possibility?
A Yes, sir.
Q Important things too?
A Maybe, yes, sir.
Q I notice in your incident report and in your notes you never said anything in here about her having a strong smell of alcohol. Of course, I believe it's true that you at least claim that you told the magistrate that to get the search warrant issue, didn't you?
A No, I did not. Corporal Dubose did.
Q Corporal Dubose told her?
A Yes, sir.

Q And she got that from you?
A No, sir, she got it from herself. Again, she went to the hospital with me. She did -- we did another interview together, so that she could make that determination on her own.
Q You didn't tell this jury earlier today that when you first encountered ---
A I told her, but she made that determination on her own.
Q So you never said about Ms. Brown that you detected a strong odor of alcohol?
A Yes, I did.
Q But you just never wrote it down?
A No, sir, I didn't write it down. Again, there's things that I may have forgotten to put in.
Q Now, of course, in a DUI case, they almost always start with a strong smell of alcohol most times, don't they?
A Pretty much it's a given sign, yes, sir.
Q Okay. But no -- nothing in your notes about any smell was alcohol?
A No, sir, I didn't put it in there.
Q And you know what I noticed another sign is the bloodshot eyes that you talked about earlier?
A Yes, sir. Again, I wasn't sure about the bloodshot

eyes. If that was at a distance, so I couldn't be absolutely sure, but it was -- again, those are just normal things that we see. Again, this was probably -- this was actually my first felony DUI and probably my fourth or fifth DUI altogether.

Q So you would tell the judge about bloodshot eyes, about smelling the alcohol even though those things weren't in the affidavit, but you thought important enough ---

A Which affidavit?

Q The affidavit to get the search warrant.

A Okay. I didn't fill out an affidavit.

Q All right. Well, who did you tell other than the date to this jury, who did you tell about her having bloodshot eyes?

A Corporal Dubose.

Q Corporal Dubose, but you never wrote that down anywhere in your notes?

A No, sir.

Q Okay. Well, I mean wouldn't you investigating a potential DUI bloodshot eyes would be something pretty important?

A Yes, sir, so would a strong smell of alcohol. Yes, sir.

Q None of which are in your notes?

A No, sir.
Q Or in the incident report?
A No, sir, cause -- I mean, it was pretty much a given.
Q A given?
A Yes, sir. I mean, when I was telling the corporal, you know, I think she's -- she admitted she had some drinks. I mean at that point in time it was pretty much okay, well, how did you come to that. I mean, it's like okay, you know, I smelled a little bit of alcohol on her. So -- but, I mean, you're absolutely right, I didn't put it in my notes, but, I mean, that would be how I came to that conclusion.
Q This is not the first time you testified in a DUI trial?
A No, sir.
Q And you've had experience with these things and, of course, you know, these things are important?
A Yes, sir. Again, this was my first felony DUI. This was probably my fourth or fifth DUI in itself. That's why I was having Corporal Dubose with me.
Q All right. Now, the next thing I got here says bent to 90 degree angle. Now, you are not an accident reconstructionist. You're not certified, are you?
A No, sir, I've only got at scene investigation one.
Q Accident investigation. And, of course, you were not

at the accident scene when this wreck took place?
A No, sir.
Q The truth is if the chastity was bent to a 90 degree angle, you don't know how it got bent, do you?
A No, sir. Other then from my on observation from the damage to the front end of her vehicle and the damage to the rear end of the vehicle. It look like she struck him in the rear end.
Q Look like that?
A Yes, sir.
Q You're not qualified as an expert to even give an opinion regarding how ---
A I'm at scene investigation certified. I can give an opinion of what I think happened. I can't tell you how -- I can't give you a number -- I can't reconstruct the scene, but I can tell you how I think an accident -- how a collision actually occurred.
Q Okay. You also indicated that -- you said after -- I'm looking at your traffic collision report?
A Yes, sir.
Q Okay. And it's not in evidence, but at least there's an allegation that statement that you claim that after turning left from secondary 51 Home Branch Road unit one, driver under the influence struck unit two in the rear. Unit one was southbound on South Carolina Highway 261.

Paxville Highway unit two was south bound on Paxville highway. After turning left from secondary 51, Home Branch Road. Where did you get that from?

A That's what I saw from the evidence at the scene that's that I determined happened.

Q Well, you told us earlier that you got information during the course of your investigation that the driver of the pickup truck been visiting some relatives on Home Branch Road?

A Yes, sir.

Q Tell me the name of one person and the address that told you that?

A I have no idea where the address is. I believe it was the stepdaughter or the brother. One of the two was the one that relayed that information.

Q And I'm sure as important as that information was, you checked that out to verify whether or not they were coming off Home Branch Road. Did you do that?

A As far as verify what?

Q Verify that they were coming off of Home Branch Road when turned on to Highway 261?

A That's what we were told was they had just left his brother's house.

Q You were told that?

A Yes, sir.

Q Now, if somebody told you that ---
A Yes, sir.
Q I know you wrote it down somewhere? And you got the name at least one person that told you that?
A They never specifically told me.
Q They didn't ---
A Again, I was not the only trooper out there that day.
Q Well, why in the world would you write something down in your incident report that you don't know where it came from?
A I didn't write it down in the incident report.
Q Well, you wrote it down in your collision report?
A The collision report was what my findings were.
Q Your findings?
A Yes, sir.
Q Your findings have be based on something factual. And I want to know where you got that from?
A From the fact that they were -- I'm trying to figure out the question.
Q I want to know where you got the information from indicating that they were come off of Home Branch Road?
A A family member relayed that information to a trooper that was on the scene and told us I don't know who it was. I don't even know who the trooper was.
Q Don't know?

A No, sir.
Q Don't know who the trooper was. Don't know who the family member was. Now, I know as highway patrolman, you don't usually keep records like that, do you? You don't know where the source comes from? Where the information come from? Surely you must know that you were coming to court one day with this. I know that had dawned on you?
A I didn't receive the information. So I didn't have anyway to write it down if I didn't receive the information. If the person didn't physically talk to me...
Q You didn't receive it and yet you got it. Somebody gave it to you. And you can't tell me the name of one person that gave it to you and you wrote down.
A I didn't write it down.
Q You told this jury today that you incidentally -- while I'm thinking about it, you also said Ms. Brown never told you that the people she had the wreck with pulled out in front of her?
A No, sir.
Q She never told you that?
A No, sir.
Q All right. Well, let's get this -- I don't know how to do this. I got to ask you I want to see the video of Ms. Brown being transported to the jail, that's what you

showed him. I want to take another look at it. And I just don't know -- I'm not trying to -- I know you don't want me working this, I might tear it up. And, Officer Minnix, I want you to listen very carefully.

(WHEREUPON, video played for the jury.)

BY MR. BARR:

Q I counted four times that she said someone hit me?

A Yes, sir.

Q Okay. Now, did you at any point develop a concern to do some further investigation as to why she kept saying that somebody hit her?

A Didn't add up with what we saw at the scene. There's no way they ran into her.

Q Well, now if they came off of Boyd Road and turned?

A Okay.

Q In front of her, you don't deny that if she was traveling coming south or traveling east, she had the right of way?

A Yes, sir, but she was -- what is it you're trying to ---

Q I'm not trying to do anything, I'm just asking you whether or not if she was traveling east she had the right of way. She was on highway 261?

A Yes, sir, it depends on if she -- but the problem was is they turned and they didn't -- and she wasn't within

that vicinity, then she doesn't have the -- I mean ---
Q You are a highway patrolman?
A Yes, sir.
Q And correct if I'm wrong, but a vehicle entering the roadway ---
A Must yield to the oncoming traffic.
Q Must yield to any traffic, that's close enough to constitute ---
A That's close enough, yes, sir. But if she was speeding, it's a hill that she was coming over. They wouldn't have seen her headlights. They pull out thinking that she's not there. They're getting up to speed. She rear ended them, knocked them into a tree. That's what we came up with.
Q I guess, maybe they wouldn't have seen her headlights or couldn't have noticed it or wouldn't have noticed it if they weren't as Mr. Durant has said very intoxicated?
A Yes, sir.
Q Now, you're telling me that -- and, of course, the hill that you're talking about, that hill is at least -- is over 100 yards from Boyd Road?
A Home Branch Road, yes, sir.
Q It's a 100 yards from Boyd Road as well.
A I'm not exactly sure what the measurements were. I know the MAIT investigators did those measurements and

everything. I'm not exactly sure what those measurements are.

Q They did the measurements and we will get those. And, of course, right now in terms of what you know?

A As far as what we saw at the scene, the impact on the pickup truck was in the rear. There was no damage to her rear end. So all her damage was done to the front end. The tree was impacted into the truck, so there was no way his rear end got bent in. She hit him in the rear end causing him to swerve off into the tree.

Q I'm not asking you to do an analysis from the mechanical aspect of what took place during the collision?

A But that's what I have to do on the side of the road.

Q I'm just asking based on what you found out. No question that she was traveling on Highway 261?

A Yes, sir.

Q And no question was that the vehicle that she collied with was coming onto Highway 261?

A No, sir, I don't know what the question is.

Q Well, I just ask you in terms of what you found, did you not discover that her vehicle was on Highway 261 traveling south?

MR. DURANT: Your Honor, I object Mr. Barr is proposing theories about how this wreck may have occurred and then object to the officer's answers based on his

investigation at the scene.

MR. BARR: I'll rephrase my question.

THE COURT: All right.

BY MR. BARR:

Q As far as you know she was traveling south on Highway 261?

A Yes, sir.

Q Okay. Now, the -- according to what you claim that you found out, the vehicle that she had the collision with came off of Home Branch Road?

A Yes, sir.

Q Okay. Now, is it not true that if that vehicle came off of Home Branch Road in order to get on Highway 261, it had to come out and make a left Highway 261?

A Yes, sir.

Q Okay. All right. State's Exhibit Number 1. I believe you testified on direct examination that that photograph depicts the vehicle that was being operated by Ms. Brown?

A Yes, sir.

Q Okay. And that tool box is the tool box from the pickup?

A Yes, sir.

Q Okay. And, of course, there's a green sign and that green sign is Boyd Road?

A Yes, sir.
Q Okay. Right on my right are the green sign is a stop sign?
A Yes, sir.
Q Okay. All right. And as far as you know that red stop sign is to stop vehicles coming on to Highway 261?
A Yes, sir.
Q Okay. Now, was there a debris field where the vehicles collided or where you believed it collided?
A The point of impact is further back this way. No, there's no debris field that you can see right here. If you look to the right -- right in front of the roadway you can start to see some of the debris. But as far as a debris field, no, sir, the debris field stopped when she -- actually when she stopped. And it was very little as far as a debris field goes.
Q Who took these photographs you did?
A I took some of them. MAIT took most of them. I believe that the Solicitor has them.
Q Ain't no question that that there's no debris field between what's depicted as her vehicle coming back towards Home Branch Road?
A There is some to the right between whoever took this picture and that vehicle. If you look to the right, there is some debris.

Q And, of course, a tool box. As far as you know, nobody moved the tool box from the location that it's in since the accident occurred, did it?
A No, sir.
Q Okay. So now the tool box somehow traveled up the road from where you claim the collision occurred?
A It was probably in the back of the truck.
Q Probably in the back of the truck?
A Yes, sir.
Q Okay. It just probably didn't fall out?
A Until she stopped. I mean, I can kind of give you an idea of what we think happened, but then you don't want that.
Q Well, I don't want to just take something, but I'm just curious as to how the tool box got up there.
A That's the separation point of the two vehicles. So when she came to a stop, they were actually -- they traveled from point of impact to that point as one unit. When she came to a stop, his vehicle kept going. The tool box could have been rolling off or have moved to the back of the truck. And when she stopped and he kept going, it could have finished coming out of back of the truck.
Q It could?
A Yes, sir. But we do know that the point of impact for this collision is those gauge marks in the roadway.

Q Well, now the gauge marks ---
A Because that's where ---
Q We gone have somebody that's gone testify regarding gauge marks one of the engineers, but now as far as how the gauge marks got in the highway, you not qualified to tell us that?
A Tell what?
Q Your opinion as to how they got in there?
A I can ---
Q You're not an accident reconstructionist. I mean, I know that?
A No, sir.
Q All right, sir. Now, did you ever consider that the truck was coming out of Boyd Road and turned right on 261 instead of Home Branch Road?
A No, sir, because the gauge marks are back this way.
Q Well ---
A Those gauge marks tell us where the collisions occurred. So because the gauge marks happened further this way, we know that they weren't on Boyd Road. We know that they did not turn right of off Boyd Road. We know that they were in the roadway between Home Branch and Boyd?
Q Well, I'm going to show you what's been marked as defense identification 1. And I don't want to put it into

evidence, but I just wanted you to tell me whether the gauge marks depicted on that photograph? Those are gauge marks?

A Those are gauge marks.

Q Now, tell me whether there's any debris?

A No, sir, it doesn't have to be. Again, the gauge marks were caused by her going underneath the pickup truck. So there might not be any debris because she didn't break anything until the vehicle separated and it may have torn the headlights off or something like that, but it doesn't necessarily have to be ---

Q You mean your theory is that the two vehicles collided way up the road and didn't shed any ---

A They collided right there where the point of impact is. She went underneath his vehicle which caused the gauge marks. Her car is the one that caused those gauge marks.

Q All right. We'll deal with that some more.

THE COURT: Mr. Barr?

MR. BARR: Yes, sir.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, we're going to take a five minute break. I'll bring you back out in just

a minute.

(WHEREUPON, the jury retire to the jury room.)

THE COURT: Let's talk scheduling.

MR. DURANT: My next witness is Corporal Dubose. She's here, Your Honor, but I think she's going to be relatively lengthy.

THE COURT: It's going to be an hour or two, so we'll have to do her in the morning. Take a quick break and be back.

(WHEREUPON, a break was taken.)

THE COURT: We ready for the jury?

MR. DURANT: Yes, sir.

THE COURT: How much longer do you think you're going to be?

MR. BARR: Half an hour.

THE COURT: You going to have redirect?

MR. DURANT: It'll be brief.

THE COURT: Be quick as you can.

MR. BARR: Judge, I can be real quick. I can be out of here along with my client in two seconds.

THE COURT: Well, that's up to you.

(WHEREUPON, the jury came into open court.)

THE COURT: All right, Mr. Barr.

MR. BARR: Thank you, Judge.

BY MR. BARR:

Q Mr. Minnix, Officer Minnix, I want to go back to something we spent a little bit on it earlier, but it is very important and that's the issue of where the truck was coming from?

A Yes, sir.

Q Now, you already told me that you don't know where you got the information from?

A The information was not relayed to me.

Q All right. Now, have you or any other officer gone up the -- is it Home Branch Road? Have you or any of the other officers found or located any relatives of either one of the victims on Home Branch Road?

A From my understanding is his brother lives on Home Branch Road. The stepdaughter is the one who -- I don't know if she's the one that relayed the information about where they were coming from, but she's the one that informed us of Mr. Arenas proper identification, his proper name and stuff. She dropped off the birth certificate to the office. So she may have been the one to relay that information as far as where they were coming from, but again I don't know. I've never been up that road to physically try and find the brother's address. After the coroner made contact with the next of kin, there would be no reason for me to go find the next of kin

myself.
Q Well, now no question that both of these men were heavily intoxicated?
A Yes, sir.
Q Okay. And no question that you got a very serious serous accident?
A Yes, sir.
Q And, of course, would you not agree that in terms of where they were coming from, you might be able to get some helpful information from the relative if they got one down there. I mean, there may not even be a relative on Home Branch Road?
A The information was relayed to me that the brother lived down the road. They were leaving his house. There's no reason to go bother these people who just lost a loved one in their time of grief about, hey, by the way did that guy come by, did that guy leave.
Q Well, have you ever asked Ms. Brown where they came from?
A Where the truck came from?
Q Yeah. I tell you right now ---
A No, sir, she told us that they were passing another vehicle on to 261 and they hit her head on.
Q Well, now you don't have that written down anywhere in your notes, do you?

A It's on the video.
Q It doesn't say she was passing. She doesn't say she was passing another vehicle. She said they hit her.
A Okay.
Q She doesn't say she was passing another vehicle on 261. Now, she claims that this vehicle came up Boyd Road?
A Okay.
Q And what I'm looking for is some confirmation from family members on Home Branch Road and I hadn't seen any?
A They did not come off of Boyd Road, okay. All right, I've already told you where the point of impact was. The point of impact is prior to Boyd Road.
Q Well, you weren't there. You don't know where the point of impact was. I don't want to be argumentative, but what I'm talking about is whether or not gotten any confirmation --
A Again, I did not take down the name of the individual, but the individual name was relayed to someone with the highway patrol or the coroner's office and the next of kin was made in contact and that's where that information was relayed.
Q So nobody in the sheriff department, nobody with the highway patrol can tell this jury the name of a relative that those two men had on Home Branch Road. Can you do that today?

A I cannot do that today, no, sir.
Q All right. Can you do it tomorrow?
A I have to check. I have no idea. Like I said, I was not the one that information was relayed to.
Q Okay. Now, here's what I want to talk about a little bit now. State's Exhibit I thought Mr. Durant introduced one of these into evidence.
THE COURT: He introduced exhibit number 4. It started out as Court Exhibit and he moved it in.
BY THE COURT:
Q Now, this is State's Exhibit Number 4. I want the ladies and gentlemen of the jury to take a look at State's Exhibit Number 4. Then I'm going ask you about it.
THE COURT: Mr. Barr, you want to use the screen.
MR. BARR: Sir?
THE COURT: You can put that on the screen.
MR. BARR: I can try and see.
BY MR. BARR:
Q And this case this form ain't no question that this is a form that's supplied by the South Carolina law enforcement division as the urine and blood sample test collection report that's used by highway patrol?
A Yes, sir.
Q And in this case this form was used by you and

Trooper Dubose to collect blood sample from Ms. Brown?
A Yes, sir.
Q Now, isn't it true. Well, you said that Ms. Brown became belligerent. Now, what did you mean by that when she became belligerent?
A She refused to cooperate, voice got raised. It got to the point where she was saying I didn't kill nobody. It got to the point where it was really hard to talk with her. She was adamant that she didn't do anything, so that's where I'm kind of at.
Q Belligerent. My God you charge with her one count of felony DUI and another count of serious -- two counts of felony DUI. And she was telling you that she didn't do anything, didn't she? That's enough to get upset about wouldn't you think so?
A Okay.
Q Now, you said that she got belligerent after you told her that she was under arrest. I mean, that's what you said earlier?
A Yes, sir.
Q And, of course, then in terms of getting blood from her, she refused to give you any blood?
A Yes, sir.
Q Now, you talk with the jury earlier about implied consent that is when somebody coming into South Carolina

and driving on the highway and, of course, it's a privilege to drive. The implied consent law says that if you come and drive you implying to consent to have breath sample, determine your blood alcohol content, in some cases even for the blood?

A Yes, sir.

Q Okay. But now you also told her about the implied consent warning said that you don't want it take it. You don't have to submit to either.

A Doesn't count with a felony DUI when we have a search warrant.

Q Did you not give her a complied consent warning?

A Yes, sir.

Q I see. Now, why did you give them to her?

A Because I'm required to by law.

Q I see. You're required to give them to her by law. And does that not implied consent warning says that you don't have to take this test. You don't have to submit to it, but if you don't submit your driving privileges will be suspended for 90 days?

A A normal DUI, yes, that's what it says. In a felony DUI, it does not say that. With a search warrant, we are getting her blood.

Q She didn't consent for you to get her blood. And you had to get a search warrant?

A Yes, sir.
Q You already told us the -- I think Trooper Dubose is the one who got the search warrant?
A Yes, sir.
Q Okay. She swore to the affidavit?
A Yes, sir.
Q Now, you don't deny that the information that she claimed in the affidavit that was sufficient to establish probable cause what she stated in the affidavit wasn't sufficient, wasn it?
A It was sufficient. She got the same -- that's why she went to the hospital with me. That's why she walked in there. That's why we waited to place her under arrest until the corporal had a chance to observe her actions and her speech and everything else. The smell of alcohol coming off of her because I was still on FTO. She was my training officer. We wanted her -- I believe it was 16 years at the time experience to make that distinction before we charged her with a felony DUI.
Q She states in the affidavit for the issuance of the search warrant why she believes it's probable cause to be able to draw the blood?
A Yes, sir.
Q Isn't what it says?
A Yes, sir.

Q Didn't the Solicitor in this courtroom today say that he agreed that it wasn't sufficient what was stated in the affidavit?

MR. DURANT: Objection, Your Honor. May we approach?

THE COURT: Yes, sir.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

BY MR. BARR:

Q The information contained in the affidavit you saw the affidavit?

A Truthfully, I don't think I may have not seen it. The corporal typed it up.

Q You want me to show it to me you?

A Yes, sir, do you have it. Okay.

Q And that's what was used to get the search warrant?

A That and the testimony -- the sworn testimony of the corporal was what was used to get the search warrant not just the affidavit itself.

Q Sworn testimony. There's nothing in that affidavit about bloodshot eyes, is it?

A No, sir, it just says to be driving -- is believe to be driving under the influence and that's what the sworn statement was for.

Q And there's nothing in the affidavit that's sworn to be true about blood being on the defendant, is it?
A Her blood?
Q Yes, sir.
A No, sir, she just had some scratches if I'm not mistaken.
Q Where did you observe scratches on her?
A I believe it was just on her arms.
Q You believe?
A Yes, sir.
Q You're not sure?
A No, sir.
Q Okay. Anything in the affidavit about smell of alcohol?
A No, sir, that was all attested to after she was sworn in by the judge that issued the search warrant. That was all attested to then.
Q In other words, that was something heard oral. It wasn't stated in the affidavit?
A No, it wasn't stated in the affidavit to. It was when she was sworn in later.
Q Now, you said that she got belligerent when she -- when you told her about the arrest?
A She refused to comply. Like I said at first, she was, yeah, sure I will give you blood. Then it became I'm

not giving blood. I didn't do nothing. Yes, that's belligerent in my book.

Q What did you want her to do help you hang her?

A No. I wanted her to provide a blood sample.

Q Pardon me?

A I wanted her to provide a blood sample if she wasn't drinking.

Q Well, she got a right not to supply it, doesn't she?

A Until she gets a search warrant.

Q Well, you took it from her by way of the search warrant?

A Yes, sir.

Q All right. Now, of course, that piece of paper that I just showed you showed you -- this is a blood collection report?

A Yes, sir.

Q Okay. Now, tell the ladies and gentlemen of this jury whether or not Ms. Brown name is on this report anywhere?

A Further up at the subject's address.

Q All right. She is the subject. She's the person ---

A If you pull it down, her name would be up there.

Q She is the person that you collected the sample from?

A Yes, sir.

