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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post-Conviction Relief

S.C. Supreme Court

Frank R. Addy, Jr., Presiding Judge

Case No.: 2014-000688

William C. Martin #332078 Appellant,

vs.

State of South Carolina Respondent.

APPENDIX
VOLUME I

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS
2007-GS-32-1374

3 STATE OF SOUTH CAROLINA)

4 Plaintiff)

5 V.)

6 WILLIAM CONRAD MARTIN,)

7 Defendant.)
-----)

TRANSCRIPT OF RECORD

8 DECEMBER 1, 2008
9 CHARLESTON, SOUTH CAROLINA
10 VOLUME 1

11
12
13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15
16
17

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

19 MR. DAVID STUMBO, Assistant Solicitor
20 MR. OLA JOHNSON, Assistant Solicitor
REPRESENTING THE STATE

21 MR. ROBERT T. WILLIAMS, ESQUIRE
22 REPRESENTING THE DEFENDANT
23
24

25 ANNE BOULEY MEYER, RPR
CIRCUIT COURT REPORTER

1 THE COURT: Ladies and gentlemen, we are going
2 to select a panel for State of South Carolina versus
3 William C. Martin, 2007-GS-32-1374.

4 Does the defendant wish to have a formal
5 arraignment?

6 MR. WILLIAMS: No, your Honor.

7 THE COURT: Ladies and gentlemen, we're going
8 to go through a process that is called voir dire,
9 which is simply a very complicated French word that
10 means we are going to ask you some questions in order
11 for the attorneys to more effectively exercise what
12 we call preemptory challenges during the jury
13 selection process.

14 If a question applies, I would ask that you
15 stand and in a very loud and clear voice give us your
16 name, your juror number and an answer to the question
17 if it applies, and remain standing until the Court
18 has completed questioning you.

19 If some of the questions may seem intensely
20 personal to you, and if you are uncomfortable
21 answering questions in the presence of the panel,
22 please make us aware of it and you will speak with me
23 privately with the lawyers and the clerk as well as
24 the court reporter.

25 Again, as I have indicated we are selecting

1 the jury for State of South Carolina versus William
2 Conrad Martin. That is an indictment for felony DUI
3 resulting in death.

4 That indictment alleges as follows: That
5 William Conrad Martin did in Lexington County, South
6 Carolina on or about July 29th, 2007, while driving a
7 vehicle under the influence of alcohol, drugs or both
8 alcohol and drugs, the defendant, William Conrad
9 Martin, did an act forbidden by law or neglected a
10 duty imposed by law in driving a said vehicle, and
11 such acts proximately caused the death to Ruggy Wilkes
12 Stone, alleging a violation of code section
13 56-5-29-45 of the code of laws as amended, and
14 against the peace and dignity of the state of South
15 Carolina.

16 Before we begin, I'm going to ask counsel for
17 the state to stand and introduce themselves, as well
18 as anyone who will be assisting them in the trial of
19 this case. And also publish the names of the members
20 of their office. And ask counsel for the defense
21 provide us with that same information, as well as
22 introducing his client to the panel. You may
23 proceed.

24 MR. STUMBO: Thank you, Your Honor. My name
25 David Stumbo. I'm an attorney in Solicitor Donald

1 Myers office. I'm an assistant solicitor for general
2 crimes here in Lexington County.

3 standing to my right is Ola Johnson,
4 co-counsel on this case. Also in the courtroom
5 sitting here is Kevin Wilson, he's an investigator
6 with our office and is going to be assisting with the
7 case. And Susan Powell is sitting back here, she is
8 one of our victim advocates.

9 THE COURT: I need you to publish the names of
10 the members of your office.

11 MR. STUMBO: That are in our office here?

12 THE COURT: No, that are in your office
13 period. All the lawyers who are in your office.

14 MR. STUMBO: Okay. We will start --

15 THE COURT: To the best of your memory.

16 MR. STUMBO: Here to my right is Rhonda
17 Patter, she is a solicitor in our office, also
18 prosecuting another case on the trial list this week.
19 sitting to her immediately left is Derrick Mobley, he
20 is another solicitor in our office involved with some
21 other cases this week.

22 sitting to his left is Mr. Larry Wedekind,
23 another prosecutor in the solicitor's office.
24 sitting next to Mr. Wedekind is Jennifer Porter, she
25 is our latest coming to us from Charleston and

1 Berkeley, 9th Circuit, which is home to Judge
2 Jefferson.

3 Other attorneys you saw here this morning
4 Solicitor Myers walked in briefly and sat here at the
5 bench and discussed matters with us. Solicitor Al
6 Urgly (phonetic) who was here earlier, Gamecock tie,
7 obviously wasn't too ashamed of Saturday's results.

8 Deputy solicitors in our office include Paige
9 Little and Rick Hubbard. Mr. Hubbard was here
10 sitting in the jury box this morning. He is one of
11 the supervisors. And we also have just a list of the
12 prosecutors Susan Nelly; we have Chip Barnes; we have
13 Kyle Dennison, who handles the domestic violence
14 cases; Debora Moore; Shawn Brown; Kate Whetstone;
15 Mike Ross; Emily Howard; Angela Aguirre.