Q Okay. Now, as far as you know, you were present when

the sample was drawn?
A When blood sample was drawn, yes, sir.
Q And there was some representations made to Ms. Brown. Now, this is in evidence says that the subject is under arrest for section 56-5-2930 et cetra and the subject has been advised in writing of her implied consent rights?
A Yes, sir.
Q Now, doesn't it say that?
A Yes, sir.
Q It says to check one only one can apply. The officer has a reasonable suspicion that the suspect is under the influence of something else other than alcohol, that's not checked. The subject is unconscious or otherwise incapable of refusal and it's considered informed therefore a blood sample is requested, that's not checked. A blood sample is requested by the arresting officer because a license medical person has informed the officer that the subject is unable to take a breathe test. Now, that's not checked?
A No, sir.
Q And no licensed person as far as you know ever told you that she couldn't take a breathe test?
A No, sir. It's the following one that's checked.
Q Subject is under arrest in violation of section 56-5-2945, 56-21-113, 56-5-2946 and 50-21-116 a blood

sample or blood sample and urine is requested. And that's checked?

A Yes, sir, 56-5-2945 is felony DUI, which is why it was checked.

Q Now, the next item says a blood sample is requested by the subject for his or her own independent test. Now, is that not checked?

A It was not checked by us.

Q Wasn't checked by you?

A No, sir, if you look at that paper, you can see the checks that were made ---

Q The jury looking at it. They can look at it.

A If you look at the paper, the checks that were made by the corporal.

Q The jury looking at it.

A If you look a the paper, the checks that were made by the corporal are small and precise. The checks that were made by the person drawing the blood were big swooping checks. We don't know why she checked that. If she checked it, we don't know.

Q My goodness ---

A But we were never asked ---

Q You signed your name on the piece of paper?

A Yes, sir. But we were never asked -- we were never informed of that.

Q Officer, now you're trying to say you don't know how ---
A I'm not trying to say anything, I'm saying it.
Q I'm asking you isn't it checked on this form?
A Not by us.
Q Okay. All right. Well, your name was checked by Ms. Brown?
A No, sir, I don't think so.
Q Now, who's the only other person had the paper?
A The individual that drew the blood.
Q She checked it?
A It's a possibility, yes, sir.
Q Now, why do you sign your name at the bottom?
A I signed my name because I'm require to because I'm attesting to what I filled out on that piece of paperwork. I couldn't even tell you who the nurse was that took the blood.
Q I know you can't. You don't know that the person was a nurse, do you? You don't know who it was. Now, you signed this final check for law enforcement officer sample ---
A Was collected in front of me. The sample was collected in front of me.
Q The sample contained as properly labeled in the subject name at the time of collection and the sample is

properly seal and ready to transport?
A Yes, sir, I attested to that. I attested to the fact that she was -- the reason blood was being requested was because she was being charged with 56-5-2945 which is a felony DUI. That's what I was attesting to, that's what I was signing that paperwork for. Now, when the nursed filled out her portion of the paperwork, she may have inadvertently checked the box not knowing that that's what it was for. We don't know.
Q Advertently. Doesn't say anything about this check mark look like inadvertence to you?
A Yes, it does, but it's not in the box. It's not actually in the box. It's just kind of...
Q Well, the jury will decide?
A And that's fine.
Q That's why I gave them a copy here.
A Yes, sir, but I was pointing out the fact that all of the checks that were made by law enforcement the corporal actually filled that out. Are precise in the box small checks, that check was not made by us. The nurse filled that out after she got done drawing the blood work.
Q And when the nursed filled it out -- whoever it was that filled it out, they took two samples of blood?
A Both are required to go to SLED.
Q And one sample of urine?

A Yes, sir.
Q And you took both of them?
A Both samples of blood are required to go to SLED and the sample of urine are required to go to SLED.
Q I understand, but if they decide to go, but did you give her one?
A She didn't request one. She never relayed that to me or to the corporal that she wanted a sample. If she had, all she had to do was say I want a sample. We would have said go ahead give her a sample and then they would have charged her for taking a sample. But they would have come up with their own vials. We issued two vials in those boxes both vials have to go to SLED.
Q Okay. The person took the blood sample gave both of them to you. Didn't give her any?
A No, sir, gave both to me.
Q Okay. And, of course, you didn't read this before you signed it, did you?
A Actually, yes, sir, that's what I'm getting at ---
Q Did you read it before you signed it?
A Yes, sir, what I am trying to tell you is is that it was filled out. We signed it. And then we gave it to the nurse. And then the nurse filled out and signed her name to the portion of it and she checked it. That's what I'm saying happened.

Q So you're saying now for the first time that it was filled out after you signed it?
A No, I'm saying we filled it out and then signed it. And then had the nurse sign her name.
Q It was filled out. The nurse signed it.
A It was filled out properly.
Q And you signed it after you read it?
A No, sir, it was filled out properly. All the boxes, all the appropriate boxes were checked. The nurse has to come back and check those boxes that she has to check. So what I think occurred -- because again this was four years ago.
Q Please don't tell us what you think occurred because we're looking at the paper all right?
A Okay.
Q All right. Now ---
MR. BARR: Court's indulged just a second, Your Honor.
BY MR. BARR:
Q Do you remember having any conversation at any time during this investigation -- do you remember having a conversation with a young lady that represented herself to you as Ms. Brown's daughter?
A No, sir, I don't remember that.
Q Do you remember at the incident site?

A At the collision site?
Q Collision site?
A No, sir.
Q Anybody asking you to go with Ms. Brown to the hospital?
A No, sir.
Q And it's your unequivocal testimony that you got up in the ambulance?
A Yes, sir, I got in the ambulance, yes, sir.
Q Okay. Do you remember ever saying to Ms. Brown that you are under arrest and you going to jail for 15 years?
A No, sir, I never said that.
Q You never said that?
A No, sir, because it's not my determination to determine her guilt or not.
Q I know it's not.
A So she was never told that.

MR. BARR: All right. Thank you. Your Honor, I think that's all for this witness.

MR. DURANT: I promise I'll be brief, Judge.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. DURANT:

Q Trooper Minnix, there was some questions that were posed to you by Mr. Barr as to where you got the

information from and that the defendant -- the victims rather were coming Home Branch Road. You mention some family members?

A Yes, sir.

Q Were the family members of the victim were they actually at the scene?

A Yes, sir, I believe that the brother and the stepdaughter were eventually at the scene.

Q The brother and stepdaughter came to the scene that night?

A Yes, sir, I believe so.

Q In the middle of the night they came to the scene ---

A Yes, sir.

Q --- when law enforcement and other first responders were there?

A Yes, sir.

Q I believe so. Now, there was much as they been made about this form, this blood collection report that -- and by the way Mr. Barr said the jury would decide that's why he gave them a copy. To be clear, the State introduced that into evidence, isn't it?

A Yes, sir.

Q I introduced that into evidence myself representing the State of South Carolina on direct examination?

A Yes, sir.

Q And that's why the jury got to see it because the State put it in evidence; isn't that right?
A Yes, sir.
Q Okay. This form which again this box that is check mark that we been talking about is under -- includes a heading check the correct one only one can apply?
A Yes, sir.
Q And there's -- you testified that there's a small check mark that you believe was made by yourself or Trooper Dubose?
A It was made by Corporal Dubose, yes, sir.
Q Okay. Attested to the reason for the sample -- the reason the sample was being drawn is because she was under arrest for felony DUI?
A Yes, sir.
Q I know we went over this before, but at any point during this hour and a half period or three and a half hour period and from the accident, until the blood was drawn, at any point during that period did Ms. Brown tell you or anybody else in your presence that she wanted an independent sample taken?
A No, sir.
Q Did she tell you I want a vial of my own blood and I want to send it to my own doctor, did she tell you that?
A No, sir.

Q Did she tell you take two vials of blood because I want one to go home with me?
A No, sir.
Q Okay. Even if she did -- hold that thought, hold that thought. Mr. Barr asked you some questions about the cup in the car, about the open container in the vehicle and why it wasn't tested. Forensic experts and what you could have done with that cup. You could have sent it to SLED where the experts are who can do amazing stuff. I think his exact words were SLED can do serious stuff; isn't that right?
A Yes, sir.
Q Okay. Even if Ms. Brown had requested an independent sample, the law requires you to give some assistance to get that sample taken?
A Yes, sir.
Q What other requirements of the law -- what does the law require you to do in giving Ms. Brown assistance with that sample?
A Transported her to the local -- the closest medical center.
MR. BARR: Objection. I'm going to object. Now, in terms of what the law requires, if you want to get the case law, then fine, but I mean unless he is an authority and he plans to do exhaustive narrative of what

the law -- he's just not qualified to do that.

THE COURT: I'll overrule rule your objection. I think he's qualified as far as he's concern or what he's required to do under the law.

BY MR. DURANT:

Q To your understanding you made DUI's before if an individual request an independent sample to be taken, what is how highway patrol's responsibility with providing assistance for that sample?

A We transporting them to the closest medical facility.

Q And then what?

A That's all we are suppose to do.

Q Transport to a facility to have blood drawn. And when the blood is drawn, where is your highway patrol send it?

A They either have the hospital test it or it goes to SLED.

Q Where the experts are?

A Yes, sir.

Q Where the folks are that can do some serious stuff?

A Yes, sir. The reason being is the detention center is not going to let her keep a vial of blood on her. It is not going to be able to go into her belongings because the belongings aren't going to be in a refrigerated space. So it's not going to be a viable sample any more any way.

Q So even if she request a sample and she request highway patrol's assistance to have that sample tested, then according to your testimony your responsibility is to take her to a hospital where she already was to get a blood drawn and send it SLED where Mr. Barr told the jury experts are, where expert toxicologists are to have it tested?
A Yes, sir.
Q Where was the blood in this case sent?
A SLED.
Q Who did the analysis on the blood in this case?
A Toxicologist at SLED.
Q The toxicologist at SLED. And, Trooper Minnix, I'm going to close at this point. There were some theories proposed by Mr. Barr as to how this accident may have happened. He cross-examined you as to how you know that's the point of impact, the gauge marks in the highway, opposing theories about Boyd Road. Again in terms ---
MR. BARR: Judge, is this closing argument or what is it? Is it a question?
THE COURT: Well, he hadn't finished his question.
BY MR. DURANT:
Q In terms of theories proposed as to how this accident occurred, what is the only theory proposed by Ms. Brown as

to how the accident occurred? How did Ms. Brown tell you the accident happened?

A Ms. Brown says that she was in head on collision with her.

Q Okay. And did she tell you that the car that hit her was passing another car?

A Yes, sir, to the best of my recollection, yes, sir. There was a statement at one point in time that was made about that.

Q Okay. And Mr. Barr said that's not on the video. And I know we been here a long time. I just want to place the video one more time for the jury and then we can get out of here.

(WHEREUPON, video being played for the jury.)

BY MR. DURANT:

Q Trooper Minnix, again is this a fair and accurate representation of the -- Ms. Brown's statements from the way to the hospital to the jail?

A Yes, sir.

Q Has it been altered or edited in any way?

A No, sir.

Q Tell me what you heard Ms. Brown say in that last clip?

A That the car was passing another car and they hit her.

MR. DURANT: Let the record reflect that's the 231 mark on the video is when the allege statement was made.

BY MR. DURANT:

Q Passing another car, going fast and hit me. I'm going to jail. Again was that the defendant's description of this accident?

A Yes, sir.

Q Okay.

MR. DURANT: That's all the questions I have.

THE COURT: Thank you, sir. You can step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Do we have any matters of law we got to take up before in the morning?

MR. DURANT: Not that I'm aware of, Judge.

THE COURT: Do you know of any, Mr. Barr?

MR. BARR: No, sir.

THE COURT: All right. We're quiting for the day. I'll see you back at 9:30 in the morning. Be back at 9:30 in the morning, we're going to continue the testimony. Don't discuss this case. I'll see you in the morning.

(WHEREUPON, the jury was excused for the day.)

326

(WHEREUPON, the proceedings were concluded for, the day to be reconvened on May 16, 2018.)

THE COURT: Okay. We ready?

MR. DURANT: Yes, sir. One issue out of an abundance of precaution, I like to add one witness to the witness list for the State Stacy Matthew who's a technician at SLED to do the chain of custody for the blood.

THE COURT: Okay. Give me his name?

MR. DURANT: It's a female Stacy Matthews.

THE COURT: Stacy Matthews?

MR. DURANT: Mr. Barr, do you want me to question the jury about any connection with Stacy Matthews?

MR. BARR: I don't think that would be necessary.

THE COURT: All right. We ready for the jury?

MR. DURANT: Yes, sir.

THE COURT: Bring the jury please, sir.

(WHEREUPON, the jury came into open court.)

THE COURT: All right. Solicitor, you may call your next witness.

MR. DURANT: Thank you, Your Honor, please the Court. The State calls Paige Dubose.

THE CLERK: Raise your right hand and place your

left hand on the Bible repeat your name please?

THE WITNESS: Paige Dubose.

THE CLERK: Solemnly swear the testimony you're about to give will be the truth and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

WHEREUPON,

Paige Dubose,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Trooper Dubose, good morning.

A Good morning.

Q Please tell the jury where you work?

A I'm a corporal with the South Carolina Highway Patrol.

Q How long you work highway patrol?

A I been employed since January of 1998.

Q You been a trooper here in Clarendon County throughout that period of time?

A No, sir. When I first came on, they wouldn't send me back to the home county, so I went to Florence County until 2001 and then I was able to get a transfer back to Clarendon.

Q This is where you from?

A Yes, sir.
Q What type of training do you have -- does it require to become highway patrolman?
A You have to graduate from the South Carolina Criminal Justice Academy which at that time was an eight-week program. And after that go through 22 weeks of highway patrol or patrol school.
Q Do you receive continuing education throughout your experience?
A Yes, sir, I have since graduated in 1998. I been to probably over I say at least 30 or 40 other specialized classes.
Q When somebody first comes on as a highway patrolman, is there some on-the-job training that they actually to go through?
A Yes, sir. Once you graduate patrol school, they give you the fundamentals of the job. Then a new trooper would have to be part of the FTO program, which is short of field training officer program, that program is between eight and 12 weeks. And that's when the new trooper would ride with the FTO officer someone who was trained in the field training officer position. And for those -- for that period of time, the new trooper learns more about how -- the administrative part of the job. He has learn as far as the law which is in patrol school, but then once

he gets on the road he ask how each trooper, each district does thing differently.
Q Have you been trained as a field training officer?
A Yes, sir, I have.
Q Is there a particular certification that you have?
A Yes, sir.
Q Have you actually served in that capacity before?
A Yes, sir.
Q All right. You were here yesterday when Trooper Minnix testified. Were you actually his field training officer?
A I was.
Q And when did you serve in that capacity?
A I don't know exact dates, but Trooper Minnix graduated the academy in 2014. So from his graduation date and I think he completed his field training evaluation stage in like September of 2014.
Q Okay. You aware at an accident that happened in Clarendon County on August 30th of 2014?
A I am.
Q You have occasion to respond to that collision?
A I did.
Q Were you Trooper Minnix's field training officer at that time?
A I was.

Q Were y'all riding together in the same car?
A Yes, sir.
Q Was he -- was it his car at that point?
A Yes, sir, he was towards the end of his evaluation stage, so he was actually the trooper driving at that time.
Q So y'all were essentially partners at that time?
A Correct.
Q Where do that collision occur?
A It occurred S.C. 261 which is Paxville Highway between Bradum Road and Home Branch Road in that vicinity.
Q That's in Clarendon County?
A Yes, sir.
Q Tell the jury -- I guess, first of all, when did you arrive on scene?
A We arrived on scene a little after midnight. I don't know the exact time. I have to look at the accident report.
Q Go ahead I'm sorry.
A That was Labor Day weekend. We were having a special enforcement that weekend and myself and Trooper Minnix had just finished up from driver's license check point on Raccoon Road. We had planned on going and have another check point on S.C. 260 towards the lake and we received a call of a collision on 261. While en route to that

collision we were advised that there was a possibly fatality involved. We arrived on scene a little after midnight. The call came out probably -- if I can see the accident report, I can tell you exact times, but somewhere between 12 o'clock or so we received a call that there was a collision. We arrived on scene approximately 20 minutes later.

Q Let me ask you a question before you go any further. You mention that it was Labor Day weekend and y'all were conducting some check points. Was this a Saturday night?

A Yes, sir.

Q What about Labor Day weekend would lead highway patrol to conduct safety check points?

A Any major holiday such as Labor Day, Memorial weekend, July 4th weekend, Thanksgiving any type of holidays, we have what they call selected enforcements where there's more troopers on the road. We focus on DUI detection by having check points at various locations where there's high number of DUI arrests.

Q Okay. And those holiday weekends are they proven to have more DUI related collisions and fatalities and so forth?

A Yes, sir.

Q Tell the jury what you've discovered when you arrived on scene that morning?

A When we arrived, the roadway was blocked by emergency personnel. As we were coming to the scene, we were traveling from the Manning area toward the scene. So there was a fire truck parked on the left shoulder of the roadway which it's emergency lights or what they call the rescue lights on which are tall -- LED lights which light up the scene.

Q Spotlight?

A Correct. So when we arrived, we say -- the first you saw roadway is blocked. We exited the vehicle. And since we thought the initial crime scene was there we went to that location. We found a black pickup off the roadway against a tree. The fire -- again, EMS personnel trying to get the passenger out of the vehicle. They were having these mechanical means as far as to extract the passenger. We were advised then that the driver which we could visually see was still inside the vehicle. And we were advised that he was in fact deceased. We let fire and EMS do their part as far as trying to extract the passenger. And we could tell that there had been a rear-end collision because of the way the truck looked. So we attempted to locate the other vehicle that was involved. Fire personnel had advised that another vehicle was down the road. We couldn't see it from where we were from all the lights, but he advised that EMS was tending to the driver.

Myself and Trooper Minnix proceeded to the other vehicle. And at that time my superior officer arrived. Trooper Minnix had -- we had broken apart for a little while. I was explaining to my sergeant and first sergeant the situation and the circumstances surrounding the collision. I observed a white vehicle with heavy front-end damage. Trooper Minnix then at some point in time came back to me and advised me that he had spoken to the driver of that vehicle. And that she was in EMS and that they were fixing to transport her to Clarendon ER.

Q What else did he tell you about this conversation with Ms. Brown in the back of the ambulance?

A He advised me that he smelled an odor of alcoholic beverage coming from her person. And he advised me that she admitted to having some drinks prior to driving the vehicle. He had said that her demeanor was kind of off. She was -- as far as her speech and all that was kind of -- it just wasn't what he thought it should be. So we started taking pictures and measurements of the collision scene. At that point in time they advised us that the passenger of the pickup truck was being flown out with life threatening injuries. My supervisors made the call to contact our MAIT team, which is a specialize unit who reconstructs accidents and I was advised that they would be en route to the scene. We surveyed the damage on the

white vehicle. Once the passenger was extracted from the pickup truck, we surveyed the damage on it and marked any evidence that was on scene, photographed it. And at that point my supervisor came up to me and said, you know, you all need to go ahead and get to the hospital. We'll secure the scene until MAIT team arrives.

Q Before you left the scene to go to the hospital, you mention inspecting the two vehicles. Was there anything significant about the white vehicle, any evidence that you found inside the vehicle when you inspected it?

A Yes, sir, there was -- the white vehicle had heavy front-end damage. The passenger compartment of the vehicle we located a clear Solo type cup, plastic cup. It was on the floorboard of that vehicle. It was photographed and Trooper Minnix advised that it had an odor of alcoholic beverage coming from it.

Q You smelled the cup yourself?

A Yes, sir. Once he told me that, I went and also smelled the cup and it did have what appeared to be an alcoholic beverage coming from it.

Q Okay. And, Trooper Dubose, in your 18, 19 years experience, how many DUI's have you made?

A I'd hate to say probably over 600, 700.

Q And you found a number of open containers during that period of time?

A Yes, sir.
Q Are you familiar with the smell of alcohol?
A Yes, sir.
Q And based on your training and your experience, is it your opinion that that cup contained an alcohol substance?
A Yes, sir.
Q After you left the accident scene, you and Minnix left the accident scene together?
A Yes, sir.
Q And went to the hospital directly from there?
A Yes, sir.
Q Had Ms. Brown already been taken by EMS to the hospital at that point?
A She had.
Q Okay. Tell the jury please what you and Trooper Minnix did when y'all got to the hospital?
A Due to Trooper Minnix still being in training, when we arrived I also interviewed Ms. Brown, that's part of the field training course that we go through. I interviewed Ms. Brown at the hospital. I asked her the same questions that Trooper Minnix had probably asked her. I asked her where was she coming from. What happened in the collision. I asked her if she had been drinking. She did admit that she had been drinking. And I observed -- I observed what -- from my experience to be someone who is

intoxicated. She had glassy bloodshot eyes. Her demeanor was off and what I mean by that is that one minute she was laughing about the situation. The next minute she was crying. The next minute she was angry and mad at us. She -- during that time between my conversation with her, she had an odor of alcoholic beverage coming her person. Myself and Trooper Minnix then exited the trauma room which she was in and we discussed the situation between me and him. And I asked him his opinion as far as he would make an arrest. Like I said, this is just part of the training protocol that we go through. And he advise that he would and I was in agreement with that. So at that point in time myself and Trooper Minnix re-entered the trauma room. We advised Ms. Brown of her Miranda warning. Trooper Minnix read that to her. And then we also advised her of her implied consent rights, which is dealing with the drawing of blood.

Q Okay. There's been some testimony about the advisement of those Miranda warnings and also the implied consent warnings. Were you actually there present with Trooper Minnix when he gave both of those warnings?

A I was.

Q Okay. And did he -- there's an implied consent form that's been shown to the officers and indicates it's already -- were you there when that was read as well?

A Yes, sir, I was.
Q Did he read the form in its entirety at least the English portion of the form?
A Verbatim, yes, sir.
Q As part of that advisement of rights was Ms. Brown advised that she had the right to request additional independent testing as she so desired?
A Yes, sir, she was.
Q Do you have -- I don't know if you have the record in front of you, but do you remember about what time it was that she was arrested and these warnings were given to her?
A I'm not sure of the exact time, but I would say it was somewhere after one o'clock that morning.
Q Okay. This was again -- this was before a search warrant was obtained?
A Yes, sir.
Q At any point during that conversation with her when she was advised of those rights, did she indicate to you a desire to exercise that right that had additional testing done?
A No, sir. After she was advised that she was under arrest and that there was a death involving the accident, she said that she wasn't going to give a blood sample.
Q Did she make any statements at that point?