16 I believe that covers all of the attorneys
17 that work in Lexington in our office.

18 THE COURT: Thank you. Mr. Williams.

19 MR. WILLIAMS: I'm Theo Williams, I practice
20 law in the town of Lexington. My office is on the
21 corner of Main and Number 6, the old bank building
22 has 912 on the side of it.

23 This is my client, William Martin. He is
24 known by the nickname of Shoney or Shoney boy. You
25 may know him as Shoney if you know him.

1 Practicing in my -- the name of the firm is
2 Williams, Hendrix, Steigner and Brink. In the firm
3 are myself, Theo Williams, John Hendrix, Carol
4 Steigner, Lisa Brink, Don Steigner, Ben Stitely,
5 Jennifer Butler, Dan Hinkle.

6 THE COURT: Thank you very much.

7 Is there any member of the panel related by
8 blood or marriage to William Conrad Martin or anyone
9 related to Rugsy Will Stone, if so please stand at
10 this time.

11 Does any member of the panel have a close
12 personal or social relationship with William Conrad
13 Martin or anyone related to Rugsy Will Stone, if so
14 please stand at this time.

15 Tell me your name and juror number.

16 PROSPECTIVE JUROR: My name is Marilyn
17 Jeffcoat, number 90. I believe Shoney may be a
18 friend of my son.

19 THE COURT: I'm sorry, ma'am, I can't hear
20 you. I know it's difficult, I apologize.

21 PROSPECTIVE JUROR: I'm Marilyn Jeffcoat, I'm
22 number 90. And I believe Shoney is a friend of my
23 son's.

24 THE COURT: Ma'am, as a result of this
25 experience can you remain fair and impartial, and

1 render a fair and impartial decision in this case
2 based solely on the evidence as it will be presented,
3 and on the law as the Court will instruct?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you, ma'am, you may take
6 your seat.

7 The following are a list of potential
8 witnesses in this case. I would ask that you listen
9 very carefully. William Terry Shealy, Jr. William
10 Terry Shealy, Sr. Charlie McCorkle. Christy Shealy.
11 Dr. J. Daniel Love. Dr. Eric A. Brown. Dr. Raymond
12 Bynoe, B-Y-N-O-E.

13 Trooper K.M. Caldwell with the South Carolina
14 Highway Department. Lieutenant J.D. Day. Lieutenant
15 Corporal M.D. Coffin. Sergeant S.R. Breland.
16 Lieutenant Corporal S.R. Farmer. All of the South
17 Carolina Highway Patrol.

18 Jennifer Adkins. Tammy Banister. Selina
19 Kinard. Brandon Williams. Brandon J. Landrum, all
20 of the South Carolina Law Enforcement Division. And
21 Deputy Corner Ronnie Corley.

22 Is there any member of the panel related by
23 blood or marriage to any of the people that I have
24 just listed, or does anyone have a close personal or
25 social relationship with any of these individuals, if

1 so please stand at this time.

2 Is there any member of the panel -- has any
3 member of the panel ever been represented by any of
4 the attorneys involved in this case or anyone with
5 whom they practice law, if so please stand at this
6 time.

7 Is there any member of the panel related by
8 blood or marriage to or have a close personal or
9 social relationship with any of the attorneys
10 involved in this case, or anyone with whom they
11 practice law, in so please stand at this time.

12 PROSPECTIVE JUROR: Paula Spin, 153.

13 THE COURT: Jury 153, Paula Spin. Yes, ma'am.

14 PROSPECTIVE JUROR: Okay. The one custody
15 battle I used that firm for a custody case.

16 THE COURT: Do you remember which lawyer you
17 used.

18 PROSPECTIVE JUROR: Alison Huff.

19 THE COURT: How long ago was that, ma'am.

20 PROSPECTIVE JUROR: Four years ago.

21 THE COURT: You need to remain standing.

22 Yes, ma'am.

23 PROSPECTIVE JUROR: My husband has used this
24 gentleman before.

25 THE COURT: Mr. Williams. Tell me your name

1 and your juror number.

2 PROSPECTIVE JUROR: 144, Andre Sharp.

3 THE COURT: As a result of these experiences
4 do you both feel you can remain fair and impartial
5 and render a fair and impartial decision in this case
6 based solely on the evidence as it will be presented,
7 and on the law as the Court will instruct.

8 Number 153?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Number 144?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: You may both take your seats.

13 Has any member of the panel formed or
14 expressed an opinion about any issue or matter
15 involved in this case, if so please stand at this
16 time.

17 Is there any member of the panel aware of any
18 bias or prejudice toward either the state or the
19 defense in this case, if so please stand at this
20 time.

21 Is there any member of the panel who was a
22 member of the grand jury which issued the indictment
23 in this case, if so please stand at this time.

24 Is there any member of the panel a member of
25 any group, or contributor to any group which has as

1 its primary concern the promotion of law enforcement
2 or victim's right? These groups would include but
3 are not limited to Mothers Against Drunk Driving,
4 Students Against Drunk Driving, Citizens Against
5 Violent Crime, People Against Rape, Citizens
6 Advocating a Return to Decency and Ethics. If so
7 please stand at this time.

8 Is there any member of the panel who has a
9 moral or philosophical or religious opposition to the
10 consumption of alcohol, is so please stand at this
11 time.

12 Is there any member of the panel who has a
13 moral or philosophical opposition, or religious
14 opposition to standing in judgment of a fellow human
15 being, if so please stand at this time.

16 Is there any member of the panel who has had a
17 family member injured as a result of an
18 alcohol-related incident, if so please stand at this
19 time.

20 Yes, sir. If you'll tell me your name and
21 juror number.

22 PROSPECTIVE JUROR: Ken Stokes, 162.

23 THE COURT: Sir, as a result of this
24 experience do you feel you can remain fair and
25 impartial, and rendered a fair and impartial decision

1 in this case based solely on the evidence as it will
2 be presented and on the law as the Court will
3 instruct?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you, sir.

6 Is there any member of the panel -- and I know
7 this is an intensely personal question and if you do
8 not wish to answer it openly you may speak with me
9 privately.

10 Is there any member of the panel who has ever
11 been arrested for DUI, if so please stand.

12 Does any member of the panel know of any
13 reason whatsoever why he or she should not serve as a
14 juror in this case, with particular emphasis on your
15 ability to be fair and impartial to both the state
16 and the defense, if so please stand at this time.

17 Any additional questions from the state?

18 MR. STUMBO: Nothing additional from the
19 state, Your Honor.

20 THE COURT: Anything additional from the
21 defense?

22 MR. WILLIAMS: Nothing from the defendant,
23 Your Honor.

24 THE COURT: Strikes are five and five.

25 Ladies and gentlemen, if you would listen very

1 carefully, if your name is called please come forward
2 and you need to -- as the deputy is showing you. I
3 always feel like we are on the airplane going, these
4 are the exits.

5 Come forward and stand exactly as he is
6 standing facing back toward the panel until we have
7 either seated you or excused you as a member of the
8 panel, after which you will either come and be seated
9 in the jury box or be re-seated in the panel. Thank
10 you, we appreciate your patience.

11 Madam Clerk, when you are ready you may
12 proceed.

13 THE CLERK: Number 93, Jackie Jumper.

14 Please make sure you bring all your personal
15 affects with you just in case you don't go back there
16 you go over here.

17 What say you for the state?

18 MR. STUMBO: Please present Ms. Jumper.

19 THE CLERK: What say you for the defense.

20 MR. WILLIAMS: Please seat the juror.

21 THE CLERK: Have a seat in the jury box,
22 ma'am.

23 Number 141, Elaine Smith.

24 What say you for the state?

25 MR. STUMBO: Please present Ms. Smith.

1 THE CLERK: What say you for the defense?

2 MR. WILLIAMS: Please excuse the juror from
3 the trial in this case.

4 THE CLERK: Return to your seat, please,
5 ma'am.

6 Number 162, Kenneth Stokes.

7 What say you for the state?

8 MR. STUMBO: Please present Mr. Stokes.

9 THE CLERK: What say you for the defendant?

10 MR. WILLIAMS: Please swear the juror.

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

12 Number 32, Donna Chavis.

13 What say you for the state?

14 MR. STUMBO: Please present Ms. Chavis.

15 THE CLERK: What say you for the defense?

16 MR. WILLIAMS: Please present the juror.

17 THE CLERK: Have a seat in the jury box,

18 ma'am.

19 Number 54, Haley Fianchino.

20 What say you for the state.

21 MR. STUMBO: Please present Ms. Fianchino.

22 THE CLERK: What say you for the defense.

23 MR. WILLIAMS: Please swear the juror.

24 THE CLERK: Have a seat in the jury box,

25 ma'am.

1 Number 81, Natalie Horn.

2 What say you for the state?

3 MR. WILLIAMS: Please present Ms. Horn.

4 THE CLERK: What say you for the defense?

5 MR. WILLIAMS: Please excuse the juror from
6 the trial in this case.

7 THE CLERK: Return to your seat please, ma'am.

8 Number 1, James Addison.

9 What say you for the state?

10 MR. STUMBO: Please present Mr. Addison.

11 THE CLERK: What say you for the defense.

12 MR. WILLIAMS: Please excuse the juror from
13 the trial in this case.

14 THE CLERK: Return to your seat, sir.

15 Number 155, Joseph Soltish.

16 What say you for the state?

17 MR. STUMBO: Please present Mr. Soltish.

18 THE CLERK: What say you for the defence?

19 MR. WILLIAMS: Please swear the juror.

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

21 Number 34, Gloria Clark.

22 What say you for the state?

23 MR. STUMBO: Please excuse Ms. Clark from the
24 trial in this case.

25 THE CLERK: Return to your seat please, ma'am.

1 Number 10, Catherine Bass.

2 What say you for the state?

3 MR. STUMBO: Please present Ms. Bass.

4 THE CLERK: What say you for the defense?

5 MR. WILLIAMS: Please swear the juror.

6 THE CLERK: Have a seat in the jury box,

7 ma'am.