A She just said that there wasn't anybody killed and she wasn't giving us any blood. She wasn't -- she didn't kill nobody, so she didn't have to give us any blood.
Q So she denied that anybody had died in the accident?
A Correct.
Q What did you do after that?
A At that point in time I told Trooper Minnix that Ms. Brown was under arrest. I left him at the hospital. He was standing outside the trauma room. I went outside the hospital and contacted my supervisor which was Sergeant Ham who was on scene at the collision. And I advised him that this subject was refusing to cooperate as far as blood sample was concern. He had a list of on call magistrates for Clarendon County. He gave me a couple numbers off the list and told me I needed to get in touch with a magistrate to obtain a search warrant for blood. He also contacted the responding MAIT units and conveyed to them that I needed a copy of a search warrant sent to my e-mail. They sent me a copy of a Word document with the search warrant on it and I filled that out. I contacted -- I believe the first person I contacted was the chief magistrate at the time which was Judge Harden and he was not in town. And he gave me Judge Locklair's number and advise me that she was taking calls for him. So I was able to contact her and I advised her of the

situation that we had, the particulars as far as the case was concerned. And asked her if she would be available to do a search warrant for us.

Q So your first conversation with Judge Locklair would have been over the phone?

A Yes, sir.

Q When you spoke with Judge Locklair, did you advise her of the odor of alcohol coming from the defendant, the defendant's admissions that she had been drinking, the open container found in the vehicle?

A I advised her of the odor of alcohol coming the driver. I advised her of my observations as far as her demeanor, as far as the glassy bloodshot eyes. I don't believe I advised her of the open container in the vehicle. I'm not a hundred percent sure but because that wasn't part of the felony DUI what I was getting the search warrant for. I may or may not have advised her of the container in the vehicle, but I know that I told her that she admitted to drinking prior to driving the vehicle.

Q And did you then go and eventually met with Judge Locklair in person?

A I did.

Q And where was that?

A I met with her at her residence on the back porch of

her house.
Q What time was this?
A Approximately three o'clock in the morning.
Q So you called her and woke her up and went to her house in the middle of the night?
A Yes, sir.
Q When you met with Judge Locklair at her house, did she put you under oath, did she swear you in?
A Yes, sir, she did.
Q And did she you ask any questions about the how's and the why's you knew -- or you believe Ms. Brown was under the influence?
A Yes, sir. Once I arrived, she again asked me the particulars as far as the case was concerned. After I was sworn in, she also asked some additional questions as far as I think the search warrant itself said that Ms. Brown was believed to be under the influence of alcohol. So she asked questions as far as how did I believe that she was under the influence of alcohol.
Q Okay. And after meeting with Judge Locklair at her house, did she then sign a search warrant giving you permission to go and get a sample of Ms. Brown's blood?
A She did.
Q What did you do after that?
A I return to the hospital. I met with Trooper Minnix

who was still outside the subject's room. We then entered the room. I read the search warrant to Ms. Brown and I advised her that blood samples will be taken pursuant to the search warrant. I notified the attending nurse for Ms. Brown's room which was trauma room. And I advised her that we needed a legal blood draw. We had our own SLED toxicology kit and another subjected enter the room and advised that she was there to take a blood sample for us.

Q Okay. And did an actual license medical personnel come take a blood sample?

A Yes, sir.

Q And as far as you know were SLED protocols followed with regard to the collection of that sample?

A Yes, sir, the SLED kit that we're issued had a tamper seal. The seal was broken while we were in the room with Ms. Brown. Two tubes of -- two tubes vials were taken from the SLED kit. A plastic container for collecting urine was taken form the SLED kit. And the non-alcoholic prep pad was given to the nurse, a phlebotomist that was in there to collect the sample.

Q Okay. And that prep pad that's clean your skin off before you insert the needle to draw blood?

A Correct.

Q And you used a non-alcoholic pad so you don't contaminate the sample with alcohol when you testing for

that?
A Yes, sir.
Q So that non-ethanol -- non-alcohol cleaning pad was used?
A Yes, sir.
Q And was the sample collected in an unused, uncontaminate vial?
A Yes, sir.
Q Then what happened to samples after that?
A Once the samples were taken, they were handed to Trooper Minnix who puts a -- an integrity seal on top of the tubes of blood. That seal contains the time that the sample was taken, contains the person who took the sample name, Trooper Minnix's name and the subject's name.
Q Was this all done in your presence?
A Yes, sir.
Q What about the collection of urine was that done in your presence as well?
A I was outside the curtain, the same licensed medical personnel was inside with Ms. Brown.
Q When you collect the blood and urine samples in this manner, there's a SLED collection report that's used?
A Yes, sir.
Q Okay. And it's been marked as State's Exhibit 49 introduced into evidence already. Do you recognize that

form?
A Yes, sir, I do.
Q Does it have your name or signature on it?
A Yes, sir, it does.
Q Tell the jury about that form?
A This is a collection report that basically the hospital gets a copy, the subject gets a copy and also a copy goes to SLED basically just has all the subjects information, the arresting officer's information. The time and date the subject was placed under arrest. The time and date of the test where it was collected and then there's a series of checks that the arresting officer goes through as far as what applies to this particular case. On this particular form, it's pretty much self explanatory. It says check the following and I checked both that they're applicable and both the blocks up top were checked by me because they were applicable. The second part says check the correct one, only one can apply. And at that time my check is in the part that says subject is under arrest for violation of 56-5-2945 which is felony DUI and a blood sample -- blood and urine are requested. The next part is to be collected by the person who actually does the collection. And they are to fill out that section and then final part would be what is given -- what happened. So it says final checks for law

enforcement. The samples were collected under my direct supervision. The samples are containers were properly sealed with the subjects name, date and time of collection and that the sample is properly sealed and ready for transport. All those were checked off myself and Trooper Minnix signed the from. And Ms. Brown was given a copy which she refused to sign.

Q Okay. Let me ask you -- again the equipments not working again this morning looks like. You mention there's a second section here heading that says check the correct one in parenthesis only one can apply?

A Yes, sir.

Q And who normally checks the box in that section?

A The officer does.

Q The officer does?

A Yes, sir.

Q So you or Trooper Minnix would have checked the correct box, the applicable box?

A Yes, sir.

Q You checked it?

A Yes, sir.

Q And which one did you check?

A The one that says the subject is under arrest for felony DUI.

Q So the small check mark here is yours?

A Yes, sir.
Q Okay. Is the medical personnel are they to check one of the boxes in that section?
A No, sir, they weren't even suppose to file out their name and stuff in that section.
Q Okay. And they would have checked the next section where it says to be completed by sample collector?
A That's correct.
Q Okay. And that's just to verify that the proper protocols were followed?
A By the collector, yes, sir.
Q By the collector. Was this form presented to Ms. Brown for her signature?
A Yes, sir, it was.
Q Did she sign it?
A No, sir.
Q What did she say when it was presented to her?
A She was just advised us -- she received a copy of the implied consent rights. She received a copy and said she wasn't signing anything.
Q She said she not signing anything?
A Yes, sir.
Q Did she make any markings on the paper?
A No, sir.
Q When these -- you already testified that when the

implied consent warnings were given to her at no point during that conversation did she request an independent sample. How about when the phlebotomist came in to take the sample. At any point during that interaction did she request to have an independent sample taken?

A Not while I was present.

Q Okay. Those rights would have been advised to her? They were advised to her earlier?

A They were advised to her earlier. And when the phlebotomist came in, the only paperwork we had was that which like I said it can only be -- one can apply. If she would have asked for an independent sample, we would have to do a whole other sheet same information, but just basically saying that she asked for an independent sample.

Q Okay. And based on your experience and your knowledge of DUI laws if a person does request an independent sample to be collected, what is highway patrol's responsibility with providing assistance to them?

A We transport them to the closest available medical facility where a sample can be taken.

Q If they been at the hospital which she already was, of course?

A Correct.

Q And then what is -- what does the law require -- what type of assistance is required by highway patrol after

that?
A Once the blood is drawn, the subject has the choice to get the sample tested by their independent lab at a doctor's office. If they chose not to do that, then the sample will be sent to SLED and toxicologist will talk about the sample sent to SLED and then they be notified of the results through SLED.
Q Okay. Did Ms. Brown ever give you or Trooper Minnix to your knowledge or anybody in your presence the name of an independent lab or doctor's office that she wanted to use to test her blood?
A No, sir.
Q Okay. So the blood then was sent to SLED; is that right?
A Correct.
Q Did you ever take -- again, before I get there, how is the blood pack. You mention that some -- Trooper Minnix put some tape, some seals over the vial themselves; is that right?
A Yes, sir.
Q Okay.
A Once the vials and container was sealed, the kit comes with a prepackage container which would hold the vials upright. It would hold the container upright. Once that's done, a seal goes on it. It goes inside of a

plastic bag in case there's any leakage, that's sealed. Then it goes inside of another box which contains the paperwork for that blood draw or urine draw and an integrity seal is also put on that box with the sealing person's name and date.

Q Okay. Did you ever take custody of that package?

A No, sir.

Q Who took custody of it at that point?

A Trooper Minnix.

Q Okay.

MR. DURANT: Beg the Court's indulgence.

(WHEREUPON, a pause in the proceedings.)

BY MR. DURANT:

Q Let me ask you one question. You mention that the driver of the pickup truck was pronounced dead at the scene of the accident?

A Yes, sir.

Q Was that while you were there?

A Yes, sir.

Q Okay. And who would have made that announcement?

A The Clarendon County coroner Mr. Hayes Samuels.

Q Mr. Samuels actually comes to the scene himself while you were there?

A Yes, sir.

Q Okay. He pronounced the driver dead at the scene of

the accident still in the vehicle?
A Yes, sir.
Q He was actually still in the vehicle when he was pronounced dead?
A She was still in the vehicle, yes, sir.
MR. DURANT: Your Honor, that's all the questions I have.
THE COURT: Mr. Barr.

CROSS-EXAMINATION

BY MR. BARR:
Q Officer Dubose, I believe you have been in or you were in the courtroom when Trooper Minnix testified?
A I seen part of it, yes, sir.
Q Weren't you sitting right back here listening to everything he said on the witness said?
A I was here for most of it because I was told that I was coming up next, yes, sir.
Q You heard his testimony?
A Most of it.
Q And would it be fair to say that you and him you discussed this case, haven't you?
A No, sir.
Q You never discussed this case?
A I was advised this week that I had court and Trooper Minnix advised me which case it was. I reviewed the

documents as far as what was sent over here to court.
Q Did you -- were you standing outside the courtroom yesterday under the tree out here talking with Trooper Minnix?
A Yes, sir.
Q Y'all didn't talk about this case, did you?
A I don't know what we were talking about. It was a number of things we could have been talking about, sir.
Q Including this case?
A It could have come up but ---
Q It could have come up?
A Yes, sir.
Q Okay. All right. Now, you indicated that you were Trooper Minnix's supervisor I believe. You were actually training him?
A Yes, sir, I was his training officer and supervisor.
Q And you were with him when you went to -- when you initially came to the incident site that you later found out to be an auto accident; is that correct?
A We were notified of the collision and I was in the car with him, so we were in the same car.
Q Now, I noticed that when you arrived at the location you parked on the side of the road. There was a vehicle in the road. There was another sign on the side of the road, but you had plenty of room to drive through there if

you wanted to, didn't you?
A No, sir, we taught not to drive through a scene, a collision scene to preserve the evidence.
Q Now, you also thought -- and you were aware that there is a requirement in South Carolina to videotape the breathe -- the incident site as well as the breathalyzer site if you arrest somebody for DUI?
A Yes, sir.
Q You were aware of that?
A Yes, sir.
Q Of course, you spoke -- answered some questions that Mr. Durant asked you about the high quantity of DUI's that occurred during certain holidays.
A Correct.
Q And this -- in fact you indicated that from time to time you set up road blocks because of the number of DUI's?
A We set up check points in high DUI areas, yes, sir.
Q So now the thought hadn't occurred to you that this incident could have involved DUI?
A What's that now?
Q The thought had not occurred to you that this incident that you're investigating could potential involve DUI?
A When we responded, no, sir, we just advised that it

was a traffic collision.
Q That thought never occurred you. You are on weekends. You said that you were coming from another location and today you are telling us that your present recollection the thought had never occurred to you?
A Well, sir, we encounter anything from deer wrecks, to felony DUI so we were ---
Q My question was did the thought ever occur to you?
A That night I don't believe so, no, sir.
Q So you didn't consider the fact -- you didn't consider the importance of getting close enough with the vehicle so the machinery could be operating correctly in order to record any conversation that he may have had with any of the drivers that thought never came into your mind?
A We parked our vehicles so we did not disturb the scene or that's where Trooper Minnix parked, so that the scene was not disturb any evidence that was from the scene would have been preserved.
Q We looked at a video yesterday and I think you seen the video. It's probably State's Exhibit Number 1 where you and Trooper Minnix arrived at the accident scene and it shows where you parked your vehicle. Have you seen that video?
A I didn't. It was pointed towards the jury. I didn't see it.

Q So you hadn't seen it at all?
A No, sir.
Q Okay. Well, maybe it's time for you to see it.
MR. BARR: Where is the video? We don't have to see the whole thing just where it's parked.
BY MR. BARR:
Q While he's setting that up, what time did you and Trooper Minnix arrive at the incident location?
A The exact time I have to refer to the accident report that was completed.
Q You completed an accident report?
A No, sir, Trooper Minnix completed the accident report.
(WHEREUPON, video is being played.)
BY MR. BARR:
Q 2335, 2355 military time what time is that?
A 2355 is 11:55.
Q 11:55.
(WHEREUPON, video stopped and now continue to be played.)
BY MR. BARR:
Q Stop it there. Now, is this the vehicle that you and Trooper Minnix were riding in?
A No, sir, this is it.
Q This vehicle here?

A Yes, sir.
Q All right. And who was driving the vehicle that was in front of you?
A I'm not sure if they were blood or red lights, but it looks like ---
COURT REPORTER: I'm sorry I can't hear you.
A It looks like another first responder. I'm not sure. I'm not sure if it's a trooper K-9 unit.
Q Did you make any effort to find out who was operating that vehicle?
A No, sir.
Q Okay. Now, you couldn't drive around this vehicle on that side, on the left side?
A No, sir, we would not have because as far as we were concerned as you can tell that's the fire truck with rescue on it. That was the scene that we were responding. That was a collision scene. So we parked close as possible as we could to this without going any further because we knew that the scene wasn't the direction we were coming from. So we did not want to go further into the scene.
Q But you did learn soon after that there were people there that you wanted to interview? You interviewed Ms. Brown?
A I did not Trooper Minnix did. I didn't talk to her

on the scene.
Q You didn't talk to her at all?
A I didn't talk to her on scene, no, sir.
Q Okay. Now, Trooper Minnix represented in this courtroom that certain statements were made to him by Ms. Brown including an admission that she consumed alcohol and that there was -- had been alcohol in a paper cup that was found in her vehicle?
A Trooper Minnix relayed to me the information was gotten from Ms. Brown.
Q He relayed that to you?
A Yes, sir.
Q Relayed it to you. And I think that you testified on direct examination that he related to you that it was found in the passenger compartment of the vehicle a small cup?
A Correct.
Q Okay.
MR. BARR: Court's indulgence, Judge.
(WHEREUPON, a pause in the proceedings.)
BY MR. BARR:
Q While I'm looking for that I'm gone -- now, you were senior officer at the scene when you and Trooper Minnix got there; is that correct?
A Yes, sir. Well, I take that back. There was a

sergeant from the ACE team who arrived prior to us, but he wasn't ---

Q He wasn't involve?

A Yes, he wasn't the investigating officer.

Q Now, you said that the cup you -- I think you described it as evidence which it probably would have been, but to the best of your knowledge wasn't seized?

A The plastic cup that was in the floorboard?

Q Yes, ma'am.

A Was not seized.

Q Now, would you not agree that ordinarily when there's evidence and smell it and you said it smell like alcohol. When there's evidence of a crime, you do seize the evidence of the crime, don't you?

A We do not when it comes to open containers, no, sir. There's no way to preserve the liquid that's inside or the container that it was in.

Q Well, was there any liquid inside?

A I don't believe so. We don't ---

Q You don't seize it and have analyzed?

A No, sir.

Q Okay. You come to court and testify as you're doing here and you essentially expect people to take your word for it?

A No, sir, it is what it is. I smelled alcohol. They

can believe me or not. I know what alcohol smells it.
Q I know you know what it smells like, but I don't know if you smell it or not when you're prosecuting somebody for -- now, is this the cup that you're talking about?
A Yes, sir.
Q That's State's Exhibit Number 23? And where is it?
A That's the driver side floorboard.
Q Driver side floorboard. How did the cup get from the passenger side to the driver side, do you know?
A It never was on the passenger side.
Q Well, you just told me that's where it was?
A When did I say that?
Q A few minutes ago on the witness stand.
A Passenger compartment. You have a passenger compartment which is the interior of the vehicle. You have a luggage compartment which is the rear of the vehicle and the mechanical compartment which is ---
Q Where is the passenger compartment in this ---
A It's anything inside of the vehicle where a passenger or a driver would sit. It's a passenger compartment.
Q The floor is -- the floor is the passenger compartment?
A Yes, sir.
Q That's a new one for me.
A If you look at the back of our accident reports where

it ask for passenger compartment whether intriguing of the vehicle occurred.

Q Now, there's no question that Officer Minnix did not record his conversation with Ms. Brown, his initial conversation?

A I don't believe -- I don't know I haven't watched the whole video, but from what y'all were testifying to yesterday it wasn't picked up on his body mic.

Q And it wasn't picked up on his body mic because the vehicle was too far away?

A Yes, sir, and other the environmental issues -- I don't know if that was the exact reason why it wasn't picked up. There's other reasons or other issues that come into play with our older system older body mic.

Q I mean, ordinarily if Ms. Brown had made the statement to Trooper Minnix that she had consumed alcohol, if his equipment had been working properly, then that would have been recorded and you could have brought it to court today and played it for us and let us listen to it and we would have known that's what she said, right?

A Yes, if his body mic would have picked it up, yes, sir. Also if I can -- it shows M1M2 that means in-car mics on and the body mic is on. Mic one is your in car. Mic two is your body mic. So on that video it shows that both were on.

Q Now, he's had experience -- I mean, he was working -- I don't know was he working at this time a couple weeks?
A No, sir, a couple months.
Q And you were out there training him because you're the one with all the experience?
A Correct.
Q And I know that you've had situations before where you encountered a situation where you gotten too far from your vehicle and you couldn't record anything. You never had experience that?
A I'm sure I have, sir. There's no set distance away from a car that the body mic will or will not pick up. I can't give you a distance, no, sir.
Q Well, now the whole purpose of a body mic is to record what transpires usually between police officer and a defendant?
A Correct.
Q And if the body mic is not working and you not recording what transpires, you just as well not even have it on?
A Sir, our normal day-to-day activity is a distance between Minnix's car and this picture and the car that's in front of us. That would be a normal traffic stop distance. This is extenuating circumstances.
Q Bottom line and due to extenuating circumstances ---

A Correct.
Q --- you nor Trooper Minnix have a recording of anything that Ms. Brown said and we are left with having to believe what Trooper Minnix said; is that correct?
A If it did not record on this video, then there is no recording of what was done or what was said at the scene other than this video.
Q Now, you indicated that Trooper Minnix described to you describe to you Ms. Brown's demeanor?
A Correct.
Q When he initially spoke to her?
A Correct.
Q And that demeanor was and I quote off?
A Correct.
Q What did you mean?
A That's what Trooper Minnix said that she just wasn't acting normal. He smelled an odor of alcohol and she admitted to drinking.
Q The odor of alcohol is that her demeanor?
A No, it's just -- for instance the way me and you are interacting now something was off about the way she was interacting with Trooper Minnix. Something wasn't normal. She wasn't asking the questions normal. I'm just relaying what he relayed to me, sir, and then my observations at the hospital was what I testified to.

Q Tell the ladies and gentlemen of the jury about her demeanor was not normal specifically and in particular what was it that wasn't normal?
A When we were at the hospital.
Q When Trooper Minnix was talking to her initially and he related it to you?
A Sir, I wasn't in back of the ambulance with them.
Q Well, you said that he told you that her demeanor wasn't normal?
A Correct.
Q And he described to you how it was not normal?
A Right.
Q Well, tell me what he told you about her demeanor if it wasn't normal?
A Just his interactions with her, sir. The way she was answering his questions, how she changed her story from having this many drinks to, no, I had this many drinks. It's not a normal interaction between two people.
Q Anything else that you considered not normal?
A I didn't -- Trooper Minnix advised that it was not a normal interaction. When I was at the hospital, I can testify to what I saw.
Q Well, incidentally when you were at the hospital, you don't deny -- and when you say you were at the hospital, you talking about when you got the search warrant; is that

correct?
A No, sir, prior to receiving the search warrant.
Q Prior to receiving the search warrant, you spoke with Ms. Brown?
A Correct.
Q And based on that conversation you signed a sworn affidavit indicating that you had probable cause to believe that you could get a blood sample from her that would confirm alcohol consumption and or level of alcohol. Did you not do that?
A I did.
Q Now, in that affidavit -- and this affidavit is the one that you took to Judge Locklair. You said personally appeared before me one Corporal J.P. Dubose of the South Carolina Highway Patrol who being duly sworn says that there's probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140 of the 1976 code of laws of South Carolina as amended as located on the following premises in this county. That this search will be for urine and or blood samples taken from the individual Tammy Dianne Brown date of birth 6/28/69. This would include the removal of sample for further analysis. Now, in that search warrant where it says reason for affiant to believe that the property sought is on the premises. Here's what you stated, you

said on August 30th 2014 South Carolina Highway Patrol responded to a collision on South Carolina 261 near Boyd Road in Clarendon County, South Carolina. The collision involved two vehicles one of which was driven by Tammy Dianne Brown. The collision caused fatal injuries to the driver of the second vehicle Mario Delano date of birth [redacted]/79 [redacted] Audry Lane in Manning, South Carolina. The driver of the at fault vehicle a 1999 Tribune white in color South Carolina license plate KJW [redacted] Tammy Dianne Brown is believed to be driving the vehicle under the influence. A search and removal of urine and or blood sample for the driver will assist in determining if the driver was actually under the influence at the time of the collision. Now, you mention Ms. Brown's eyes?

A Correct.

Q They appeared to you to be bloodshot?

A Yes, sir, and glassy.

Q Did you check her contacts?

A I did not.

Q Do you know that she wears contact lenses?

A I do not.

Q Okay. Did you tell the judge anything about smelling any alcohol?

A I did.

Q Pardon me.