8 143, Tina Scott.

9 What say you for the state?

10 MR. STUMBO: Please present Ms. Scott.

11 THE CLERK: What say you for the defense?

12 MR. WILLIAMS: Please excuse the juror from

13 the trial in this case.

14 THE CLERK: Return to your seat please, ma'am.

15 Number 118, Hazel Montgomery.

16 What say you for the state?

17 MR. STUMBO: Please present Ms. Montgomery.

18 THE CLERK: What say you for the defense.

19 MR. WILLIAMS: Please swear the juror.

20 THE CLERK: Have a seat in the jury box,

21 ma'am.

22 Number 106, John Magee.

23 What say you for the state?

24 MR. STUMBO: Please present Mr. Magee.

25 THE CLERK: What say you for the defense?

1 MR. WILLIAMS: Your Honor may we approach?

2 THE COURT: You may.

3 (Whereupon, a discussion was held at the bench
4 off the record.)

5 MR. WILLIAMS: Please excuse the juror from
6 the trial in this case.

7 THE COURT: Defense, five.

8 THE CLERK: Number 124, Linda Owens.

9 What say you for the state?

10 MR. STUMBO: Please excuse Ms. Owens from the
11 trial in this case.

12 THE CLERK: Return to your seat please, ma'am.

13 Number 119, Earline Moore.

14 What say you for the state?

15 MR. STUMBO: Please present Ms. Moore.

16 THE CLERK: What say you for the defense?

17 MR. WILLIAMS: Please swear the juror.

18 THE CLERK: Have a seat in the jury box
19 please, ma'am.

20 Number 129, John Pierce.

21 What say you for the state?

22 MR. STUMBO: Please present Mr. Pierce.

23 THE CLERK: What say you for the defense?

24 MR. WILLIAMS: Please swear the juror.

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

1 Number 126, Michelle Peak.

2 What say you for the state?

3 MR. STUMBO: Please present Ms. Peak.

4 THE CLERK: What say you for the defense?

5 MR. WILLIAMS: Please swear the juror.

6 THE CLERK: Have a seat in the jury box,

7 ma'am.

8 Number 151, Eddie Smith.

9 What say you for the state?

10 MR. STUMBO: Please excuse Mr. Smith from the

11 trial of this case.

12 THE CLERK: Return to your seat please, sir.

13 Number 48 Ernest Easter.

14 What say you for the state?

15 MR. STUMBO: Please present Mr. Easter.

16 THE CLERK: What say you for the defense?

17 MR. WILLIAMS: Please swear the juror.

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

19 Number 89, Gregory Jeffcoat.

20 What say you for the state?

21 MR. STUMBO: Please present Mr. Jeffcoat.

22 THE CLERK: What say you for the defense?

23 MR. WILLIAMS: Please swear the juror.

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

25 Alternate, Your Honor?

1 THE COURT: One. One alternate, strikes are
2 one and two.

3 THE CLERK: Number 113, Melissa Miller.

4 What say you for the state?

5 MR. STUMBO: Please excuse Ms. Miller.

6 THE CLERK: Return to your seat please, ma'am.

7 Number 36, Risha Cole.

8 What say you for the state?

9 MR. STUMBO: Please present Ms. Cole.

10 THE CLERK: What say you for the defense?

11 MR. WILLIAMS: Please excuse the juror from
12 the trial in this case.

13 THE CLERK: Return to the your seat please,
14 ma'am.

15 Number 75, Gary Heinly.

16 What say you for the state?

17 MR. STUMBO: Please present Mr. Henley.

18 THE CLERK: What say you for the defense?

19 MR. WILLIAMS: Please excuse the juror from
20 the trial in this case.

21 THE CLERK: Return to your seat please, sir.

22 Number 86, Flexica James.

23 What say you for the state?

24 MR. STUMBO: Please present Ms. James.

25 THE CLERK: What say you for the defense?

1 MR. WILLIAMS: Please swear the juror.

2 THE CLERK: Have a seat in the jury box,
3 ma'am.

4 Any motions regarding the selection of the
5 jury from the state?

6 MR. STUMBO: None from the state, Your Honor.

7 THE COURT: From the defense?

8 MR. WILLIAMS: None by defense, Your Honor.

9 THE COURT: Ladies and gentlemen, you have
10 been selected for the case of State versus William

11 Conrad Martin. I'm going to have you go to the jury
12 room with the bailiff for me for a few moments while
13 we figure out scheduling because I'm going to have to
14 select another jury. And it will probably take the
15 same amount of time that it took us to do this jury
16 which was just shy of 30 minutes.

17 I anticipate that what we probably will do is
18 break, let you all go for lunch, we have some matters
19 of law we need to take up before we begin the trial
20 of this case. But I'll give you a better idea as to
21 what our schedule will be. We certainly will start
22 the trial in this case today.

23 During the break please don't discuss the
24 case, don't speculate about what you think it may or
25 could be about, and please go with the bailiffs for

1 me. If you need anything, please let me know.

2 (Whereupon, the jurors exit the courtroom.).

3 THE COURT: Counsel approach for me, please.

4 (Whereupon, a discussion was held at the bench
5 off the record.)