A I did.
Q Did you state it in the affidavit in the sworn statement?
A No, sir, that was verbally conveyed to the judge.
Q Verbally conveyed?
A Yes, sir.
Q Now, did you verbally or did you tell the judge anything in here in the affidavit and you do agree that the affidavit is your sworn statement?
A Correct.
Q Based upon which ordinarily a search warrant was given, but in this case, it was only after you went to the judge's house or either called her on the phone and gave her other information in addition to what you swore was the truth in this affidavit was only after that that she issued the search warrant?
A It was after I went to the judge's house that she signed the search warrant after I was sworn in.
Q Listen tell me this much. Now, you've had a search warrant issued before. Why did you not state what you believe was probable cause in the affidavit that you swore to?
A The probable cause was that I believed that she was under the influence, that's why we needed the blood.
Q The basis for probable cause?

A Correct.
Q Now, of course, you don't deny that in South Carolina as well as most states there is a standard for probable cause or for the issuance of a search warrant. You just don't go down there and get one helter skelter. You have to have sufficient basis to get a search warrant, do you not?
A Yes, sir.
Q Okay. Now, it just so happens -- now, you do understand that we challenge the sufficiency of the search warrant?
A I understand that we had a hearing prior to this hearing, yes, sir.
Q Well, we've challenged the sufficiency of the search warrant and it's only after we come up with addition information that you claim that you told the judge under oath that's not in here that you got the search warrant, is that not true?
A I haven't added any information since the hearing, sir.
Q No, ma'am, I'm not talking about -- I'm talking about what you initially stated in the affidavit?
A I don't understand your question I'm sorry.
Q I'm sorry I'm just a bad questioner. I can't get it right. Now, let me ask you a couple of questions I was

concerned about and still concern about how you and Trooper Minnix seem to be distancing yourself from the execution of this form. When I say this form, I'm talking about the blood collection report?

A What do you mean by distancing ourselves.

Q Well, seems like y'all -- like somebody did some work on this form other than you that you don't know about and that you're saying that it was done by accident and I'm talking specifically where there's a check mark that says a blood sample is requested by the subject for her own independent test?

A Sir, I did not make that check.

Q I understand.

A I don't know who made that check mark, but it was not made by me.

Q Well, let me ask you a question. You signed this document, didn't you?

A I did.

Q And you read it before you signed it, didn't you?

A It was signed after the -- if you look at the bottom section ---

Q It was signed after the document been completed?

A No, sir. I signed ---

Q Are you saying that -- tell me what on this document indicates that you signed it prior to the time that it was

completed?
A Where it says final checks for law enforcement. We are signing as the final check. It says the sample was collected under my direct supervision. The sample contain or container is properly labeled with the subject's name and time of collection. And the third check was a sample that's properly sealed and ready for transport. What happens -- you want me to run you down how we do this form?
Q No, ma'am, I don't want you to run me down on anything. I want you to tell me whether or not you're asserting now that somebody came and put some check marks on here after you signed it?
A Once this is complete, we give this to the nurse, okay, because she has to sign her part where it says that she collected the sample with her name and her signature. So this is given to the nurse for them to make a copy for themselves and for the subject involved.
Q Would you have us believe that you signed it before the nurse did the collection?
A No, not before she did the collection before she signs it. Once the nurse does the collection, you write the time that the sample was taken, then we get the blood. We label it do all that stuff. We sign it. The nurse by that time has taken off her gloves. She's able to hold a

pen and she signs it.
Q Now, the truth of the matter is the person that collected the blood that you thought was a nurse, you really don't know who she was, do you?
A Do I know her personally, no, sir.
Q And you don't know whether or not she was authorized to draw blood. You looked at her appearance and she looked all right to you. And but as far as knowing whether or not she was qualified to do what she was doing, you don't know that, do you?
A We ask the attending the nurse that -- we advised her that we needed a legal blood sample. She made a call and a female entered the room who was wearing a Clarendon ER scrubs and also a badge on her shirt and states she was there to take the blood.
Q My question was ---
A I did not ask for any credentials.
Q I know you're having problems with my questions, but I ask you whether or not you knew who the woman was?
A I do not know her, no, sir.
Q So you don't know whether or not she was authorized or qualified, do you?
A I do not.
Q All right. Now, with respect to her signature and this says the title says print and then signature. Now, I

guess, you would have us believe that after you and Trooper Minnix signed at the bottom of this where you said final checks for law enforcement officers, final checks for law enforcement offers and you finally check. You have us believe that you gave this back to the person that draw the blood?

A We did, yes, sir.

Q Okay. Sample collected under my direct supervision. Who does that pertain to?

A That pertains to the law enforcement officer.

Q Sample container is properly labeled with subject's name, time of collection. Who did that pertain to?

A The law enforcement officer.

Q Sample is properly sealed and ready for transport all of these items are checked. Who does that pertain to?

A The law enforcement officer.

Q And does it say that these things are the final checks of the law enforcement officer?

A Yes.

Q Well, if there's a final check, why in the world you going to give it back to the person that draw the blood? You know you didn't do that, did you?

A That's our portion to fill out, sir. We cannot fill out the section for the collector, that's her portion to fill out or his portion.

Q How can you fill out this portion of the final check when no blood has been collected?
A Sir, it says that the blood was collected.
Q Well, now are you giving it back to the nurse or the person that collected the blood to write something on there. You would come to court today and say you don't know anything about it?
A The nurse or collector would not sign that piece of paper prior to her taking the sample.
Q Well, I think -- now, with respect to -- you don't deny that this piece of paper that your report that you filed says that Ms. Brown wanted an independent test, do you? You don't deny that? I mean, that's what the paper said, doesn't it?
A No, sir, it does not.
Q There's a check mark that says a blood sample is requested by the subject of her own judgment. Does it say that on here?
A No, sir, it's not in the block. And if she would have requested a sample, we would have to fill out a completely different paper.
Q Well, I think the lady and ladies and gentlemen of this jury saw and they looked at it and they see whether or not it's in the block. Now, Ms. Brown didn't write anything on it. It was in your custody somewhere between

you and the examiner or the person that's supposedly drew the blood. The check mark got there. She didn't put any there, did she?

A No, sir, Ms. Brown did not have the paper.

Q Now, business of assisting her to get an independent, do you deny that the law in South Carolina requires arresting police officers to assist an individual in getting an independent test when one is requested. Now, I know we're gone have an argument over what it means to assist, but you do admit that much, don't you?

A If I understood your question, you're asking that the law requires law enforcement to assist someone getting blood test. Yes, it does.

Q And that law doesn't specifically set out what in terms of specific acts. It doesn't set out what specific acts are required to be done, does it?

A I don't believe in the law. It requires or it specifically says where you have to take someone or anything like that, no, sir.

Q I know it doesn't say specifically what because it depends on the circumstances of each particular case. It says that you're required to give affirmative assistance in assisting them in contacting somebody to do the independent test, doesn't it say that?

A It says must provide them with affirmative assistance

to get an independent test, yes, sir.
Q Now, I asked yesterday -- and, of course, the Solicitor asked you several times today, did you do anything -- did you even talk with this woman about getting an independent test? When I say this woman, I'm talking about Ms. Brown?
A No, sir, other then her being read her implied consent rights which is part of it. I did not ask her if she wanted to get an independent test.
Q Listen to my question. My questioning I know it's -- listen at me carefully maybe that will help.
A Yes, sir.
Q I ask you what, if anything, any act you did to assist her? And if you didn't do anything, you could say no. And if you did something ---
A I didn't do anything, no, sir.
Q All right. And what, if any, act did Trooper Minnix -- would the answer be the same as he did nothing?
A He did nothing, no, sir.
Q All right. Now, no question that the person whoever the person was that draw Ms. Brown's blood drew two vials of blood and a urine sample?
A Correct.
Q And the two vials of blood were given to Trooper Minnix?

A Yes, that's what comes in a SLED kit.
Q And Ms. Brown did not receive any blood?
A Not from the ones that was drawn in our presence.
Q All right. Now, let me just talk to you a little bit about Ms. Brown's appearance at the emergency room when you claim that she -- I think you were in the courtroom yesterday when you heard Trooper Minnix described her as being belligerent?
A I believe that's how he described her.
Q How would you describe her attitude and conduct then?
A She just had mood swings.
Q Had what now?
A I would consider them mood swings.
Q Mood swings?
A Right.
Q And you said the mood swing is associated to taking liquor, taking alcohol and that's how people ---
A It can be, yes, sir.
Q Mood swings. All right. Now, of course, you don't deny that the mood swing occurred when y'all told her that y'all were gone arrest her and charge her with two counts of felony DUI. Her mood changed then, didn't it?
A Her -- yes, sir, she got angry after that.
Q I guess so. Instead of going home -- incidentally, did her daughter come along and ask to see her in the

emergency room while you all were there?
A No, sir.
Q You didn't see her daughter?
A No, sir.
Q So she was back there by -- with alone with you whoever was there to draw the -- take the blood sample and Trooper Minnix she was back there alone with y'all?
A Correct. She was in the trauma room, yes, sir.
Q In the trauma room?
A Yes, sir.
Q Incidentally, of course, you saw the vehicle that she was riding in at the time of this collision?
A Yes, sir.
Q And as far as an outward appearance, Trooper Minnix told me that he saw scratches, but he never told where he saw the scratches. Did you see any physical injury?
A I did not.
Q No physical injury?
A No.
Q But she had been involved in a wicked collision?
A Correct.
Q Now, of course, you don't know what, if any, internal injuries she had?
A No, sir, I do not.
Q And under the circumstances, would you not agree that

her conduct was probably pretty normal?
A No, sir.
Q For somebody that had been involved in that kind of collision?
A No, sir.
Q What was abnormal about it?
A Like I said her mood swings.
Q She what now?
A Her mood swings. Like for instance, one minute she'd be talking, just like me and you were talking. The next minute she be angry at us. The next minute she was laughing about the situation. The next minute she was crying about the situation. There was no set -- I guess, you say mood as far as a normal person would have.
Q Normal person. Tell me how you think you would feel when somebody tells you incidentally -- had anybody told her that somebody had gotten killed in this accident?
A Yes, sir.
Q Who told her?
A Trooper Minnix.
Q When did he tell her that?
A At the point in time that we advised that she was being charged with two counts of felony DUI, but one count resulting in death.
Q And that would have been at the emergency room,

right?
A Correct.
Q Okay. So prior to that, she had no knowledge that anybody had gotten killed, did she?
A I don't know, sir.
Q So now -- well, she had been in the emergency vehicle?
A Correct.
Q And had gone to the emergency room and she had not had any contact with anybody else other than the people in the emergency vehicle and with two law enforcement officers. And as far as you know, none of these people told her that somebody had died. And you said that she started acting unusual when found out that she was gone be charge with felony DUI, one involving death?
A From the time that I saw Ms. Brown in the hospital, she had the mood swings. It wasn't after we advised her. She got angry after we advised her it was a death involved because she kept saying they hit me.
Q They hit me?
A Right.
Q Okay. Well, what I'm talking to you, she kept saying they hit me?
A Right.
Q Okay. Of course, y'all didn't pay that a whole lot

-- too much attention, did you? You thought she was just babbling or something?

A From the evidence we had at the scene, it didn't support what she was saying.

Q The evidence didn't support it. Now, ain't no question that until this day in terms of investigation tell me one person that you know of that can confirm that the driver of the vehicle that got killed was not coming from a party on Boyd Road the night the incident occurred?

A I didn't understand.

Q Name one individual---

A Yes, if a person who can tell us he was coming from a party?

Q That he was not?

A I don't know, sir. I don't know where he was coming from.

Q All right. But your entire prosecution presumes she was coming that he was coming off of -- what is is Poor Farm?

A Home Branch Road.

Q Home Branch Roady, yeah. And I've asked for -- do you know anybody or any relatives that he's got on Home Branch Road?

A I do not personally, no, sir.

Q Okay. Now, you never asked Ms. Brown -- of course,

once you took her into custody, you didn't Mirandize her, did you?
A Yes, sir, Trooper Minnix did.
Q She was either Mirandized by you or Trooper Minnix?
A Trooper Minnix.
Q And I know at least on two occasions you spoken with her or if not you Trooper Minnix and maybe yourself or and or Trooper Minnix at least on two occasions, right?
A I have not spoken to her.
Q You never spoken to her?
A Not to my knowledge.
Q Okay. So you had never asked her to tell you her version of how the accident occurred?
A I have not.
Q Do you know whether Trooper Minnix ever asked her how the accident occurred -- tell him?
A I do not know whether Trooper Minnix asked has or not, not while I was with him, sir.
Q All right. Nobody asking?
A I'm not sure the MAIT team might have done an interview I don't know.
Q Well, as far as I know -- and as far as probably you know -- well, as far as you know, she the only eyewitness, isn't she?
A I don't understand your question.

Q Listen at my question then. Again, my bad questioning, but listen at me. As far as you know and as far as you know did anybody else know this woman right here, Ms. Brown, is the only eyewitness to this entire incident whereby she's charge with the two counts of felony DUI. You know any other witnesses -- eyewitness?
A There were no witnesses on the scene.
Q No witnesses on the scene. Now, as far as you know and I'll ask you again are there any other eyewitnesses other than Ms. Brown?
A She was a party at the collision. I wouldn't call that an eyewitness.
Q Well, she must have seen that she was involved in it?
A She was. She was involve in it.
Q Well, then maybe she's the only eye witness that experienced it, but ain't no question about it you don't have one living soul that you've asked to describe how the accident occurred?
A Yes, sir.
Q And hadn't asked Ms. Brown?
A No, sir.
Q Okay. Of course, she the person charged so she you -- now, in terms of her acting as you say unusual, do you know what kind of work she does?
A No, sir.

Q You know how many children she have?
A No, sir.
Q You know whether she's married or single?
A No, sir.
Q I tell you what irrespective of what she does and she must do something to get hit with the news that you about to go to jail for -- and get arrested for allegedly killing one person under the influence and causing serious bodily injury to another, that ought to give you pretty good jolt, wouldn't you? I mean, the normal kind of person. I know it would scare me out of my pants. It wouldn't kind of scare you? It wouldn't upset you or something? You just stay cool just like how you are now?
A I wouldn't get angry, no, sir, because I know I made that decision.
Q Same thing you said she did?
A No, sir, I would not get angry.
Q Wouldn't get angry?
A No, sir.
Q Well, she kept telling you they hit me and I'm the one going to jail?
A Right.
Q Okay. You were in the vehicle when she was carried off to jail, right?
A Yes, sir.

Q Okay. Did you hear -- you heard her keep saying that they hit me?
A That's what she said the whole time she was in the hospital as well, sir, they hit her.
Q Okay. All right. Of course, now, as far as you know even though she been saying that you don't know anybody paid any attention to that just dismissed it?
A What do you mean paid attention to it?
Q Well, I mean, follow her up on, it do some investigation like how y'all usually do when investigating something in your search for the truth?
A We had evidence on scene which disprove that, sir.
Q Well, I know you're talking about what your MAIT team gone come and say that they reconstructed the accident, but I'm talking about somebody that -- that number one somebody that either eyeball can say this is what I saw or somebody or somebody that could at least confirm that this man was coming off of -- was not coming of off Boyd Road from the party. Ain't no question in your mind that they were both pretty liquored up pretty good, weren't they?
A They both -- the driver of the vehicle was under the influence of alcohol as well.
Q They both was?
A Yes, sir.

Q So they could have been coming from one of these parties that you claim that y'all be setting up the inspection roadblock for?
A The collision occurred on 261 and eastbound lane as far as we were concern. We were not ---
Q All right. Well, it occurred on what now?
A On S.C. 261 in the eastbound lane.
Q Highway 261 between Paxville and Manning?
A Between, yes, sir.
Q And as far as you know, Miss -- well, I mean, everybody was partying. Ms. Brown had made the statement to Trooper Minnix that she was coming from a party?
A Correct. She was coming from Paxville I believe that's what he told me.
Q She was traveling east on Highway 261?
A Yes, sir.
Q Okay. Now, you say that you are now station in this district I mean in terms of your patrol work?
A Yes, sir.
Q So you are also familiar with Highway 261 from Paxville to Manning?
A I am.
Q I got into a discussion yesterday with Trooper Minnix about these signs, highway signs, road signs. And I would

think that we probably gone have some more debate about it, about these road signs, but now are you familiar with the speed limit signs that are used by the South Carolina Department of Highway Public Transportation?

A Yes, sir.

Q Describe a speed limit sign as you know it to be please, ma'am?

A It's any sign or erected by South Carolina Department of Transportation which shows a speed for that area.

Q Any sign?

A Yes, sir.

Q That shows a speed for that area?

A Yes, sir.

Q Very good. Let me ask you something. That definition that you gave me, tell me whether or not I can find it in the manual for the signs they publish a manual for signs in South Carolina. Can I find that definition? Are you familiar with the manual?

A I am not, but I believe you can find it under 56-5-1520 where it regards speed in the South Carolina law book.

Q Well, but I mean aside from what's in the code, they publish a handbook for people with signs, all kind of signs railroad crossing signs, stop sign. You name it they got it in there. You not familiar with it, are you?

A I have seen books with signs in it. I'm not familiar with the one you are talking about.
Q Well, all right. But you said any sign that tells somebody what the speed limit is. Essentially, I'm paraphrasing because in this case -- and I think you probably would agree that one of the primary issues in this case we just gone turn, it's gone be interpretation of speed?
A Why is that?
Q Pardon me.
A I don't understand the question.
Q Well, I said would you not agree that one of the primary issues in this case is gone concern speed?
A I do not agree with that.
Q You don't agree with it?
A No, sir.
Q Thank you, ma'am. I gone remember that.
A Yes, sir.
Q You don't that in terms of your charge against Ms. Brown it has nothing to do with speed?
A She was charged with felony DUI. She was charge with felon DUI. Speed could be factor in the driving under the influence, but she was not charged with speeding.
Q How about a major factor?
A A what?

Q A major factor.
A Her speed being a major factor?
Q Yeah. Will her speed as be a major factor in this case as far as you know?
A I think there's a lot of major factors in this case.
Q How about speed?
A It's a factor in the case. I mean, I don't know what you describe as major.
Q Well, I mean it's significant and important and big big kind of factor?
A That's opinion.
Q Well, I mean, that's what I'm asking you. Do you agree with me?
A Do I agree that speed ---
Q Yes, ma'am, you know the case. You brought the charges. You know the facts and circumstances. You know the law. And I'm just asking you tell me whether you agree?
A I believe speed was a factor in the collision.
Q Because see now in as much as you have told us that you don't think speed -- you not acknowledge that speed will be a major factor. The time is gone come if the Lord let me live that I might get in front of this jury and tell them remember Trooper Dubose on the witness stand saying she just don't believe speed was -- I might do

that?
A That's fine, sir. That's my opinion.
Q Does that change your opinion at all?
A Does it change what opinion?
Q Your opinion about not agreeing with me concerning speed?
A I don't know. You got my words twisted all around. I don't believe it's a major factor.
Q Well, I tell you what I bet Mr. Durant is gone straighten out the word by the time this evening sometime.

MR. BARR: I don't have any further questions.

MR. DURANT: Just a few follow up, Judge.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. DURANT:
Q Trooper Dubose, there was questions posed to you regarding -- first of all, video requirements at both the incidents scene breath test facility. Are you familiar with those requirements and DUI laws?
A Yes, sir.
Q Okay. Particularly when you make a DUI that doesn't involve injury to anybody involved, where is the defendant taking -- well, first of all where is the defendant questioned?
A He's questioned in front of the patrol vehicle.

Q Just in front of the patrol vehicle?
A Yes, sir.
Q And would be videotaped with the dash camera that's used that's present inside the patrol vehicle?
A Correct.
Q Are there certain exceptions to those videotaping requirements?
A Yes, sir, if someone is transported to a medical facility, we are not able to videotape in the facility.
Q If they require emergency medical treatment?
A Right.
Q You are not able to videotape it?
A Correct.
Q Okay. In this case, when you and Trooper Minnix arrived on scene, where was Ms. Brown?
A At the time that Trooper Minnix questioned her, she was in the back of the EMS ambulance.
Q Already in the back of the ambulance with the EMT?
A Yes, sir.
Q Okay. When you all arrived on scene and we seen the video you all pulled up, you all were coming from Manning?
A Yes, sir.
Q At that point in time did you know where the vehicle was involved in the accident were in relation to you all when you pulled off?

A No, sir, like I said, what we went by when we got there was the fire truck with the rescue lights wherever that is where the vehicle was.
Q Okay. Of the two vehicles that were involved in the accident, which is the first one that you came upon when you approached the scene?
A The black pickup truck.
Q The black pickup truck. At that point in time did you even know where the other vehicle was that was involved in the accident?
A No, sir.
Q So you had already parked your car and you had got out or approached the scene as far as you could, you didn't even know where Ms. Brown's vehicle was yet at that point?
A No, sir, at the time we didn't know there were two vehicles involved.
Q Would it have been possible for you all to drive your car around the other first responders to get to Ms. Brown's vehicle?
A It probably would been possible, but through preservation of evidence at the scene, we are taught not to do that.
Q So without risk of contaminating the accident scene, you couldn't have gotten to her vehicle?

A Correct.
Q So the only way to get the camera to her vehicle would have been to risk contamination of the accident scene?
A Correct.
Q And to drive around the other first responders that were there?
A Right.
Q And, of course, at that point Ms. Brown wasn't in her vehicle any more. She was with EMT?
A Yes, sir.
Q So was it possible to video Ms. Brown's conduct at the accident scene?
A No, sir, not in that situation.
Q And that's one of the exceptions to the videotape requirement?
A Yes, sir.
Q There's also -- you discussed the videotape requirement at the breath test site when somebody -- if they are arrested for DUI and there's no injuries involved, you mentioned there's some question happens in front of your car. After that questioning if they're arrested, where are they taking you?
A They're taken to a data master facility -- a breathe site facility.

Q So they are taken to a facility that's set up with the equipment to take somebody breathe sample?
A Correct.
Q To do breathe test?
A Yes, sir.
Q All right. And where is that facility?
A The one from Clarendon County is at the Clarendon County detention center.
Q Okay. You don't have that equipment at the hospital here in Clarendon?
A No, sir.
Q Okay. Now, when Ms. Brown left the accident scene, where did she go?
A She went to the Clarendon Memorial hospital.
Q With who?
A With EMS.
Q So EMS took her to the hospital rather than releasing her to your care take to take to a breathe test site?
A Correct.
Q So at that point since she was under the care and the custody of EMT and medical personnel and Mr. Barr mentioned that at that point y'all didn't even know what her injuries were, she had to be assessed to see whether she had internal injuries; is that right?
A Yes, sir.

Q Okay. And because of that, she was transported to a medical facility?
A Right.
Q Since she was transported to a medical facility, would she have been given a breathe test sample?
A Not at the hospital, no, sir.
Q Not at the hospital. Not until she was released and had been arrested and can go back to the jail?
A Correct.
Q Okay. There was some questions ---

MR. DURANT: Actually, Your Honor, before we go any further, may we approach?