6 (Whereupon, a recess was taken in this
7 matter.)

8 THE COURT: Is the state ready to proceed?

9 MR. STUMBO: Your Honor, I believe that I
10 showed a picture to Mr. Williams just now. There is
11 a photograph that I intend to put into evidence with
12 one of my early witnesses, a family member, to
13 corroborate her testimony.

14 Mr. Williams does have an objection to it.

15 THE COURT: Is it gory? What is it?

16 MR. STUMBO: It's not gory, Your Honor, what
17 it is it's a photo of the victim --

18 THE COURT: I'm sorry, I didn't mean to sound
19 so --

20 MR. STUMBO: No, it's a photo of the victim,
21 Ms. Stone, at Christy, her granddaughter's house.
22 This is right she pulls out of the driveway with the
23 grandson, that's when the wreck occurred.

24 THE COURT: Why would you be offering it.

25 MR. STUMBO: Simply to corroborate where she

1 was, she was there essentially to visit her
2 granddaughter.

3 THE COURT: I'll have to take it up
4 contemporaneously. You'll have to make a
5 contemporaneous objection.

6 MR. STUMBO: Okay, that's fine.

7 THE COURT: I need to hear about it in the
8 context. You all know more about the case than I do.
9 It's a disadvantage to me to sort of rule in the
10 blind about it.

11 We will see whether it's relevant in the
12 context of the case and we will go from there. Don't
13 offer it, when you get ready to offer it -- well, Mr.
14 Williams will know and he'll make a contemporaneous
15 objection and we'll take it up at that time.

16 All right. Is the state ready to proceed with
17 opening arguments?

18 MR. STUMBO: Ready, Your Honor.

19 THE COURT: Is the defense ready to start with
20 opening arguments?

21 MR. WILLIAMS: Defense is ready, Your Honor.

22 THE COURT: Is there any exception to the jury
23 take notes from the state.

24 MR. STUMBO: Not from the state.

25 THE COURT: From the defense?

1 MR. WILLIAMS: Yes, Your Honor.

2 THE COURT: What would that exception be?

3 MR. WILLIAMS: Your Honor, unless they all are
4 taking notes, even when they all are taking notes, it
5 would be defense counsel's opinion that sometimes
6 written notes appear to have more significance than
7 the remembrance of the jury.

8 I would be concerned if one of the jurors was
9 flashing his notes saying, look that's not what was
10 said or that's not what was presented because here it
11 is in my notes that it was something else. So, we
12 would be concerned about the note-taking.

13 THE COURT: Any exception to the note-taking
14 is overruled. Note-taking is a privilege that a jury
15 can exercise or not exercise. They will be given
16 specific instructions that their notes are for their
17 individual purposes and they're not to be shared with
18 anyone else, and that anyone else's memory is just as
19 reliable as their notes.

20 I find that jurors take notes anyway. They
21 take them on grocery lists and other things which
22 runs the risk of premature deliberation. So I would
23 rather have control of the process of them taking
24 notes with instructions as to how they're to do it.

25 If you all bear with us, Hope needs to go

1 downstairs to get the notepads.

2 (Whereupon, a recess was taken.)

3 ~~THE COURT: Is there any case law that you all~~
4 ~~are going to be relying on on any of the motions that,~~
5 ~~you will be arguing~~ so that I can look at it in
6 advance of the motion? Give me a citation.

7 MR. WILLIAMS: I have a pending number, Your
8 Honor.

9 THE COURT: That's fine.

10 MR. WILLIAMS: Pending number is 26-345, it's

11 City of Rock Hill versus Suchenski,
12 S-U-C-H-E-N-S-K-I. And it was heard January 4th,
13 2007 and filed June 18th, 2007.

14 THE COURT: Court of Appeals or Supreme Court?

15 MR. WILLIAMS: That is a Supreme Court
16 decision. Sitting Justice Manning I believe.

17 THE COURT: All right. Is there any other
18 case law that you will be relying on? I assume
19 that's for the blood test.

20 MR. WILLIAMS: Yes, Your Honor. It deals with
21 any alcohol readings.

22 THE COURT: Is there any case law the state
23 will be relying upon?

24 MR. STUMBO: None at this time, Your Honor.
25 Other than of course Jackson v Denno and its progeny.

1 THE COURT: what exactly is going to be the
2 nature of your argument on the suppression of the
3 blood test, Mr. Williams?

4 MR. WILLIAMS: Your Honor, it's actually
5 multi-faceted.

6 THE COURT: Just give me a synopsis so that I
7 can be prepared when you argue it.

8 MR. WILLIAMS: There is -- at the scene, ~~a~~
9 ~~police officer arrives at the scene and he does field~~
10 ~~sobriety tests on the scene. He does not videotape,~~
11 ~~those field sobriety tests.~~

12 He signs an affidavit which will require his
13 testimony to make a determination whether or not the
14 affidavit was sufficient because under the videotape
15 statute --

16 THE COURT: I am very familiar with that. Are
17 you contesting it based on that?

18 MR. WILLIAMS: That's part of it.

19 THE COURT: Okay.

20 MR. WILLIAMS: In addition, once he was taken
21 to the Data Master room he was given his implied
22 consent warnings and he did not blow.

23 THE COURT: So he refused it, correct?

24 MR. WILLIAMS: I'm sorry?

25 THE COURT: He refused the Data Master?

1 MR. WILLIAMS: He refused the Data Master,
2 right. But what complicates the factor is when he
3 was taken to the Data Master test for blowing on the
4 Data Mater, the statute says that he's actually
5 supposed to be offered that so that the video on the
6 Data Master test could be completed within three
7 hours from the time which the incident occurred.

8 THE COURT: He was videoed in the Data Master
9 room though, correct?

10 MR. WILLIAMS: He was videoed.

11 THE COURT: You are not contesting that coming
12 in?

13 MR. WILLIAMS: Not actually contesting the
14 video of the Data Master coming in. But I'm building
15 on the number of errors that were made.

16 Then the next deal has to do with he was taken
17 to the hospital.

18 THE COURT: So he passes out in the Data
19 Master room, correct?

20 MR. WILLIAMS: Well, I don't know that he
21 passes out, I'm waiting on some evidence on that.

22 THE COURT: Well EMS came, correct?

23 MR. WILLIAMS: I don't know that EMS came to
24 the sheriff's department.

25 THE COURT: Aren't there some witnesses on

1 this?

2 MR. WILLIAMS: I would like to see them.

3 THE COURT: Let's just say I'm required to
4 assume -- I have to make some assumption about the
5 facts, about what's going to be presented. They told
6 me that's what's going to be presented in your
7 presence.

8 MR. WILLIAMS: Okay.

9 THE COURT: That he -- I just need to be
10 clear, we did that at the bench before we got
11 started. I've had no ex-parte --

12 MR. WILLIAMS: He is shaking his head like he
13 has got them coming so that's good, Your Honor.

14 MR. STUMBO: Trooper Caldwell was there for
15 the entire thing and he will testify as to what
16 happened.

17 THE COURT: But my assumption about the facts
18 is correct, you all are contending that you're going
19 to present witnesses that he collapsed, that he
20 refused the Data Master and he collapsed in the Data
21 Master room, EMS was called, correct, he was taken to
22 the hospital?

23 MR. STUMBO: Correct. Trooper Caldwell called
24 in the medical personnel to take him to the hospital.

25 THE COURT: Then his blood was taken?

1 MR. STUMBO: Right.

2 MR. WILLIAMS: Correct. So an additional
3 question would deal with whether or not that
4 particular doctor made the call, that he was
5 medically incapable of performing the Data Master
6 test --

7 THE COURT: He had already refused it, hadn't
8 he?

9 MR. WILLIAMS: He had already refused it.

10 THE COURT: So is it really no contest that he
11 didn't intend -- did he plan to change his mind and
12 take it?

13 MR. WILLIAMS: If he refused it, why did they
14 take him for the blood test?

15 THE COURT: We have to assume that that's what
16 they did, or he collapsed and they took his blood.
17 Because when you collapse at a hospital they
18 generally do take your blood to see what's going on.

19 MR. WILLIAMS: But they did not take his blood
20 because they were concerned about the --

21 THE COURT: I don't know, I have not heard --

22 MR. WILLIAMS: You're right, we have to wait
23 on the witness.

24 THE COURT: I haven't heard, so I don't know
25 why they took his blood.

1 MR. WILLIAMS: ~~Then you've got there were two~~
2 ~~tubes of blood that were drawn, and he wasn't given~~
3 ~~his tube of blood.~~ His tube of blood disappears. He
4 gets out of jail, he has no tube of blood.

5 Now I think it's 29-45 -- no, that's a
6 statute, there is a statute dealing with taking of
7 blood talks about how he has a right to have
8 independent drawing of the blood.

9 If you are entitled to the independent drawing
10 of the blood, you ought to be entitled to have the
11 other tube tested also.

12 THE COURT: ~~Does the statute actually say,~~
13 ~~that? I thought the statute talks in terms of you,~~
14 ~~going to the hospital and demanding a test once you,~~
15 ~~refuse the Data Master.~~

16 MR. WILLIAMS: He did not demand a test, he
17 was taken to the hospital and the blood was drawn
18 involuntarily.

19 THE COURT: We are confined by the words of
20 the statute. We can't make law. I don't get to make
21 what the law is, I'm bound by what it says, the plain
22 and ordinary language.

23 So the plain and ordinary language of that
24 statute gives you the ability to demand that a test
25 be taken. And the purpose of that statute is so that

1 you can basically exonerate yourself if you have
2 blown a certain amount, or if you want to basically
3 say, I may have other things going on with my body
4 that cause me not to be able to -- or he just wanted
5 to be able to have an independent test --

6 MR. WILLIAMS: -- health-related reasons, then
7 it would be an improper search. And the blood result
8 should not be introduced because it was done without
9 legal recourse in that it was taken for a reason
10 other than his health.

11 THE COURT: We'll see what the -- I just
12 wanted to know what the basis of your argument was so
13 I could kind of see where we were going.