THE COURT: Yes, sir.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

BY MR. DURANT:
Q Trooper Dubose, there were some questions posed to you actually -- really more to the form of statements made by Mr. Barr that they were challenging the search warrant, the sufficiency of the search warrant in this case. And he reference a pretrial hearing that was in regard to that matter. You were present and testified at that hearing?
A Yes, sir, I was.
Q Based upon your understanding, what was the ruling

from the Court in regard to the sufficiency of the search warrant?

A The ruling was that it was -- it did suffice as far as the affidavit of both written and verbal testimony to the judge.

Q All right. Mr. Barr questioned you for a while there about the fact that according -- as he claims that there were no eyewitnesses to the incident other than Ms. Brown. You remember him asking you about that?

A Yes, sir.

Q The truth is actually that Ms. Brown's the only surviving eyewitness with the ability to communicate about what happened that night, didn't it?

A She is the only person out of two vehicles that can state what happened, yes, sir.

Q And he asked you or made the statement that there was no recording of anything Ms. Brown said that night or that morning. And the truth is there actually is a recording that some of Ms. Brown's statements in the car from the hospital to the jail?

A Yes, sir.

Q Is a recording of that?

A Yes, sir.

Q And Ms. Brown the only eyewitness to this incident on camera in that recording so you and I and the jury can

hear she told you and Trooper Minnix how the accident occurred, didn't she?

A She kept saying someone hit me. They hit me.

Q She said someone hit her. They were driving fast past another car and someone hit her. She described a head on collision?

A Yes, sir.

Q So the only surviving eyewitness with the ability to communicate about this accident, she did tell y'all how it happened. And how her story is that it was a head on collision. That they were driving fast passing another vehicle and hit her head on 261 between Home Branch and Boyd Road.

A Correct.

MR. DURANT: That's all the questions I have.

MR. BARR: I want to make sure ---

THE COURT: Wait a minute. You don't get another crack at her now.

MR. BARR: Pardon me.

THE COURT: You don't get another crack at her.

MR. BARR: Judge, these are somethings that she brought out on -- I mean he brought out on ---

THE COURT: I understand, but you -- he goes first. You go second and he gets reply. You don't get another crack.

MR. BARR: So I got to call her as my witness?

THE COURT: You do whatever. I'm just following the rules.

Ladies and gentlemen, we going to take a ten or 15 minute break. Don't talk about the case. I'll get you back out here in ten minutes.

(WHEREUPON, the jury retire to the jury room.)

(WHEREUPON, a break was taken.)

THE COURT: Are we ready for the jury?

MR. DURANT: Yes, sir, Your Honor.

(WHEREUPON, the jury came into open court.)

THE COURT: You can call your next witness.

MR. DURANT: Your Honor, the State calls Angela Ann Floyd.

THE CLERK: Raise your right hand and place your left hand on the Bible and repeat your name please.

THE WITNESS: Angela Ann Floyd.

THE CLERK: You solemnly swear the testimony you about to give to be truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Angela Ann Floyd,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:
Q Ms. Floyd, good morning.
A Good morning.
Q If you would just tell the jury where you work?
A I currently work at Williamsburg Regional Hospital in Kingstree, South Carolina.
Q What is your job there?
A Phlebotomist.
Q A phlebotomist?
A Yes.
Q Tell the jury for those of us who may not be familiar what is a phlebotomist do?
A A phletbotomist go -- I work in the hospital to go around collecting patient's blood when doctor does an order we draw their blood. On the floor and in the ER and out patients as well.
Q So that's the job of a phlebotomist to draw blood?
A Correct.
Q Do you have any specialize training in phlebotomy in order to do that?
A I did. I went to Sumter Technolcal College back in 2002 and you get -- you go through your class and then you get the certificate after you done and pass the class.
Q And you have a certificate in phlebotomy?
A I do.

Q How long have you been doing this?
A About 15 years.
Q You mention 2002 that you got a certificate, so you been doing it continually since that time?
A I have.
Q Did you work for a period time at Clarendon Memorial Hospital here in Manning?
A I did.
Q When was that?
A It was back in maybe 2014.
Q So you were working -- were you working for Clarendon Memorial back on August the 30th and the 31st 2014?
A I was.
Q Okay. Did you have occasion -- do you remember meeting with highway patrol and a defendant who had been arrested for felony driving under the influence. Do you have to occasion meet with highway patrol when to draw and that defendant back on August 31st 2014?
A I did when I got to the patient's room.
Q Okay. So when you got to the patient's room, did you have any interaction with the patient before that?
A I did not other than asking the name, date of birth stuff like that.
Q Okay. So you came to the room simply when it was time to draw the blood?

A I did.
Q And you mention -- so you ask questions to verify her identity
A Correct.
Q And do you remember who that patient was?
A It's been so long ago. Her name ---
Q Let me just show you when you draw the blood was there a blood collection report that was filled out?
A It was.
Q Okay. It's been introduced in evidence all ready as State's Exhibit 49. Do you recognize that?
A I do.
Q And does it have your name on it?
A It does.
Q And is the subject's name listed on the top?
A Yes, it is.
Q And who is that?
A Tammy Dianne Brown.
Q Okay. When you came into Ms. Brown's room to meet with her and to take the blood, did you have a conversation with her?
A No, I did not.
Q Okay. Did you ask her any questions?
A Other than her first and last name and date of birth.
Q So you just got her identifying information from her?

A Correct.
Q Okay. The form that's before you who fills that out?
A The state trooper does first part, that second part is checked off by them. That third middle part is checked off by them also and then I sign and print.
Q Okay. And I'm going to give you copy to look over and put the one that's in evidence on the projector so we can all read out of the same so to speak. So you mention this is identifying information up here. Who would have fill that out?
A Where are you talking about?
Q Up at the top just identifiying information for the subject?
A The state troopers fills that out.
Q The troopers filled all this information out?
A Right.
Q It's got time of arrest and time of the test, date and time of the test 8:31 2014 3:21 0321 which be 3:21 a.m.?
A Uh-huh.
Q Okay. And then there's a second section here who fills this out?
A They do also.
Q Okay. And then this section here which is checked the correct one, only one can apply who fills that out?

A They show us the boxes to check and we check those. And then I sign my name and then you print your name up under that.
Q Okay. So you signed and print your name here. There's a check mark -- and then before you there, there's another box section down here -- with some other check marks and your name. Did you fill out this section?
A You have to check off their, that would be my part checking off there.
Q Okay. Now, let's go through that first. This is the part that you checked off here states the first one you checked is using a non-ethanol prep. A blood sample was collected into an unused uncontaminate vial and given directly to the arresting officer or to the subject requesting a sample for her -- his or her independent test after collection. You check that?
A That was done in error.
Q Which part -- well, let me ask you, so did you follow those procedures to the unused uncontaminated vial when you collect the evidence?
A I did.
Q Okay. Did you use an non-ethanol prep?
A I did.
Q Okay. And what's the reason for using the non-ethanol prep?

A Using a non-alcohol prep causes the blood draw to be a little bit more increases the alcohol.
Q Okay. And then a urine sample was collected in an unused uncontaminated container and given directly to the arresting officer?
A It was.
Q Okay. How many of the check marks on this page in its entirety were made by you?
A Three.
Q Three. Okay. So there's one up here in this section that says correct the correct one. A blood sample was requested by the subject for his or her own independent test. And then down here about using the non-ethanol prep collected using uncontaminated vial. And then about the urine sample. You said one of them was made in error. Which one was made in error?
A Where the blood sample is requested by the subject for his or her own independent test.
Q Okay. And I asked you about the conversation with her. You say you just got her identifying information?
A Correct.
Q Did you give her any advisement of rights?
A I did not.
Q You didn't tell her, hey, you got the right to get your own independent test?

A I did not.
Q Did she tell you or the officers in your presence that she wanted her own independent test?
A She did not.
Q Tell the jury about her demeanor -- did she make any statements to you?
A She was being -- she was kind of difficult there when I was in there during that time doing what I needed to do as far as my part. She was being kind of difficult to get along with.
Q Okay. Did she -- do you remember whether -- when the form was submitted to her for signing, did she agree to sign the form?
A As far as the form goes, it's just me and the state trooper. So they had to get her to sign that bottom part here that I see. They had to get her to do that after I had left.
Q Okay. So you had already left when the form was presented for her signing?
A Right.
Q Okay. Let me talk to you a little bit more about the -- kind of this procedure for collecting the blood. Just to be clear, did you clean the site on her arm that you would have collected the blood from?
A I did.

Q Again, you did that with a non-alcohol prep of some type of ---
A It was done with betadine.
Q With what?
A Betadine.
Q Betadine. That don't contain alcohol?
A It does not.
Q Okay. And when the blood was drawn, was it placed in unused, uncontaminated vial?
A I was.
Q Where did the vial come from?
A It came from the kit the state troopers had brought in with them.
Q Okay. So they actually had a blood collection kit that contained the vials?
A Correct.
Q After the blood was drawn, was it -- were the vials kept securely?
A Yes, they were.
Q Did you place any information on the label with regard to name of the subject, the time and date of the blood draw and so forth?
A Yes, I did.
Q Okay. And the name of the person was drawing blood which would have been your name?

A Right.
Q So you would have wrote that on the label on the outside of the vial?
A Correct.
Q Who sealed the vial.
A I did because it comes with like a plastic strip like a tape strip and it goes over that with the information is on the tube and on that also.
Q So wraps up one side of the vial over the top?
A Right.
Q Which will be where the cap is?
A Yes, the cap is.
Q And back down the other side?
A Uh-huh.
Q So in order to open the vial then, you would have to break the seal?
A You would have to break that seal, yes.
Q And you put the seal on yourself?
A Uh-huh.
Q Which was date, the time and sign your name it to?
A I did.
Q Okay. How many vials -- did you take one or two vials of blood?
A It may have been one to two vials probably. It's been so long. I can't remember. I know one was taken.

I'm not sure about the second one.
Q Okay. You would have secured them both with a seal?
A Yes.
Q And what about did you collect some urine as well?
A Yes.
Q How is that done.
A It's done basically the same way too. There is a seal after the urine is collected in that little plastic bottle. It's also taped in to go over also with her name and first and last name date of birth. And then my initials the time that it was done.
Q Okay. And then you would have sealed that as well?
A Correct.
Q And given in it to -- all turned over to the troopers that were there with you?
A That's correct.
Q At the scene?
A That's correct.
Q Or at the hospital rather. I just wanted to clarify this form real quick. I know it's been three and a half years. I don't want you to guess about what happened. I want you to tell the jury what you can actually remember and what the practice is, but this second section here which says check the correct one only one can apply. Typically who fills out that section?

A Sometimes my time in doing these, sometimes the state trooper will go in and check those boxes. And all they really want me to do is just sign and print. And then sometimes they'll tell us to check those boxes, you know, it just depends and that was -- yeah, that's it.
Q You understand the form and it's clear that only one box should apply. And only one box should be checked?
A Correct.
Q Would it acknowledged that there appears to be two of them -- at least one is definitely checked. And one there's a mark around the box?
A Right. And that one was done in error.
Q Okay. So the big checks were done by you; is that right?
A Correct.
Q Who did the small checks?
A The state trooper.
Q The ones that are up here?
A Right.
Q Here, here and down here?
A Right.
Q The state trooper did those?
A Right.
Q Okay. Again, as far as you remember at any point during your interaction -- you said she was being

difficult, but at any point in your interactions did Ms. Brown ask for an independent sample?

A She did not.

Q At any point did she tell you or the other officers that I want this particular doctor or this particular facility to test my blood?

A No.

MR. DURANT: Ms. Floyd, that's all the questions I have. Please answer any Mr. Barr has.

CROSS-EXAMINATION

BY MR. BARR:

Q Ms. Floyd, you said you work at Williamsburg County hospital now?

A I do.

Q You all have kind of a rough time over there, aren't you?

A It comes and goes in spells.

Q Now, tell me if you would please, ma'am, you have testified today and I'm thinking that there would be things that perhaps you remember and perhaps some you don't remember about what transpired when this blood was drawn by you?

A It's been so long ago. I mean, memories do come back as to that particular morning that we were in the ER.

Q And are you telling us today that you have

independent recollection of having done or having drawn blood on this particular occasion from Ms. Brown?

A Yes.

Q You remember that today?

A Yes.

Q And, of course, I am particularly interested in what you have described as a check mark by that portion of this form that says a blood sample is requested by the subject for her own independent recollection. And it's your testimony today that that check mark by that block was made by you?

A Yes, in error it was.

Q Now, this is a form I believe that's filed probably in the patient's file?

A Repeat the question again.

Q This is a form that's filed in the patient's file as part of the medical record?

A Correct.

Q Okay. And it's also filed with SLED?

A Correct.

Q Okay. Now, if you would please, ma'am, tell me whether or not at any time between August 30th of 2014 and today, have you contacted SLED or the hospital and said you know I made an error on the blood test report for Ms. Tammy Dianne Brown?

A No, I have not.
Q You have not. Now, would it be fair to say that if you had had a recollection or had any knowledge of your having made an error, you would have contacted some official to let them know that you made a mistake on the medical record?
A I would have.
Q Okay. So would it be also be fair to say then in as much as you did not contact anybody regarding the so called error, it has recently come to your attention that this error was made?
A Exactly, that's right, correct.
Q All right. So now in as much as recently come to your attention that error was made, you have not had occasion to review State's Exhibit Number 49 since the time you signed it, have you?
A I have not up until yesterday is when I actually seen the paper and got to look and that's when I realize that the check mark was done in error.
Q Oh, up until yesterday when you saw the paper. And I would surmise that you were looking through your records and you saw it and you realize that you had made an error?
A That's correct.
Q And where were you looking through those records?
A It was sent to me -- a picture of it was sent to me

on my phone.
Q Sent to you by who?
A Chris Durant.
Q Chris Durant, the prosecutor, sent it to you yesterday?
A Yes, sir.
Q Sent it to you on your cell phone, ma'am?
A That was correct.
Q And he sent you an e-mail along with it?
A No, sir.
Q Sent you a phone message?
A It was through a text, yes.
Q A text message that's what they call it a text message. I guess, you can see I'm not -- I don't do any texting fingers are too big. Would it be fair to say that the text message you got cause your attention to this error that you had made?
A That is correct.
Q I got one last question. Would you have known that you had made an error if it hadn't been called to your attention by the prosecutor?
A That is correct.
Q You would not have known?
A That's correct.
MR. BARR: All right. Thank you, ma'am, got

nothing further.

REDIRECT EXAMINATION

BY MR. DURANT:

Q Ms. Floyd, there seems to be some suggestion that the prosecutor which is me told you what to say or told you you made an error, is that how our conversation went down?

A I was told that -- it was sent to me by you that a question had come up about that check mark. And then when I got it and I looked at it, that's when I realize that the check mark was done in error.

Q Did I tell you it was done in error?

A No.

MR. BARR: Objection. I think now it's getting into hearsay.

MR. DURANT: Your Honor, he questioned her about our conversation, error about the communication.

MR. BARR: Can you let me state my objection?

THE COURT: Go ahead.

MR. BARR: She's now getting into the details of the e-mail that was sent to her -- text message that was sent to her by the prosecutor. I merely asked her how did she find out -- how it was brought to her attention. I did not ask her any questions about the text of the -- which is an out-of-court statement made for the trooper. And I would submit it's hearsay and I object to it.

MR. DURANT: Let me rephrase the question, Judge.

BY MR. DURANT:

Q Was there any text associated with the photograph of the picture that was sent you?

A No, it was not, just a picture of the paper that was sent and that's all.

Q There was no other communication -- written communication from the Solicitor's office. I know a text message is just a photo of the paper?

A That's correct.

MR. DURANT: That's all the questions I have.

THE COURT: Thank you. You may step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Do you have a short witness or this is a good time to go to lunch?

MR. DURANT: I think I got -- the next two are just chain of custody I think be relatively short.

THE COURT: You agree with that, Mr. Barr?

MR. BARR: I'm not sure who you gone call?

MR. DURANT: Joe Ham.

MR. BARR: All right.

THE COURT: Okay. Call him and if it gets too long stop and go to lunch.

MR. DURANT: State calls Sergeant Ham.

THE CLERK: Raise your right hand, place your left hand on the Bible repeat your name please.

THE WITNESS: Joseph Ham.

THE CLERK: You solemnly swear the testimony you about to give will be the truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Joseph Ham,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Sergeant Ham, if you would, please tell the jury where you work?

A South Carolina Highway Patrol. I'm the first sergeant in charge of Sumter and Clarendon County.

Q How long have you work there?

A On patrol?

Q Well, how long you work for the highway patrol?

A 28 years.

Q 28 years?

A Yes, sir.

Q You at requirement age?

A I could have a couple years ago.

Q You're first sergeant here. What troop is this?
A This is troop one.
Q And that encompasses Clarendon County and ---
A Clarendon and Sumter, yes, sir.
Q Have you -- were you working in troop one back in August of 2014?
A That's correct.
Q Okay. What was your rank then?
A Sergeant.
Q Sergeant. So you would have been over the other corporals, the other troopers within the area?
A I guess to put it in perspective I would have been the second in command here in Sumter and Clarendon area.
Q Did you -- first of all, are you aware of a traffic collision that occurred on Highway 261 in Clarendon County back on August 30th of 2014?
A I am.
Q Okay. And did you have occasion to actually respond to the accident scene yourself?
A I did arrive at the accident scene, but it was already in the investigation process at that time. My position -- I approached the scene over, but it was after everything was over. I actually stopped traffic prior to them coming out of Paxville to the collision.
Q Okay. So were Trooper Minnix and Trooper Dubose

already on scene when you arrived?
A That's correct.
Q What was your role you mention you stop traffic and direct traffic around the accident scene. How long did you remain on scene?
A I'm not sure the exact time I left. I stayed after everything was cleared up.
Q Okay. You stayed and everything was cleared, so you stayed until MAIT arrived?
A Correct.
Q Now, there were other first responders on scene besides highway patrol, the fire department, the Clarendon County sheriff's office deputy. You remember seeing those all on scene?
A That's correct they were on the scene.
Q Just to clarify, have you as the Sergeant, have you checked to see whether or not there's any dash cam recordings available from other agencies that were on scene?
A Pretty much what we do is we'll put together a packet any time there's a wreck of this magnitude. We'll have the investigating officer go back and check to see if there's anything we're missing any videos, any pictures, anything that's out there. And we just want to encompass everything in our packet. To my knowledge, the only --

everything in the packet that we have.
Q Okay. You check with the sheriff's office to see whether there's a dash cam video associated with a patrol car that's on the scene that evening?
A There were video -- to my knowledge there is no other video then the one that's in the packet that was done by the highway patrol.
Q Okay. Now, Trooper Ham as -- did you come into contact, any custody of any evidence in this case?
A At the time of this accident, I was the evidence custodian for postdate for troop one postdate, which we'll enter all the evidence into what we call our police central. And I was the person who did all that and transport the evidence.
Q When did you -- well, first of all, what evidence did you receive?
A Pertaining to this, it would be the blood and urine that was collected at the hospital the night prior.
MR. DURANT: Let me mark this as a State's Exhibit for ID.
(WHEREUPON, State's Exhibit No. 50 was marked for identification only.)
BY MR. DURANT:
Q Let me show you what has been marked as State's Exhibit 50 for the purpose of identification. You

recognize that form?
A It is.
Q Is that -- that gives you any indication as to what evidence you might have received in this case?
A Yes, this is the South Carolina Department of Public Safety chain of evidence form. Basically, the trooper will fill this form out with all their information that they have. When I get this form which will probably be the next day or so, it's stated that item one which was two tubes of blood. Item two was one container of urine.
Q Okay. And how were those been packaged?
A They would be in what I would call a vial kit. It's just a kit that's provided to us by SLED. It's got the tubes in it that we collect. We take to the hospital for blood collection. And it's got a bottle it for urine collection.
Q And it was put in a kit, the box the package somehow?
A They're package in a little box that will preserve them as much as, you know, from breaking or anything else from spilling. The trooper is responsible for making sure that all that is in there and the trooper at the time will seal that and put it in evidence.
Q So the outside packaging has a seal on it?
A Correct.
Q So you can tell if it's been open.

A Correct.
Q When you did you actually receive this evidence?
A The evidence was put into the evidence refrigerator at the Sumter office here which is the postdate headquarters for this area on August 31st of 2014. I removed the evidence from the refrigerator on September the 1st of 2014 for labeling and logging it into police central as I call it. And then on the same date which is September the 1st I put it back in the refrigerator attempt storage. And then I remove from the refrigerator on September the 3rd of 2014 to transport it to the central evidence facility in Columbia for processing to be sent to SLED.
Q Who put it into the evidence refrigerator at postdate to begin with?
A Trooper Minnix.
Q Trooper Minnix. And you were the next person to handle it?
A Correct.
Q When you first initially received the evidence -- when you first handled it, had the outside seal on the packaging been broken?
A One of the main things you gone do when you go in there to get any kind of evidence is to make sure that it is sealed properly. So I made sure that it was sealed,

had his initials on it, that the box was sealed because I don't -- when I get the box, I have to trust what's in the box is in there ---

Q You look in it?

A I do not open the box. I trust that the two tubes of blood and the urine was in there because that's what the trooper put on the paper that was in that box because it's already sealed by him.

Q Okay. Is there a labeling on the outside of the box with some type of identification system to let you know that you're handling the same piece of evidence the Minnix put in the refrigerator and so identified?

A The trooper would write his case number on the box, which is that 14BW170207HP14.

Q Okay. So that's the case number for this case?

A Correct.

Q And you received that box with presumably as labeled as containing two vials of blood and a sample of urine that you don't open it to see?

A I do not open that box.

Q It was sealed when you receive it and then eventually what you took it to Columbia is that what you said?

A To Columbia Shop Road to the central evidence facility.

Q To the central evidence facility. Didn't remain

refrigerated up until that time?
A Up until I take it out of the refrigerator and I transport it in my vehicle to the central evidence facility.
Q What happened to it then?
A At that time I would turn it over to one of the techs there at the central evidence facility. They will in turn do what they need to do with it and they'll put it in the refrigerator also until it's transported to SLED.
Q Can you tell from that form who the tech was that it was turned it over to?
A Look like PM Odom.
Q Do you know him?
A I do.
Q Okay. He works at central evidence facility?
A He do.
Q And I say you would have delivered it to -- hand delivered it to him?
A Correct.
Q And when was that?
A That took place on September the 3rd.
Q Okay. When you handed it over to Odom at the central evidence facility was it still sealed?
A It was.
Q Still in the same condition as it was when you

received it?
A Correct.
Q Okay.
MR. DURANT: Trooper Ham, that's all the questions I have.
THE COURT: Mr. Barr.

CROSS-EXAMINATION

BY MR. BARR:
Q Trooper Ham.
A Yes, sir.
Q You familiar with Highway 261 from Paxville?
A I am for 28 years.
Q 28 years.
A Probably longer than that.
Q Probably know every blade of grass.
A I ain't gone say that because I probably wouldn't crawl when I went through that.
Q Let me ask you something. You are also familiar with the various forms of traffic signs to regulate traffic on the highway in the State of South Carolina, right?
A Yes, sir.
Q And is there a uniform speed limit sign that's used in South Carolina?
A When you say uniform all the -- there are different speed limit signs. There's the standard -- I don't know

what size of it that says either 55, 60, 70, that is that sign.

Q On the white background?

A Correct, white background.

Q With black marks around the edge of it?

A Black marks, black letter.

Q Speed limit sign, that's what that is?

A That's one speed limit sign, yes, sir.

Q All right. Do you know of any others?

A There's several others. You got the speed limit sign if you going in a residential area, that's going to be a different size sign. You got the speed limit sign if you're coming into a speed school zone. You got the speed limit sign if you're coming into a curve.

Q And they're -- the speed limit signs are not all gone be white with the black lettering?

A That's correct. They're not all white with black lettering.

MR. BARR: All right. Thank you, sir. I have nothing further.

THE COURT: Anything?

MR. DURANT: No, sir, Your Honor.

THE COURT: Thank you, sir. You can step down.

(WHEREUPON, the witness leaves the witness stand.)

MR. DURANT: Judge, I've got Lieutenant Rivers he's just an evidence custodian from Columbia. I think he's be very quick.

THE COURT: Okay.

THE CLERK: Raise your right hand, place your left hand on the Bible and repeat your name please.

THE WITNESS: Mendel Rivers.

THE CLERK: You solemnly swear that the testimony you're about to give will to the truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Mendel Rivers,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Lieutenant Rivers, obviously you work for the highway patrol. Tell the jury what your job is with the highway patrol?

A My job is to do -- I'm the supervisor of the central evidence facility in Columbia where we receive and we preserve evidence.

Q So you are essentially the custodian for highway patrol?

A Yes, sir.

Q I'm going to show you what's been marked as State's Exhibit 50 and do you recognize this?
A Yes, sir.
Q Tell the jury what it is?
A It is South Carolina Department of Public Safety chain of custody and evidence construction form.
Q What case is it pertain to?
A This case pertains to case number 14BW170207HP14 listed as the Officer JK Minnix and subject violator's name is listed as Tammy Dianne Brown.
Q Okay. Did you ever come in contact with any evidence associated with that case?
A Yes, sir.
Q When was that?
A That was on September the 8th of 2014.
Q Okay. And how did you come in contact with it?
A I removed it from our central evidence facility safe in the refrigerator to transport it to SLED for analysis.
Q How did it get into the central evidence facility safe or refrigerator?
A PM Odom the CF technician received it and on September the 3rd of 2014 and he deposited it and put it into our refrigerator which is within our safe.
Q Are you familiar with the packaging of blood and urine draws in felony DUI cases?

A Yes, sir.
Q Okay. Is there a -- are they the blood and the vial and the urine samples that are taken are they sealed in some outside packaging?
A Yes.
Q Is that outside packaging bear a reference and some identifying information that link it up -- to link it back to a particular case?
A Yes, in this particular case, it has label on it that identifies the case number as well there officer and the subject's name.
Q Okay. When you received this evidence, you mention that it was received by PM Odom initially in the evidence facility on September 1st; is that right?
A That's correct.
Q Okay.
A Correction that was on September the 3rd.
Q September the 3rd. Where was it stored between that period of time and when you handled it on the 8th?
A It was stored within the central evidence facility in the refrigerator in our safe.
Q When you receive the evidence on the 8th, was it still sealed?
A Yes, sir.
Q Okay. Had the seal on the outer packaging had it

been tampered with or broken in any way?
A No, sir.
Q Tell the jury what you would have done if you found some indication that the seal had been tampered with?
A Well, the first thing is that it never would have been received within our facility because of our standard operating procedures. If it is tampered with or it's not sealed properly, then we will not receive -- we will accept it. So being that it was sealed, that means that the standard operating procedures were adhered to within our facility.
Q And then tell the jury what you did after you took it out on the 8th?
A I took it to SLED for analysis.
Q Do you know the name of the personnel at SLED that you hand delivered it to?
A Doris Yarborough.
Q Okay. What happens when you get to SLED with the evidence, what do you do with it?
A They will take and check all the paperwork and make sure that all the proper paperwork has provided along with the evidence. They will then take that evidence and put in a plastic heat seal package where I will initial and date that it was heat -- it was sealed on that particular day and time.

Q So SLED hadn't opened it at that point?
A No, sir.
Q So they take the sealed box and the container with the sealed vial. The vials were sealed, placed in the box, that box is sealed. And when you get to SLED with it, SLED takes that sealed box and puts it into a vacuum sealed container bag. They seal it again and you put your initials and date on it?
A That's correct.
Q And you actually did that in this case?
A Yes, sir.
Q Okay. And do you have any further involvement with this case after that?
A No, sir.

MR. DURANT: That's all the questions I have.

THE COURT: Mr. Barr.

CROSS-EXAMINATION

BY MR. BARR:

Q When you -- when the evidence is turned over to you, you received it in this case from Mr. Odom?
A No, sir, I received it from our -- I removed it from our refrigerator within our evidence facility safe.
Q And who put it in there?
A PM Odom.
Q PM Odom?

A Yes sir.
Q Put it in the refrigerator?
A That's correct.
Q And what is his job title?
A He is the central evidence technician.
Q Do you know Mr. Odom put it in there?
A According to the evidence form, he put it in there on September the 3rd of 2014.
Q You took it out on the 8th?
A That's correct.
Q Assuming that he put it in?
A He's the only one that has -- there only certain people who has access to get to that refrigerator within our safe. And I give all the permissions in order for those people to get in there. And he's one of them only central evidence technicians have the permission and ability to even enter that room.
Q How do they get in the room a key?
A They use a scan pad.
Q A scan pad?
A Yes, sir.
Q How does that work?
A With his ID badge.
Q ID badge?
A Yes, sir.

Q Okay. So I can take his ID and go down there and scan it and get it?
A If you were able to get possession of it, but it stays on his person.
Q Stays on his person?
A That's correct.
Q Of course, you don't know that, do you? He may give it to his wife, give it to the child to play with or something?
A Well, in order for that to happen, we have recording -- everything is recorded. So we will be able to know if anyone else was in there that's outside of the one's who are permitted to be there.
Q You mean you got a camera?
A Yes, sir, the entire facility 24 hours a day.
Q Where is the camera?
A Where is the camera?
Q You got a tape?
A No, sir, I don't have a tape on me, no.
Q Your safety measure is you got a camera taping everybody going in to make sure nobody else gets in?
A Well, our safety measures are -- we have pretty much about five or six layers of security. So there are several ways -- there are only certain ways for anyone to be able to get in there. Those permission are going to be

granted by myself.
Q And, of course, all of this is assuming no one makes an error?
A Error in what way?
Q In some way. I mean, errors can be made, right?
A Well, the error here would have to be that someone else had the ability to get inside, which no one has that ability other than the ones that I permit to go in there.
Q Well, nobody else has the ability other than Mr. Odom as far as your official business is concern, but Mr. Odom has the ability to get in or let somebody else get in. He can't do that, can he?
A He can let someone else in, but they will have to be signed in order to go in with him. So no one is ever allowed within our facility that safe area without being accompanied by one of the central evidence technicians.
Q Mr. Odom controls access to this evidence 12BW17207HP140. He control the access to it?
A What number that you ---
Q That number that's on the top of your SLED form. The one that you just read off.
A 14BW17020?
Q Uh-huh. All right.
A He has the ability to be able to get in those permissions that are authorized by myself.

Q And, of course, today you cannot speak for Mr. Odom to tell us what Mr. Odom did and did not do?

A No, sir.

MR. BARR: All right. Thank you, sir. I have nothing further.

THE COURT: Anything further?

MR. DURANT: No further questions.

THE COURT: Thank you, sir. You can step down.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Is it a good time to go to lunch?

MR. DURANT: Yes, sir.

THE COURT: All right. Ladies and gentlemen, take a lunch break. I ask you to be back in the jury room at two o'clock. Don't discuss this case and allow anyone to discuss it with you. I'll see you two.

(WHEREUPON, the jury excused for lunch.)

THE COURT: From a scheduling standpoint, when do you think we gone get this case to the jury?

MR. DURANT: Judge, I've got five more witnesses.

THE COURT: So obviously it won't be today.

MR. DURANT: No, sir, certainly not today. Judge, I've got three individuals from SLED, a family member and then the MAIT investigator. I suspect at the

current pace the MAIT investigator is going to relatively lengthy.

THE COURT: Okay. See you all at two o'clock.

(WHEREUPON, a lunch break was taken.)

(WHEREUPON, State's Exhibits Nos. 51-57 were marked for identification only.)

THE COURT: We ready for the jury?

MR. DURANT: Yes, sir.

(WHEREUPON, the jury came into open court.)

THE COURT: Solicitor, you may call your next witness.

MR. DURANT: The State calls Stacy Matthews.

THE CLERK: Place your left hand on the Bible and repeat your name please.

THE WITNESS: Stacey Matthew.

THE CLERK: You solemnly swear the testimony you're about to give will the truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Stacey Matthews,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Ms. Matthew, good afternoon. If you would, please

tell the jury where you work?
A Currently I work for the Charleston police department.
Q In what capacity?
A I am their forensic quality insurance manager.
Q And what does that mean?
A Essentially I oversee all their qualify control following their policies and procedures and maintain the Charleston police departments forensic services division's accreditation status.
Q Before you went to work for the Charleston police department, where did you work?
A I worked for the South Carolina Law Enforcement Division more commonly known as SLED.
Q In what capacity, did you work at SLED?
A I was a forensic toxicologist there.
Q Forensic toxicologist?
A Yes, sir.
Q Tell the jury what a forensic toxicologist is please?
A A forensic toxicologist is a scientist who analyzes biological samples such as blood or urine for the presence or absence of alcohol or drugs or poisons.
Q And what type of training and education have you received in order -- enable you to become a forensic toxicologist?

A I have a bachelor's of science degree in forensic science as well a bachelor of science in degree chemistry both from the University New Haven. In addition to that, I underwent training from SLED which involved proportion and a class proportion. And this training was for blood volatiles. The classroom portion entails a series of lecturers and oral test. And the classroom portion involved analyzing over 500 samples and learning how to operate the instrument. In addition to that, I also attended Robert F. Borkenstein course on alcohol and highway safety.

Q You performed these tests on blood samples and urine samples in order to determine alcohol concentration?

A Yes, blood, urine, tissue, occular samples.

Q Okay. About how many times?

A Easily over 500 times more than that.

Q Have you ever testified in court as a toxicologist?

A I have.

Q Have you been qualified as an expert in the field of toxicology?

A Yes, sir.

MR. DURANT: Your Honor, at this time the State would offer Stacey Matthew as an expert in the field of toxicology.

THE COURT: What says the defense?

MR. BARR: We are not going to challenge her qualifications.

BY MR. DURANT:

Q Ms. Matthew, you worked for SLED back in August of ---

THE COURT: Hold on, Mr. Durant. The Court so finds she's an expert.

MR. DURANT: Thank you, Your Honor.

BY MR. DURANT:

Q Ms. Matthew, were you working for SLED back in September of 2014?

A Yes, sir.

Q Okay. Did you have occasion to receive into your custody some blood and urine specimens from the South Carolina Highway Patrol the label was coming from South Carolina Highway Patrol and labeled as having been taken from a suspect name is Tammy Dianne Brown?

A Yes.

Q Okay. When did you receive those items?

A I believe in September, but I need the chain in order to ---

Q Do you have the chain with you?

A I do.

Q Okay. And the document you're talking about is that a chain custody form prepared by SLED?

A Yes, it is.
Q Okay. First tell the jury about the procedures how this type of evidence is receive by SLED?
A Okay. So an evidence custodian or the submitting officer will bring a sample to SLED. In this case, it was Mendell Rivers and he brought it to SLED on September 8th 2014. From there, they would go to the evidence control department and the evidence control technician would assist them in logging in that sample. So essentially part of the information is enter into LINS, which is the laboratory information manage system. And a unique lab number will then be generated for that sample. This lab number will follow that sample from start to finish from the moment it is submitted to SLED to when it's returned to the agency. A bar code is printed out and it is place on a tamper evident heat sale pouch. The sample -- the evidence packaging with the sample is contained in will be tracked to make sure that it's sealed properly and initialed where it needs to be. And then it would be placed into that pouch. That pouch will then be sealed initial and dated by the submitting officer. After that, the evidence technician will place that piece of evidence into a locked and secure refrigerator that is designated just for toxicology samples. And it would remain there until someone from the toxicology department can pick it

up.
Q So when a sample is coming from law enforcement, how would are they packaged?
A This particular sample was in a DUI kit.
Q Okay. What's a DUI kit look like?
A It's -- the outside is just a cardboard box and on the inside there's another cardboard box into it which has writing information about who the samples coming from, who's submitting it, who packaged it and then on the inside of that, it contains one plastic container typically used for urine and then two tubes of glass vials for blood.
Q Okay. I'm going to show you a series of photographs that may help explain the process.
MR. DURANT: Your Honor, offer State's Exhibits 51 through 57 I believe without objection.
MR. BARR: I don't object.
THE COURT: Okay. It is in without objection.
(WHEREUPON, State's Exhibits Nos. 51-57 were admitted into evidence.)
BY MR. DURANT:
Q Ms. Matthew, let me show you State's 51 first of all. If you would tell the jury what we're looking at here?
A So that is an evidence the tamper evident heat seal pouch that I mention, that's provided from SLED. And you

can see at the top there's a seal with initials and dates and that is from the officer who submitted the sample.

Q Okay. These initials and the date here this will be from the highway patrol officer?

A Yes.

Q MCR like MC Rivers?

A Yes.

Q And this outer packaging is the heat seal package that you're talking about?

A Yes.

Q Okay. And there's a number here with a bar code below it. Who's number is that?

A So that number is the number that the laboratory information management system generated to basically follow the sample with. So that's how we know that sample is by that lab number.

Q So when the sample comes in from law enforcement to to SLED, a new number is generated, a unique SLED lab number?

A Yes.

Q That's this number L1411280?

A Yes, sir.

Q Okay. And below that -- I don't know if you can read from where you are, but says South Carolina Highway Patrol troop number one agency case number 14BW7170207HB14?

A Yes, so usually on the bottom of it it will have the agency that submitted that information, so in this case the South Carolina Highway Patrol. And they also have the agency case number. So South Carolina Highway Patrol have their own agency case number. And then we create our own lab number, which is the L14 number.

Q Okay. Let me show you State's Exhibit 52 what is this?

A That is just a picture of the evidence package still in the tamper evident heat seal package just the back of it to show that there was writing.

Q Okay. And it looks like some writing that was done with a marker here what is that?

A That is just showing that it was received on 9-8-14 and that it was just -- it was sealed.

Q Okay. Is that somebody's initials over here?

A Yes, I believe that is Dotti Yarborough's initials.

Q And according to the SLED chain of custody, would that have been the person that received it into evidence from SLED?

A Yes, she would have been the one who in taked it from the submitting officer.

Q There's some other -- there's some labeling -- is this beneath outer packaging -- beneath the heat seal pack?

A Yes, that's beneath it.
Q Okay. So these labels would they have been on the box that came from law enforcement?
A Yes, those labels are on the box that came from highway patrol.
Q There's a case number there which should correspond with the law enforcement case number that was -- that you guys taped from to the front of it under your lab number; is that right?
A That case number ---
Q Agency case number here 14BW170?
A That should pertain to the highway patrol case number.
Q Okay. So again this is just the back of the heat seal pack that you all put around the evidence once it came in?
A Yes, sir.
Q Is typical SLED procedure do you all open up the inside box at that point?
A During inventory is when -- inventory is essentially is photo documenting the evidence, so at this point I would have brought this evidence from the toxicology department and I would have inventoried it. So I only opened one package at a time. And I take pictures of it. So I would open the tamper evident heat seal pouch and I

would open that box and eventually I would get to the blood samples.

Q Okay. So you're actually the one who took these pictures?

A Yes.

Q Okay. So there's some -- again looking -- did you take these photos before you opened the heat seal pack?

A Yes.

Q Okay. And again there's some -- did you take these photos before you open the heat seal pack.

A Yes.

Q Okay. Again, the person that put in the heat seal pack would have been Ms. Yarborough?

A Yes.

Q There's an inner box with some seals that says kit shipping seal. Was that seal still on there and still sealed when you received it?

A Yes, and the further pictures you'll see that the seal was still intact.

Q Who puts that seal on there?

A That seal I believe is done by whoever is packaging up the sample.

Q Okay. There's another seal here that's broken is that the seal -- highway patrol breaks that when they open the box?

A Yeah, the box is usually sealed completely. And then when they need to use it to collect the sample, they'll break the box. And then once they collected all the samples they'll put another seal on it.
Q All right. So let me show you State's Exhibit 53. What are we looking at here?
A That is the outside box of the DUI kit, so that is taken out of the tamper evident heat seal pouch and that's the actual physical box.
Q Okay. And is this the box that the samples would have been in when highway patrol delivered them to SLED?
A Yes.
Q Was this box sealed?
A Yes.
Q Had that seal been broken when you received it into evidence?
A No.
Q Okay. So just to clarify, you took this picture after you removed it from the heat seal pack?
A Yes.
Q Show you State's 54 what are you looking at here?
A That would be the backside box. Again, just show that pictures of the labels that were on it and to show that seal on it was not broken.
Q So same thing we're looking at before just now it's

outside -- out of the heat seal pack.
A Yes.
Q Again you did all this yourself?
A Yes.
Q Okay. State's Exhibit 55 what are we looking at here?
A So when you open that this first box, this is what is in it, so it's just another box. And like I said it mentions the name of whoever sample is collected as well as other pertinent information like the time, the date.
Q So this is actually inside the other box we're just looking at?
A Yes.
Q Is this interior box sealed as well?
A Yes.
Q Okay. Had that seal been broken when you received it?
A To my knowledge, it was not.
Q Would you have analyzed it if it had been?
A You still could analyze it because what really matters is what on the inside to make sure to make sure that the actual tubes of sample is not broken.
Q But the outer box hadn't been broken and to your knowledge this one hadn't either?
A No.

Q Okay. State's Exhibit 56 what are we looking at here?
A These are what you get to after unwrapping all those things. They are two vials of blood and one container of urine. And they both are labeled with the name of who the sample was collected from. And you can see those labels were not broken at all.
Q So these would be two vials of blood. This is a container of urine?
A Yes, sir.
Q Okay. They have subject's name Tammy Dianne Brown, arresting officer JK Minnix, JP Dubose. Is this the condition that you received these items into evidence at SLED?
A Yes.
Q The seals were still intact?
A Yes.
Q On both containers of blood and the ring?
A Yes.
Q Okay. And then finally State's Exhibit 57 what are we looking at here?
A So that's the other side of the tube, I just flipped it, so you can see the other information that's written. So the time and date and I believe the signature of who collected that sample.

Q Okay. So 831140321 on both signature Angela Ann looks like Floyd on all three?
A Yes.
Q And again this is the condition you received all this evidence into your custody at SLED?
A Yes, sir.
Q If these seals had been broken, would you have analyzed the evidence?
A No, we would have contacted the submitting officer to let them know this and, you know, essentially talk to them about how we can't really test this at all.
Q Okay. After you took the evidence and you did an inventory of it at SLED, took the photographs, what did you do?
A So after you take inventory so essentially like I said, you take pictures of it what you saw and then I made sure that the information that is on the tubes match up with the information that was inputted in LINS. And after that I will write the lab numbers, the L14 number on that tube with my initial. And I would place it back into the tamper evident heat seal pouch. From there, I will seal it, initial it and date it and I will place it into the locked and secure toxicology refrigerator. And it will remain there until someone is ready to perform analysis on it.

Q Did you actually perform an analysis on these?
A I did not perform an initial analysis, no.
Q Okay. Did you perform a later analysis?
A I did once, yeah.
Q So you after you had took an inventory, you put the items still with seals intact in an evident -- secured refrigerator at SLED?
A Yes.
Q Okay. Who would have been the next person that handled the items?
A The next person to have touched this sample would be Kelly Buchman.
Q Okay. Is she the person who did the initial analysis?
A Yes.
Q Okay. How did it come to pass that you did a second analysis?
A So the initial analysis that is performed on a sample is a blood alcohol testing and in doing so, we do two tests. Essentially to show that, you know, in case something wasn't operating properly, we do a double check to make sure that the number that we receive the first time is the same as the second time you run it. In this case, the first test that she ran are quality control that we run with every run that we do. It did not pass. So

with that it -- we essentially do not use that number at all. So she ran a second test, she got a valid number because all the quality control checked out. And the way we do it we do one person runs things during the week. So at that time it ran into my week. So I ended up doing a second test on it.

Q What do you mean by qualify control at SLED?

A Qualify control -- so with our samples at the end of every run, we run certified standards that we receive from external vendor, which is a known value that we're suppose to get when you run that sample. So it would be a .08, a .15 and a .40. They're all different values. Quality control those numbers are supposed -- are results are supposed to be within five percent of the known value. So the known value of a .40 five percent is your value should be between .38 and .42. So in that case for whatever reason her standard was out and so therefore we did not use any of the data that came from it.

Q Okay. So if I understand you correctly, then SLED has some blood samples for which they know the toxicology. You know the blood concentration of alcohol in those samples?

A It's not a biological sample the standards are, but it's a certified standard that has a alcohol concentration.

Q So not from a person?
A No, it's not from a person.
Q Some certified substance that's got a known percentage of alcohol, no concentration of alcohol?
A Yes.
Q And you use that to test the equipment?
A Yes, to make sure that they equipment is running properly and that, you know, the data that we're getting out is accurate.
Q So before you actually run the test on anybody's blood, essentially you're trying to calibrate the equipment making sure that it's producing an accurate result?
A Yes.
Q Is that fair to say?
A Yes.
Q You do that twice to make sure the equipment was functioning properly with this sample to begin with; is that right?
A Yes, we do two tests to make sure that like I said and it's like this if something was out we do another test just to make sure that everything follows our protocol.
Q Okay. All right. So your second test would have been after Ms. Budgen had taken custody of the samples?
A Yes.