14 Okay, is the state ready to proceed?

15 MR. STUMBO: State is ready, Your Honor.

16 THE COURT: Is the defense ready to proceed?

17 MR. WILLIAMS: Defense is ready, Your Honor.

18 THE COURT: Please bring in the panel. Bring
19 in Number 32 last, she is the foreperson.

20 (Whereupon, the jurors enter the courtroom.)

21 THE COURT: Ladies and gentlemen, if you would
22 stand up for me, please, and raise your right hand
23 for clerk to administer the oath.

24 (Whereupon, the Clerk administers the oath to
25 the jury panel.)

1 THE COURT: Thank you, ladies and gentlemen,
2 we appreciate your patience. We were selecting
3 another jury as well as handling some preliminary
4 matters in this case.

5 We will have the Court's opening instructions
6 and the lawyers opening arguments and then we will
7 break for lunch. Again, we appreciate your patience.

8 Ladies and gentlemen, the case that we are
9 about to try is the State of South Carolina versus
10 William Conrad Martin, the defendant. What I will
11 now say is intended to serve as an introduction to
12 the trial of this case. There are some notebooks
13 right there, if the bailiffs would pass those around
14 with me along with pens.

15 And, ladies and gentlemen, if you would write
16 your juror number on the first page of the notebook
17 so that you will be able to identify which notepad
18 belongs to you. And I will give you some additional
19 instructions regarding note-taking before we conclude
20 the Court's general instructions.

21 As I indicated, what I now will say to you is
22 intended to serve as an introduction to the trial of
23 this case. These remarks are not an instruction on
24 the law. I will instruct you on the law applicable
25 to this case at the end of the trial before you

1 retire to consider your verdict.

2 This is merely an explanation of the procedure
3 that we will follow in the trial of this case so that
4 you may better understand what is happening and how
5 we are proceeding.

6 The defendant is charged by an indictment
7 filed in this court with the crime of felony DUI,
8 which is driving under influence resulting in death.
9 The elements of which will be explained to you at the
10 conclusion of the trial before you begin your
11 deliberations.

12 The indictment is simply the charge by which
13 this case is brought into court, and it is not in any
14 sense evidence of any of the allegations it contains.

15 The defendant has pled not guilty to the
16 indictment. The state therefore has the burden of
17 proving each and every one of the elements of the
18 offense beyond a reasonable doubt. And it will be
19 your duty, ladies and gentlemen, to decide whether
20 the state has met that burden or not.

21 Your purpose as jurors is to find and
22 determine the facts. You are the sole judges of the
23 facts in this case. If at any time I make any
24 comment regarding the facts, you must disregard it.
25 The law does not allow me to have an opinion about

1 the facts of the case, and that is solely a matter
2 for you, the jury, as the fact finders to determine.

3 Ladies and gentlemen, you are to determine the
4 facts from the testimony you hear and the other
5 evidence introduced in court. It is up to you to
6 determine the inferences which you feel may be
7 properly drawn from the evidence. It is especially
8 important that you perform your duty of determining
9 the facts diligently and conscientiously because
10 ordinarily there is no way to correct an erroneous
11 determination of facts made by a trial jury.

12 On the other hand, and with equal emphasis,
13 the same law that makes you the judges of the facts
14 makes me the judge of the law. The law as given by
15 the Court is the only law you may consider. You must
16 accept and follow it, even though you may disagree
17 with me about what the law is or what you think the
18 law should be. I cannot tell you what the facts are,
19 and you cannot disagree with the Court about what the
20 law is or what the law should be.

21 Your responsibility, ladies and gentlemen, is
22 to take the law as the Court instructions, and to
23 apply it to the facts as you find them from the
24 testimony of the witnesses and any other evidence
25 that is introduced into the record. After doing that

1 you will render your verdict, a true and just verdict
2 under the solemn oath that you've just taken as
3 jurors.

4 Ladies and gentlemen, until I advise you to
5 begin your deliberations, you must not discuss this
6 case with anyone, that includes your fellow jurors,
7 your family members or your friends, or anyone who
8 may be involved in this case. After the case is
9 submitted to you, you must discuss it only in the
10 jury room with your fellow jurors.

11 The attorneys and the parties have been
12 advised not to speak to you at all, so if you should
13 see them around the courthouse or in a restaurant or
14 in a parking lot and they don't speak, please don't
15 think they're being unfriendly, they're simply
16 following the Court's instruction.

17 During the trial do not read, watch or listen
18 to any media accounts about this case. That includes
19 anything that may be in the newspaper, that you may
20 hear on the radio, television or Internet. You must
21 also not do any independent research of any type,
22 that means any kind of Google searches or any kind of
23 Internet searches regarding any matter in this case.
24 That includes any factual situations, any kind of
25 media accounts that might be on the Internet, as well

1 as any kind of fact searches such as about a subject
2 matter involved in the case on the Internet.

3 You must not consider anything that you may
4 have read or heard about this case outside the
5 courtroom, whether before or during the course of
6 this trial. It is important, and I would say even
7 essential, that you keep an open mind and not decide
8 any issue in this case until all of the evidence has
9 been presented, the parties have made their closing
10 arguments and I have instructed you on the law
11 applicable to this case.