Q Okay. So would she have then been the person that broke a seal on the blood samples?
A Yes, she would have.
Q Okay. And when you ran your test to confirm her numbers or to test again, did you use the same blood sample or you open a new one?
A If permitable if there's enough sample, we always use the same sample that was originally used for the first test.
Q Okay. And when you ran your second test, did you get the same number, the same reading that Ms. Bugden had come up with?
A Yes, the numbers fell within the criteria that we're supposed to have it.
Q Okay. Tell the court what you determined when you ran your test, the blood alcohol concentration to be in these samples?

MR. BARR: Objection.

THE COURT: Okay. You all come up.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: We need to take up a matter of law outside your presence. So I'm going to ask you to go to the jury room. I'll get you back out in a few minutes.

Don't discuss this case.

(WHEREUPON, the jury retire to the jury room.)

THE COURT: Okay. Mr. Barr, if you state your objection.

MR. BARR: Your Honor, it's our position that two breaks in the chain of custody. The first one would be after Trooper Ham -- and I don't recall the name of the person that Odom claimed he delivered. And the next person that, of course, initial the sealed pouch to contain the blood samples. In addition, Judge, we would also submit that the samples inadmissible. And, Your Honor, I noted what we done is we've argued regarding the video of the or non-video of the incident site. In addition, I would take the position that the samples taken -- when the blood samples were taken that that was also required to be videotaped. And I would read a portion of 56-5-2950 which states that -- well, I'm about midway the last paragraph says that a breathe sample taken for testing must be collected within two hours of arrest. Any additional test to collect other samples must be collected within three hours.

Your Honor, I think that there may be a violation there as well, but goes understated that the breathe test must be administered by a person trained and certified South Carolina Criminal Justice Academy SLED

450

policies. At the very end of that paragraph, Judge, says blood and urine samples must be obtained and handled in accordance with the procedure approved by SLED. Subsection B says that no test maybe administered or samples obtained unless upon activation of the video recording equipment and prior to the commencement of the testing procedure. The person has been given the written copy and verbally informed about the right not to take the test.

Of course, as I understand it, she -- Ms. Brown was given the implied consent warning. And this was done at the emergency room. Now, Judge, there would have been no reason as I see it why if this section of the statute was complied with, there would have been no reason why it couldn't have been done. This was not the incident site. She was in custody. She was taken into custody at the hospital. A warrant was issued for her arrest after a warrant was obtained and my reading of this is that the statute requires that that procedure be videotaped.

THE COURT: My understanding of what you just read had to be incompliance with SLED. And compliance with SLED has to be followed to protocol, the SLED kit that they used in the drawing of the blood protocol. It has to be videotaped because they don't have a videotape capabilities at the hospital.

MR. BARR: Well, Judge, whether or not they got the videotape capabilities at the hospital, I think depends on what law enforcement does. But my reading of this statute and I read it three or four times and it applies to blood and urine samples.

THE COURT: Right, but it doesn't say videotape does it?

MR. BARR: Sir?

THE COURT: What you read to me said blood and urine must be incompliance with SLED, doesn't it?

MR. BARR: Well, it says upon activation of video recording equipment prior to the commitment of the testing proceeding.

THE COURT: Right, but that's video and the breathalyzer.

MR. BARR: Judge, I think that applies to -- it says samples obtained. Now, I don't think that's a breathe sample. I think that pertains to previous paragraph regarding blood and urine samples which paragraph -- which the previous paragraph talked about, but that tells me that this applies to blood and urine samples.

THE COURT: Well, I'll read it again. That was not my interpretation of the statute. You have any cases that say that. I never had a case or seen a case where

452

blood drawing in the hospital is videotaped.

MR. BARR: Well, Judge, I'm just reading what the statute says and it seems to me that that's what it says.

THE COURT: Okay. Let me see the statute. Can I see what you are reading?

MR. BARR: 56-5-2950.

THE COURT: Okay.

(WHEREUPON, a pause in the proceedings.)

MR. DURANT: Your Honor, may I be heard?

THE COURT: Yes, sir.

MR. DURANT: Your Honor, it's the State's position that subsection B 56-5-2950 relates back to South Carolina code 56-5-2953 which is the incident site and breathe test site and video recording. That statute specifically includes an exception such as applicable here to when an individual requires emergency medical treatment because she is at the hospital law enforcement wasn't practical for law enforcement to videotape the taking of the sample. It's taken by medical personnel. Certainly unless it contends that law enforcement to bring cameras into the hospital and videotape somebody in a room giving an urine sample and having blood drawn from their arm and includes an exception for -- on somebody's end and requires emergency medical treatment, that's the case

here, Judge. I do not believe that the State is of the position that that subsection 56-5-2950 does not require video recording of the blood and urine samples, Your Honor.

MR. BARR: Emergency medical treatment would never verify. If I recall, the emergency treatment that Officer Minnix without being directed or without consulting with any medical personnel took upon himself to make a decision ---

MR. DURANT: That's a misstatement of the evidence in this case. Officer Minnix testified that he was told by EMT that they had to take her to the hospital.

MR. BARR: Your Honor, he said he was told by EMT that she had to go to the hospital, but I'm talking about with respect to why he did not take a breathalyzer or would not offer her a breathalyzer because of some injury to her mouth or whatever, there was no direct -- he was not directed to that extent by any medical personnel. He just simply decided and made a decision that now -- and it turned out that she didn't need any medical treatment. She had no injury. Of course -- and when they went to the hospital they immediately seem to have full access to her, took custody of her and had her arrested. I don't see that exception anywhere. And in addition we've got our chain custody issues.

454

THE COURT: Okay.

MR. DURANT: The chain of custody issue that I ask Your Honor to refer to I know Your Honor is familiar with the case. The State's not required to produce every single person, every body in the chain of custody. It's enough if the State identifies everybody in the chain of custody and presents competent evidence to show that the items in question are what they appear or allege to have been. That the seals were intact. They were never tampered with and seal was not broken until the point in time that the items were tested by SLED and all the proper protocols were followed before that, Your Honor. In this case, that that's clear. We got evidence as to Corporal Minnix depositing them -- sealing the items three times essentially to sealing the vials and then sealing the inner box and then outer box, depositing in the outer box, that sealed outer box and to the refrigerator and highway patrol. Sergeant Ham receiving that box and taking it still sealed, delivering it still sealed to an evidence facility in Columbia. Sergeant Ham identified Sergeant Odom or Lieutenant Odom as taking custody of that box to him according to Officer Ham it was still sealed. He delivered it to Odom. According to Officer Rivers when he received it from Odom, it was still sealed. He delivered it to SLED still sealed. According to Ms. Matthews when

she received it, it was received in evidence at SLED by Doris Yarborough which corresponds to the Lieutenant Rivers testimony. It was delivered at her seal. It was receive from Ms. Yarborough and still sealed. The outer box was seal. The inner box was sealed and individual tubes themselves were sealed. I think the record is replete with evidence sufficient to establish competent chain of custody of this case, Your Honor, according to the standard of South Carolina set forth by the Hatfield case.

THE COURT: You want to be heard on that, Mr. Barr.

MR. BARR: Okay. Judge, I would that that would be govern under Rule 6 of the rule for chemical analysis and chain of custody found in the South Carolina Rules of Criminal Procedure. Specifically, it's our position that that would in fact be the case. However, there is an exception. In the rule itself, it says that the report must be accompanied by an affidavit of chemist or analyst perform the test that he or she is certified by SLED and qualified by rule of standards, set forth here his or her training and experience as a chemist include the number of times he or she has been an expert witness and that he or she -- her conduct or his test shown that's on the report usually a procedure approve by SLED, that the report

456

accurately reflects the testimony. Of course, it would be our position that that would apply as to this person who's about to give her opinion been regarding analysis.

THE COURT: But doesn't Rule 6 involve that the State follows Rule 6 and provides those material they don't need to bring the person who analyze the blood to court. They can simply put it in and keep from having exactly what we having today, but that you can demand that everything -- they in fact brought the person to court who is qualified as an expert in toxicology. And they establish -- they establish everybody in the chain or custody. Two of the people are here, but based on the testimony, the key people here and that everybody's testified that in fact the seals were intact all the way down the line and was intact at the time that it was analyze. It's only in a situation where you had a broken seal or an issue of question that somehow the blood and urine were tamper with and they got everybody in and explain who broke the seal if in fact it was tampered with or adulterated in any way. I don't think law in the State of South Carolina at this point requires the State to put everybody in, unless there's been some question that evidence has been tampered with in any way. And everybody that I heard from the time the officers sealed it and the nurse sealing it and the person who analyze it, the seals

were intact. And they were not open in any way. Well, I think the case law is current in effect in this state that the State has met its burden concerning the chain.

MR. BARR: Judge, we have one additional. In as much as it appears that it's gone come into evidence in spite of the objections that we have, it would the defense's position that it should be exclude under Rule 403 of the South Carolina Rules of Evidence, which is our position that that -- see is it Rule 403. It would be our position that though the evidence may be relevant, that the evidence should still be excluded because a probative value is substantially outweighed by the danger of unfair prejudice and confusion with the issues of misleading the jury all by consideration of undue delay, waste time and needless presentation and cumulative evidence. Of course, we would add for the record Rule 403 on the basis for our objection to it being admitted into evidence.

THE COURT: All right. Thank you, sir. I find based on the evidence that's been presented in this case and that evidence is relevant. Even though it is prejudicial, the State rarely orders any evidence that is not prejudicial against your client. And I don't think the prejudicial value outweighs the probative value in this case. It's nothing that would inflame the jury. The motion that they would consider the evidence as any

other evidence hope they reach a verdict in this case that's just. So I'll overrule your motion. Anything else?

MR. BARR: No, sir.

THE COURT: Okay. You all ready for the jury?

MR. DURANT: Yes, sir, Your Honor.

THE COURT: Bring me the jury.

(WHEREUPON, the jury came into open court.)

MR. DURANT: Please the Court.

THE COURT: Yes, sir.

BY MR. DURANT:

Q Ms. Matthew, I think when we left off I asked you whether or not you performed an analysis in the blood samples that were received in evidence by SLED in this case?

A And I did, yes.

Q What were your findings with respect to Ms. Tammy Brown's blood in this case?

A Off the top of my head, I don't know. If I had the the report, I can tell you.

Q Do you have it with you?

A I do not. The ethanol concentration that was reported is 0.210?

Q So .210?

A Yes.

Q Okay. Is there a recognized correlation between alcoholic content of blood and intoxication?
A There is, yes.
Q Okay. From your training and experience what would be the condition of a person who's blood showed a concentration of 0.21 percent alcohol?
A I think it's better that you refer to the signing toxicologist on this case.
Q That was?
A And the signing toxicologist on this case is Tim Brambow.
Q Tam Brambow who is present in the courtroom?
A Yes.
Q Today?
A Yes.
Q But again your finding is .21?
A Yes.
Q Your finding is .21?

MR. DURANT: That's all questions I have.

MR. BARR: I don't have any questions, Judge.

THE COURT: Thank you, ma'am. You may step down.

(WHEREUPON, the witness leaves the witness stand.)

MR. DURANT: The State calls Kelly Bugden.

THE CLERK: Raise your right hand, place your left hand on the Bible and repeat your name please?

THE WITNESS: Kelly Bugden.

THE CLERK: You solemnly swear that the testimony you're about to give will be the truth and nothing but the truth so help you God?

THE WITNESS: Yes.

WHEREUPON,

Kelly Bugden,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Ms. Bugden, good afternoon.

A Good afternoon.

Q If you would tell the Court where you work?

A I work at the South Carolina Law Enforcement Division more commonly known as SLED.

Q How long have you work for SLED?

A I worked for SLED since November of 2013, so going on five years now.

Q And what position or what's your job at SLED?

A I am also a forensic toxicologist.

Q What type of training or experience have you received in order to become a forensic toxicologist?

A I have bachelor's of science in chemistry and also

bachelor's of science in forensic science both from the University of New Haven. I also have a master's of science in apledganomics (sic) from the University of Connecticut. On top of my degrees, I've also had similar in-house training as Stacey Matthew containing -- which was practical and lecture training and some written test as well talking about alcohol and the effects on the body and I also had to test samples 500 that were previously analyzed by analyst who work there over the course of time. And I had to get values similar to what they had received so that way I can prove that I was competent to do the testing. And I also had to do a mock court as well. And I have also attended the Borkenstein course of alcohol and traffic safety as well.

Q Okay. Have you been qualified to make blood and alcohol examinations?

A Yes.

Q Have you ever been qualified as an expert in South Carolina courts?

A I have.

Q In toxicology?

A Yes.

MR. DURANT: We offer Ms. Kelly Budgen as an expert in the field of toxicology.

MR. BARR: No objection.

THE COURT: The Court will find she's an expert.
BY MR. BARR:
Q Did you receive in the evidence in this case labeled as a blood sample from a Tammy Dianne Brown?
A Yes.
Q Did you perform an analysis on that sample?
A I did.
Q Were you able to make a finding as to a blood alcohol concentration?
A Yes.
Q And what was that finding?
A I also don't have a copy of the report in front of me sorry.
Q Same report?
A Yes.
Q And before you get there, you heard the testimony from Ms. Matthew that after she received the evidence, after given the evidence at SLED, you would have been the next person to handle it; is that right?
A That's correct.
Q When you received the evidence yourself, were the seals on the intertube on the inner vials of blood and urine sample were they still intact?
A They were.
Q Were you actually the person yourself to break the

seals?
A Yes.
Q Okay. And you broke the seal, took a sample and analyzed it with the equipment at SLED and were able to get finding as to Ms. Brown's blood alcohol concentration?
A That's correct?
Q And what was that finding?
A We reported out a .210 blood alcohol concentration.
Q .210 and I'm going to ask you the same question I asked Ms. Matthew and maybe get the same response, but the correlation between alcohol content and a person's blood ethanol concentration?
A There is.
Q In intoxication?
A Correct.
Q Okay. For your training and experience, what would be the condition of a person who's blood alcohol concentration was a .210?
MR. BARR: Judge, I'm going to object. Why are we with consent that she is qualified as a toxicologist, what she is now doing would be to give a specific opinion regarding the effects of alcohol on a particular individual whom she has never examined. It would be our position that she is not necessarily -- she's -- first of all, there's no foundation. And secondly that she would

not necessarily be competent to express an opinion regarding the effects of alcohol on this particular individual and not know anything else about the individual or having not have physically examined her in any way.

THE COURT: Okay. Solicitor, you need to lay a proper foundation.

MR. DURANT: Your Honor, I would submit there's a case directly on point State vs. Martin?

THE COURT: I understand, but that doesn't be able to tell particular speak in general about it.

MR. DURANT: I believe so, Judge. Yes, sir, State vs. Martin.

THE COURT: Give me the cite number?

MR. DURANT: 391 S.C. 508.

THE COURT: Okay. You all come up here a minute.

(WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)

THE COURT: I find that she is qualify to testify of the effects of alcohol on people in general.

BY MR. DURANT:

Q Ms. Matthew (sic), in general based on your training and experience, can you give an opinion as to what the condition of the person might be whose blood alcohol

showed a concentration of .21 percent?
A I'm going to give you the same answer as Ms. Matthew and tell you that Timothy Grambow is the toxicologist on this report, so he would be the person to interpret these findings or interpret the findings of this report.
Q So it's his report. You tested it. You came up with the same thing that Ms. Matthew did. Your findings the same as hers. Mr. Grambow the senior toxicologist at SLED?
A Yes.
MR. DURANT: Thank you. No further questions.
THE COURT: Any questions?
MR. BARR: No, sir.
THE COURT: You may step down. Thank you.
(WHEREUPON, the witness leaves the witness stand.)
MR. DURANT: The State calls Tim Grambow.
THE CLERK: Raise your right hand, place your left hand on the bible and repeat your name please.
THE WITNESS: Timothy Wayne Brambow.
THE CLERK: You solemnly swear that the testimony you're about to give will the truth and nothing but the truth so help you God?
THE WITNESS: I do so.
WHEREUPON,

Timothy Grambow,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MCMILLAN:

Q Good afternoon, Mr. Grambow. If you would please tell the jury what you do for a living?

A I'm a forensic toxicologist at SLED.

Q And I believe we just heard you're a senior toxicologist?

A I am a senior toxicologist at SLED. I been in that department for over 16 years.

Q Okay. How long in that capacity for 16 years?

A 16 years, yes.

Q Okay. Can you give the jury a background of your education?

A Certainly, I have a bachelor of science degree in chemistry from Wake Forest University in North Carolina. After that, I began working at SLED in 2002. And underwent there intense in-house training program on analysis and interpretation of alcohol, that lasted roughly a year. I got certified through SLED. And that after that I went on to analysis and interpretation of other drugs, that lasted approximately another year and became certified through SLED. In that capacity as such, I also attended outside trainings. I attended Borkenstein

school on alcohol and traffic safety at Indiana University. I attended similar course in Philadelphia on drugs and driving. I'm a full member of the society of forensic toxicologist, which is the premier of forensic toxicology professional association in the United States. I have held positions within that organizations as well as attending national conferences. The last one I attended was in January of this year in Florida. I attended workshops, presented in their workshops. I have presented articles and post-presentations at the various meetings. I have since become nationally board certified in forensic toxicologists which requires a working in the field for three years as a forensic toxicologist taking a board certification exam. And then maintaining continuing education yearly in order to maintain that certification.

Q After hearing all that state the obvious question, but have you performed test on blood samples to determine alcohol concentration?

A Yes.

Q About how many times?

A Thousands.

Q Okay. Of all those that training you listed, was any of that training specific to the effects that drugs and alcohol have on a person?

A Yes, both in-house certification through SLED and

then the external training whether they be workshops around the country or a specific school such as the Borkenstein school or the -- the one in Indiana or the one in Philadelphia.

Q Have you ever been qualified as an expert in forensic toxicology?

A I have. I have testified as an expert in forensic toxicology roughly 50 times or so in general sessions court, magistrate court, municipal court. I even testified in a federal court martial case over in Beaufort.

MR. MCMILLAN: Your Honor, at this time we would offer Mr. Brambow as an expert in forensic toxicology.

MR. BARR: Judge, we don't challenge his qualification.

THE COURT: The Court so finds he's an expert in forensic toxicology.

BY MR. MCMILLAN:

Q Mr. Brambow, we heard from two analyst prior. Can you tell jury what your role was in the analysis of this blood?

A Certainly. Well, as cases come in to our laboratory, we test everything blindly. We don't know. Everything is assigned a lab number. We follow certain testing procedures for cases. And in this instance as a DUI case

that came it was a blood case, it got alcohol testing. And then there was also a -- in the history of the case, there was a history of Xanax, which is a prescription drug. So the alcohol analysis got performed and then drugs screening and confirmation was required in which case at that the point in the testing, it gets -- the case gets assigned to a senior toxicologist to look at the results of the alcohol testing and to complete the drug testing portion. Issue one comprehensive report and then testify in court as an expert as to the testing and the interpretation of those results.

Q So the history of drug use came back for Xanax and so you after the blood was tested for alcohol, you tested it alcohol for drugs?

A Yes, there was a drug screen performed and then I allocated a sample for the confirmation for that testing, yes.

Q You said you also reviewed the alcohol testing as well?

A Absolutely. Actually, it's part of our checklist of things to do when writing a report is we document, you know, make sure we look through every piece of raw data from that particular case, but then we also have to sign a piece of paper says that we reviewed all the quality control for that particular type of testing. And within

that, you know, at any point if something seems off or something just didn't fit right, at any point I can send that sample and retest it myself or send it back to one of the original testers and have them retest it. In this case, everything seem, you know, run of the mill on the up and up. And so I just continued with my testing and then wrote up the entire case.

Q Okay. So what were your findings after the review of the level that was found of the two analysis?

A A copy of the report -- bear with me. So I reported out the ethanol level of a 0.210. And then a negative screen for various classes of drugs. And then a positive result for Alprazolam, which is the generic name for Xanax at a level of 0.01 milligrams per litter.

Q Okay. Now, I'm going to ask the question that's been asked prior to analyst. Is there a recognize correlation between alcohol content of the blood and intoxication?

A Alcohol is one of the -- if not the longest studied drug and as such, countless studies have been done on the association of various alcohol levels with impairing effects that would affect your driving ability. So, yes, there is lots of comprehensive data associating with traffic safety.

Q In your training and experience, what would a condition of a person in general where their blood

concentration level was at .21?

MR. BARR: Judge, I'm objecting again the same objection. In addition to the previous objection, we be objecting on the ground of relevance. And I think we've gotten outside of the statute as it relates to blood level analysis. We're now talking about talk Xanax, which is a prescription drug, but nonetheless and in addition we would include a Rule 403 objection.

THE COURT: Okay. And I will note your objection. I've overrule your objection. My understanding the question he asking about Xanax even though he reported Xanax. It was about alcohol.

MR. MCMILLAN: Correct, Your Honor.

THE COURT: I'll overrule your objection.

BY MR. MCMILLAN:

Q I will ask the question again. What was the condition of a person in general be where their blood alcohol concentration level was at .21?

A Yes, so again with alcohol being one of the longest study drugs, we realize that alcohol actually generally affects everybody the same way. So somebody at this level regardless of sex, size, shape, color what have you at this level 0.210 be too impaired to drive.

Q And ---

MR. BARR: Judge, I object and move to strike.

THE COURT: Okay. I'm going to overrule your objection.

MR. MCMILLAN: Beg the Court's indulgence.

BY MR. MCMILLAN:

Q Mr. Grambow, in your training and experience with someone at this level .21, you stated that they would be too impaired to drive. What affects would a person at that level be experiencing?

A Sure. And the affects of alcohol are -- obviously they're going to start well before this level that we obtain. So when you start drinking alcohol, it is a foreign substance. And it is technically a drug. So as you ingest it, your body absorbs it and distributes it through your blood. It circulates and gets to your brain. It's going to start having an affect on you even a very small levels. You know, some of those lower levels the effects are not what we would consider impairing as far as drive safety is concern, but things are going to be -- you would even see at a lower level would be. You know, you may get away from some of your earlier fears. So like if you want to take just have a drink take the edge off or you're a little nervous about something, take it you maybe a little bit more talkative, just these little social things. And would we consider that impairing, typically not. But as your level increases and you get up to a .05,

approaching a .08 and higher things that are going to be -- you're going to start having effects. You're going to start being more impaired to your driving. And the reason this is is because as a drug alcohol is a C and S depressant. C and S being defined as a central nervous system, so that's your brain and your spinal cord. And the reason this is important because alcohol is going to effect the higher, most highly functioning parts of your brain. And that's going to effect decision making and processing information. So even at those levels, you know, starting at around '05, working its way to an 08 and going higher, the things that are going to be effected is your ability process information, make good critical decision, and react appropriately in a timely fashion. And that again starts at a level much lower than level what was reported here. And the reason that's important if you think about driving a vehicle, there are thousands of decisions that you have to make constantly while driving in order to perform that safely. A lot of these things we take for granted because most of us been driving since 15, 16, 17 years old, but if you think about even just backing out of your driveway in the morning safely, think about all the decision processing that you have to do. You can see where that ability to process information and react quickly is going to be affected. So when you

get in your car, you buckle up, start the engine, right. And you going to start looking around and you're processing sounds of their. You hear somebody walking down the street, kids playing, cars honking the horn and whatnot. You're looking in your mirrors. You're looking around. Your mind processing visual cues, audio cues. And then you go and put your foot on the break. You put the car in gear. You hit the gas. Of course, you don't stomp on the gas because then you'll just go shooting out your driveway. You got to have -- push the peddle far enough down that you actually move. So now you're processing central information on how the pressure is on that. All of that is going on simultaneously. Your brain is like a super computer. And it's got to be making these decisions quickly. When you start drinking alcohol and it's depressing your ability to process that information, you're going to miss out on some of the cues or you're going to process it much slower so you may actually react without having making a good decision or conversely you are going to take a really long time to make a decision in which case your reaction whether it be to -- when somebody runs out in front of you and push the break in a timely fashion in order to be able to stop in time, that maybe delayed. So that's really one of the biggest issues that's going to occur as far as the impairment drive

safely. Now, again as your levels increase even higher, you are going to start manifesting that more obvious manners which would occur swerving and your ability to hold your lane traffic and start swerving from left to right. And that's what a lot of people associate with impaired driving as being all over the road. But as I just demonstrated, it starts well before that. But as you approach a level of .21, that impairment, you know, starts increasing by vast amounts. And again you're going to have all of that processing information and reaction time delay. And that's just going to that keep increasing, increasing with the alcohol level. So absolutely your ability to drive safely is going to be impaired.

MR. MCMILLAN: Thank you. I have no further questions.

THE COURT: Mr. Barr.

CROSS-EXAMINATION

BY MR. BARR:

Q You just -- you testifying generally concerning the effects of alcohol on people in general. And, of course, you made some statements that concerns us a little bit because I think you indicated that with respect to the effect of alcohol at a level of 0.21 or .021 -- .210 that a person with alcohol content at that level would in your opinion be too impaired to drive. Did I quote you

correctly?
A That is my opinion, yes.
Q Now, you also went on to say that particular level of concentration in a person's bloodstream would make no difference whether or not you man or a woman?
A As far as an impairment goes that is correct, sir.
Q Okay. And you also indicated that big or small?
A That is correct.
Q Now, are you saying that alcohol at that particular level would affect a person that's been drinking alcohol for 20 years, would affect a person that's not been drinking at all the affect would be the same?
A Indeed they would.
Q Even though they drinking for 20 years?
A Yes, now there are some common misperceptions about alcohol.
Q I know that, yes, sir.
A And so to your point as far as the size goes, so what we're measuring is blood alcohol concentration. So that's the amount of alcohol per a certain amount volume of within a person. So the concentration is going to affect somebody the same. Now, the amount of alcohol it takes to get to that concentration may differ between males and females or may differ from somebody who's large or small. But getting to that -- once you obtain that concentration

that affects are going to be the same. Now, as far as someone who is a novice drinker or someone who is a regular experienced drinker while just looking at them in simple social setting, it may be hard to tell the difference when they have the same alcohol concentration. What happens is where it's an issue with driving, it's simple task versus multitasking and complicated tasking. So simple tasks whether you're sitting at a table at a restaurant or standing at a bar or having the casual conversation with someone, an experience drinker can mask some of the simple visualizations. So you may learn in your experience as a drinker to speak a little bit slower, so you don't slur your speech, stand with a little bit wider base so you don't rock as much or even if you're walking down the way, you may learn to kind of space yourself whether with your finger or just kind of looking down a line, so you're not weaving as you're talking. In a novice drinker, non-experience may not have those life experiences. And so they may start showing those physical signs because they haven't learn to mask those social setting. Now, with driving in a complicated multi-processing of information, your brain cannot disconcern that. You cannot physically because of your experience override the highest parts of your brain in order to be able to process information in -- with

reaction.
Q It seems that you contradicting yourself because on the one hand, it seems that you're saying that the alcohol concentration in a person's blood in some cases can be -- can be regulated and result in certain type conduct. And if you are an experience. And in some other cases, it cannot be. Now, it has to be a difference I mean in appearance and conduct if it's regulated in such a way that it's not necessarily as noticeable. Would you not agree that it could be different?
A That's the difference between complex multitask functioning and simple task. So that's why I said whether you're sitting down and having a drink or holding a simple conversation versus doing all the processing, staying within your lanes, watching all of your surroundings, listening, maintaining concentration. It's been shown in clinical studies in driving simulations studies and actual roadside test, that the complexity of driving a vehicle is where you cannot overcome such things by the simple masking is what they call learn tolerance.
Q Now, I may go out and drink a fifth of liquor six o'clock in the evening and hadn't ate anything all day or I may go and eat a stomach full and drink the same amount of liquor two hours before six o'clock. Now, you're not suggesting that with respect to the affects level of

concentration, you're are not suggesting that both of those situations would yield the same results, are you?
A The amount of food in your stomach is going to relate to how long it takes your body to observe the alcohol.
Q Yes, sir.
A But that has nothing to do with the conversation of impairment at a certain blood concentration level. Those are two different topics.
Q When you take alcohol and it gets to a certain level of concentration in your blood system, doesn't it make a difference the time that you take it. If you took the blood sample two minutes after I took the fifth of liquor or you wait two hours, you're not saying that both of those will be the same thing, are you? They couldn't be.
A Correct. It takes your body time to absorb that alcohol to reach that level.
Q In this case, you don't know -- and Ms. Brown hadn't took some drinks and alcoholic drinks. You don't know when she drank it, do you?
A No, because if she drank it earlier in the day, it could have been that her blood alcohol level was much higher than this. I don't know for certain. All I know is that at the time of the test that this was what her level and that was an impairing level.
Q Okay. Now, you say that you're speaking generally.

Now, you would concede that alcohol irrespective of what level of concentration might be, effects different people different ways?

A That is not what I'm saying at all.

Q You're saying that it effects everybody the same way?

A It does effect everybody -- it is a central nervous system depressant and it effects everybody's brains in the same way. It's a chemical process and it effects the brain the same way, yes. Now, as I alluded to earlier, differences in people may cause differences in how much alcohol it takes you to get to a particular concentration or the rate in which your body can metabolize and get rid of that alcohol. Those are a lot of differences and there's a lot of variables in that. As far as concentration goes, alcohol affects everybody the same which is why legally there are -- there is a per se limit that at a certain concentration people are deem to be impaired.

Q I'm trying to figure out why some of my friends who are stone alcoholics act differently from some of the other social drinkers that I know, that drink the same amount of liquor, but they seem not to be falling apart and can't go without getting a drink of whiskey or according to your testimony, I mean, it would seem that if they consume the same amount alcohol or had the same blood

alcohol concentration, they would all manifest the same kind of conduct?
A As far as driving a vehicle, yes.
Q Don't seem to be the case?
A Well, as far as driving a vehicle, if I have no issues with anybody with that alcohol level hanging at a social gathering at a barbecue and having a good time, but as soon as they get into a vehicle to drive, that's going to be too impaired to drive and be safe or to safely drive. And I personally certainly would not want any of my friends to be driving at that level.
Q Well, you never can tell. You never can tell.
MR. BARR: Thank you, sir. I have no further questions.
MR. MCMILLAN: No redirect, Your Honor.
THE COURT: Thank you, sir. You can step down.
(WHEREUPON, the witness leaves the witness stand.)
MR. DURANT: The State calls Debbi Gutierrez.
THE CLERK: Place your left hand on the Bible, and repeat your name please.
THE WITNESS: Debbie Gutierrez.
THE CLERK: You solemnly swear the testimony you're about to give will be the truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Debbie Gutierrez,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Ms. Gutierrez, good afternoon.

A Good afternoon.

Q If you would tell the jury where you live?

A [redacted] Boyd Road, Manning, South Carolina.

Q Is that Boyd Road that's off Highway 261 here in Clarendon County?

A It is.

Q How long you live there?

A For about 20 years.

Q About 20 years. Do you know an individual that was injured in this car accident by the name of Arturo Murrieta-Blas?

A Yes, I do fiance.

Q How do you know him?

A He was my fiance.

Q He was your fiance. Was he your fiance back in August of 2014?

A Yes, he was.

Q Okay. Was he living -- were you living on Boyd Road

back then?
A Yes, I did.
Q Okay. Was he living there with you?
A No, he had his own place.
Q And where was that?
A With his friend.
Q With his friend you said?
A Yeah, with his friend.
Q And where was that?
A At a trailer park over on -- I went blank.
Q Winters Hill?
A Winters Hill.
Q Winters Hill Road that's also off 261?
A Yes.
Q And Winters Hill if you leave Boyd Road and going towards Winters Hill, that's further toward Manning?
A Yes, it is.
Q Okay. And Home Branch Road in relation to Boyd Road would be the Paxville side ---
A Yes.
Q --- is that right? So you are Mr. Arturo's fiancé back on August of 2014?
A Yes.
Q Were you with him on the evening of August the 30th of 2014?

A No, sir.
Q Okay. Do you know where he was?
A Yes, sir, he was at a party with his friends.
Q And where was ---
A They were having a cookout actually.
Q Where was that cook out?
A Just right down the road on Bradum Road -- I mean, not Bradum Road, but Home Branch Road over in that way. It's close to my house.
Q They were at a party on Home Branch Road the evening of August 30th 2014?
A Yes, it's actually was a cookout.
Q Were you invited to go to the cookout?
A Yes, I was.
Q You were invited to go to the cookout?
A Yes. I choose not to go.
Q And you choose not to go?
A Yes.
Q That's how you knew he was there?
A Yes.
Q Did you have any plans, had you made any plans with Arturo to meet up with him later that evening?
A Yes, I did. He was coming over after they finished cooking out.
Q So he was coming over to your house on Boyd Road?

A Yes.
Q After he finished the cookout?
A Yes.
Q Did he ever make it to your house that evening?
A No.
Q At some point were you notified that he been in an accident?
A Yes, later that night I was notified that he had been in an accident and that he was on his way to the hospital. And from there is when I got to the hospital and seen him and his face flapped open.
Q Did you actually go to the accident scene and speak with law enforcement?
A Yes, I did.
Q Then you went to the hospital?
A Yes.
Q Which hospital did he got to?
A Florence. He went to Manning, but they had to send him to Florence.
Q So you went straight to Florence?
A Florence.
Q Do you remember about how long Arturo was in the hospital?
A Two months. A little over two months.
Q A little over two months?

A Yes.
Q Did you visit him regularly when he was in the hospital?
A I lived there.
Q You lived there?
A Yes.
Q When he was released from the hospital October of 2014, where did he go?
A To my house.
Q To your house on Boyd Road?
A Yes.
Q Tell the jury a little bit about his condition when he was released from the hospital?
A When he came home from the hospital, he was like a child that was learning that he had a diaper on and he pull at it. He couldn't really talk. He had to learn to walk over again. He had to learn to eat again. It was like a newborn baby having to learn everything over again.
Q Did he live with you -- he still live with you on Boyd Road?
A No.
Q How long did he live there with you after the accident?
A He live there with me for about a week and his family come and took him.

Q They came and took him?
A Yeah, came and took him to live with them because of ---
Q Lives with family after that?
A Yes.
Q After the accident, was he able -- you mention that he wouldn't talk very well. So he had some cognitive impairment?
A Yes.
Q Okay. Was he able to have adult conversations?
A No.
Q Could you sit down and talk with him about this accident and what happened?
A No.
Q To your knowledge has he ever regained that ability?
A No. When I was bringing him home that night, I had to actually literally stop beside the road and call my friends because he flipped out and was about to tear the back of the car up because he was trying to get out screaming and stuff. It took me awhile to get him home. I had to get help with that.
Q Again to your knowledge, has he ever regained that ability to ---
A No.
Q As I said have adult conversations?

A No.
Q He still essentially in the same state as he was when he was released from the hospital?
A Yes.
MR. DURANT: Ms. Gutierrez, thank you for answering my questions. Please answer Mr. Barr has.

CROSS-EXAMINATION

BY MR. BARR:
Q Ms. Gutierrez, we never met. I've seen your name quite a few times. Of course, let me extend to you even though it's been sometime my sincere condolences for what happened to your boyfriend.
A Thank you.
Q Now, you said that you and your boyfriend were not living together at the same residence?
A No.
Q Okay. But you stay on Boyd Road?
A Yes.
Q Okay. Now, when you go up Boyd Road, it's kind of a pretty rough dirt road. Do you go to your left to go your house or do you go to your right?
A You talking about after you turn on the dirt road?
Q Yes, ma'am.
A I'm on the right.
Q You are on the right.

A Third house down.
Q You have a garden at your house?
A No, sir, there's a house in the corner.
Q Fenced in garden?
A No. You go up the road just a little piece around the curve. There's a house right there with fences around it. There's another house right there with trees around the yard.
Q I know where you are talking about. And you live there alone?
A Yes, sir.
Q Okay. Now, the night of the accident you said that there was a party on Home Branch Road?
A Cookout.
Q Cookout. And did you go to the cookout?
A No, sir, I chose not to. I wasn't feeling good.
Q So you -- do you know whether or not -- I mean of your own knowledge, do you know whether your boyfriend went to the cookout?
A Yeah, he was there. He call me from there. And I know the people that was there that had the party.
Q Well, I mean, you said he called you?
A I would hear the rest of them in the background.
Q And you could hear noises in the background?
A Yes, sir.

Q And what time was this?
A Probably six and seven.
Q Six or seven o'clock in the evening?
A Yes, sir.
Q Okay. So after he called you, you spoke to him. Did you have occasion to talk with him again that evening?
A Excuse me.
Q Did you have occasion to talk with him again that afternoon?
A No, sir.
Q Okay. So the last time you saw him was before the accident was six or seven o'clock that afternoon?
A That's the last time I talk to him was between six and seven. I never said I saw him. I talk to him.
Q Okay. All right. And when he left your -- he was at your house at some point, right?
A No, he didn't make it there.
Q He was not at your house at all earlier that day?
A He didn't make it there.
Q Do you know how she was traveling?
A In a vehicle.
Q Was he driving?
A No, he wasn't.
Q Who was he riding with?
A A friend.

Q Who? Do you know?
A The other guy that was with him his friend Meemo (sic).
Q Were they drinking?
A I don't know, I wasn't there. That be the same as me telling you I saw you drinking.
Q That wouldn't be hard to do.
A That's why I say I can't tell you he was or he wasn't.
Q Okay. You -- the people on the -- friend's on Home Branch Road where they had this cookout, do you know any of their names?
A Yeah.
Q Whose house was the cookout at?
A Benjamin and Bethal.
Q Who's that now?
A Benjamin and Bethal.
Q Benjamin and Bethal?
A Yeah.
Q And what are their last names?
A I don't know everybody's last name, sir, honestly. I know your last name that's fine. Don't mean I have to know your last name.
Q So then you spoke with your boyfriend around seven o'clock and he was at the cookout. And he didn't tell you

how long he was going to be there or did he?
A No, sir, I didn't ask. I don't have any doubts. I have trust issues. I trust everybody. So if you tell me something, I'm gone trust you.
Q I see.
A I don't stand there and question you over and over again.
Q So were trusting him to?
A Yeah.
Q Did he tell you how long he was going to be at the cookout?
A No, sir, didn't ask.
Q Didn't ask?
A No, sir.
MR. BARR: I have nothing further.
MR. DURANT: No redirect.
THE COURT: Thank you, ma'am. You can step down.
(WHEREUPON, the witness leaves the witness stand.)
MR. DURANT: Take a brief recess, Your Honor.
THE COURT: Ladies and gentlemen, we're going take a short recess. Don't discuss the case. I'll get you back out here in a few minutes.
(WHEREUPON, the jury retire to the jury room.)

THE COURT: Before we break, I want to put something on the record concerning Mr. Barr's objection of the video. The South Carolina case State vs. Long a Supreme Court case 363 South Carolina 360. The holding in that case that the two paragraphs essentially after which is made under 56-5-2950 perform an officer may order blood test for felony DUI under 56-5-2946. The officer may need no longer offer a breathe test as the first option. Nor must he obtain a medial opinion that such test is not excused before ordering a blood sample, a test sample. So that case basically says that the officer does not have to in a felony DUI case. The statute says notwithstanding any other provision, a person must submit to a chemical test to determine alcohol concentration when sustaining a felony DUI. And this case holds that an officer does not have to offer a breathe test when transporting a person to a breathe test and does not have to question medical personnel as to feasibility to taking a breathe test. I think that's a 2005 case. My understanding that's the current law in the state. So I want to put that on the record as part of your objection. We'll take a ten minute break. And I'm sorry I was hoarse. If you can't understand it, I'll let you read it.

(WHEREUPON, a break was taken.)

494

(WHEREUPON, the jury came into open court.)

THE COURT: I'm sorry ladies and gentlemen, you probably can't hear what I'm tell you. The next witness we have in this case based on what the attorney's tell me is gone extremely long, which means that I won't get you all home and I promised you. So I'm gone quite right now. Once we start, we usually finish that witness and it will get you home later than 5:30. So I'm going to let you go home, be back at 9:30. And we'll take that witness in the morning. You will be able to get home and be with your home. Don't discuss this case yet. And don't allow anyone to discuss it with you, don't do any research. See you at 9:30 in the morning. Thank you.

(WHEREUPON, the jury is excused for the day.)

THE COURT: Ms. Brown.

THE DEFENDANT: Yes, sir.

THE COURT: Would you stand up and raise your right hand please, ma'am. Do you solemnly swear that the testimony you going to give me is the truth, the whole truth, and nothing but the truth so help you God?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you, put your hand down. I'm informed by the State's counsel that they have one more witness. After that witness testifies, it will be your turn as to whether you want to put up any evidence or not.

You have a right to testify, but you also have a right not to testify. You have a constitutional right to remain silent. And if you chose not the testify, I will instruct the jury cannot consider that in any way against you. They can't even discuss that in the jury room, but this right is your right. You can ask your attorney for advice as to whether you should or not should not testify. But it's not his decision, it's yours. If you choose to testify, you'll be treated like any other witness and you may be impeached. I don't know whether you got a prior criminal record. If you do, whether it qualifies, you can be impeached and your attorney can tell you that. But I just wanted to let you know your rights. You don't have to tell me now, but give you an opportunity overnight to think about it, discuss with your attorney and decide what do you want to testify or put up any evidence in this case. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You have any questions you want to ask me concerning these rights?

THE DEFENDANT: No, sir.

THE COURT: Thank you, ma'am. Anything else we need to do today?

MR. DURANT: Thank you, Judge. No, sir, Your Honor.

496

MR. BARR: No, sir.

THE COURT: I'll see you all 9:30 in the morning.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on May 17, 2018.)

(WHEREUPON, State's Exhibits Nos. 58 and 59 and 60-64 were marked for identification only.)

THE COURT: We ready?

MR. DURANT: Yes, sir, Your Honor.

THE COURT: You ready, Mr. Barr.

MR. BARR: Yes, sir.

THE COURT: Bring me the jury.

MR. BARR: Your Honor, may we approach before the jury comes in?

THE COURT: Yes. Hold on a minute.

(WHEREUPON, a bench conference was held.)

(WHEREUPON, the jury came into open court.)

THE COURT: All right, Mr. Solicitor.

MR. DURANT: Please the Court.

THE COURT: Yes, sir.

MR. DURANT: The State call Lance Corporal Bryan Ridgeway.

THE CLERK: Place your left hand on the Bible and repeat your name please.

THE WITNESS: Bryan Ridgeway.

THE CLERK: You solemnly swear the testimony you're about to give will the truth and nothing but the truth so help you God?

THE WITNESS: I do.

WHEREUPON,

Bryan Ridgeway,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DURANT:

Q Lance Corporal, good morning.

A Good morning.

Q If you would please tell the jury where you work?

A I work for the South Carolina Highway Patrol MAIT team.

Q How long have you work for highway patrol?

A Since January of 1999.

Q So 18, 19 years now?

A Yes, sir.

Q And what is your rank?

A Lance corporal.

Q And you mention you are -- you work for the MAIT team?

A Yes, sir.

Q Tell the jury what MAIT is?

A It's the multidisciplinary accident investigation

team.
Q And how long have you been a member of MAIT?
A Since October of 2009.
Q October 2009?
A Yes, sir.
Q So nine years now or going on nine years?
A Yes, sir.
Q Is there any special training required to become a member of MAIT?
A There's a lot of training required. When we first get on MAIT, we have to go through basically three core courses which are 80 hours of piece just to be on the team. And then after that we go through a lot more training.
Q What are those core courses?
A The core courses are at scene investigation, at scene recon and technical most of them just expand upon the course prior to it, but it's going through the different physics involved in collisions. And the first one's an introduction into some of the calculations we use and then the next two courses expand upon those and add more into them.
Q Okay. What in particular does that training consistent of?
A That training is mostly looking at the collision

scenarios and then how our calculation apply to them, to work through them. And again everything is physics based, so how physics applies to it.

Q Any other training you receive besides those three core courses?

A It's probably too numerous to list. I believe in just collision reconstruction itself I'm over 1200 hours in training. And then also that's not including all the conferences I attend on a yearly basis which are usually about week long conferences where we have multiple courses during that week.

Q So you -- do you attend on a regular basis continuing education, continue training throughout since you became a member of MAIT?

A Yes, sir, again most of it is during the -- we have some courses during the year usually advance courses expanding upon knowledge that we already have, but then we also do it yearly conferences.

Q Tell the jury again how many hours total of collision reconstruction training you have?

A I'm not sure the exact number. I know it's over 1200. I believe it was 1280 the last time I looked just in collision reconstruction.

Q 1280 hours of collision reconstruction training?

A Yes, sir.

Q Are you accredited by any national boards or associations in accident reconstruction?
A I am. I am accredited through ATTAR, which is the accreditation commission for traffic accident reconstructionist.
Q How did that accreditation come about?
A One of -- you have to have at least the three core courses. And then even before I could sit for the testing, I had to submit a case that I already worked and have them review it. That's basically to make sure that I have the knowledge to sit for the test itself. Then in January of 2011, I sat for a two-part exam that is broken up into eight hours sections. The first one is knowledge based. And the second one is they present you evidence for a collision that the that -- the ATTAR board had actually taken two cars crashed them into each other and then recorded the evidence and I had to reconstruction that collision and get the same results that the vehicles were doing at the time of the collision.
Q So they give you a hypothetical accident or a real accident?
A Yes, sir.
Q But they knew the inputs, the knew the speeds and variables associated with the accident; is that right?
A Yes, sir, they know the speed because they're --