12 It is your solemn responsibility to determine
13 the guilt or innocence of the defendant. And your
14 verdict must be based solely on the evidence as it is
15 presented to you in this trial, and on the law as I
16 will instruct you during and at the close of the
17 trial.

18 Now in just a moment the solicitor will make
19 what is called an opening statement in which he will
20 explain to you the issues in this case, or at least
21 what he believes the issues to be in this case.

22 The attorney for the defendant may also make
23 an opening statement, although he is not required to
24 do so. What the attorneys tell you during their
25 opening statement is not evidence. It is only their

1 contention as to what they believe the issues are in
2 this case.

3 The evidence in this case will be presented to
4 you by the testimony of sworn witnesses, from the
5 witnesses stand and/or by exhibits that may be
6 introduced into evidence in this case. From time to
7 time during the trial you may hear one of the
8 attorneys say something like, Your Honor, I object.
9 Just as in sports, business or any other structured
10 activity, there are certain rules that we must obey
11 in the presentation of evidence. These rules have a
12 definite purpose, they ensure that you receive the
13 most trustworthy and reliable evidence available.

14 An objection is a procedure that is used to
15 call a possible violation of those rules to my
16 attention as the judge of this court. And for this
17 reason you should not hold an attorney's objection
18 against them, nor should you conclude from the
19 Court's overruling or sustaining an objection that I
20 favor one side or the other.

21 Also from time to time you may hear one of the
22 attorneys say something like, Your Honor, we have a
23 question of law or a matter of law to discuss with
24 you, or they may ask to approach the bench, or I may
25 ask them to approach the bench.

1 The reason we do this is because sometimes
2 when I'm discussing matters of law with the
3 attorneys, it might be necessary for me to make some
4 comment about the facts in connection with ruling
5 whether a particular statute, evidentiary rule or
6 procedural rule applies. And for this reason we
7 exclude you from the courtroom while these
8 discussions take place so that in no way will you be
9 influenced by anything the Court may say or do in
10 connection with the facts of this case.

11 In determining what the true facts are in this
12 case you must decide whether or not the testimony of
13 the witness is believable. It will be my
14 responsibility to rule as a matter of law whether
15 certain testimony is admissible at all or not. But
16 once it is admitted, whether or not you believe it is
17 solely a matter for you to determine.

18 In deciding whether to believe a witness, you
19 have the right to consider the interest of any
20 witness, the bias of any witness, the prejudice of
21 any witness, the opportunity for the witness to have
22 seen the things about which and -- I'm sorry, the
23 opportunity for the witness to have seen the matters
24 and things about which the witness may testify, and
25 the way the witness acts on the witness stand,

1 something we commonly refer to as demeanor.

2 You have a right to consider anything that is
3 in the record that will help you evaluate the
4 testimony of the witnesses. That means that it is
5 your duty, ladies and gentlemen, to pay close
6 attention to the witnesses, to observe them, to
7 listen to them, and to pay close attention to the
8 attorneys and the Court.

9 Although I know it is very difficult, please
10 do not allow your thoughts to wonder. So that at the
11 end of testimony and after arguments of counsel and
12 the instructions on the law as given by the Court,
13 you will then be in a position to determine what the
14 true facts are and to apply the law to those facts
15 and thus render a true and just verdict in this case.

16 As I indicated during the course of this trial
17 you will be given the opportunity to take notes.
18 Note-taking is a privilege that you may choose to
19 exercise or chose not to exercise. Please don't feel
20 compelled to take notes, not everyone finds them
21 helpful to them.

22 If you should decide to take notes, please
23 don't try to record everything that is said, it is
24 virtually impossible. The average person talks at
25 about the rate of 200 to 250 words a minute, although

1 it may not seem that fast. And the only reason the
2 court reporter can do it is because she has a very
3 specialized form of shorthand that probably shortens
4 the words to one letter as she goes along, sometimes
5 two letters, sometimes syllables that only she can
6 read. That's why they are professionals that are
7 trained in the specialized form of shorthand. It
8 enables them the ability to take down the proceedings
9 at a very fast rate.

10 As you know none of us are capable of doing
11 that. So please don't allow yourselves to be
12 distracted in note-taking. As I indicated, it is
13 your responsibility to determine the believability of
14 witnesses, which means you must observe them and you
15 must observe their demeanor. If you allow
16 note-taking to become a distraction to you, it
17 dilutes your powers of observation. So I would ask
18 that you not allow it to become a distraction to
19 you.

20 If you should decide to take notes you may
21 want to make an outline of the main points and
22 arguments that are being made to you. Once you are
23 sent to your jury room to deliberate, allow your
24 notes to refresh your memory. Please do not share
25 your notes with anyone else. They are for your

1 specific and your individual purposes of refreshing
2 your own memory of the topics that you've taken notes
3 on during the course of the trial.

4 During breaks and recesses your notes will
5 have to be left either in the jury room or at night
6 we will secure them. Please rest assured that no one
7 will read your notes and we will at all means protect
8 the privacy of your notes.

9 Ladies and gentlemen, I would remind you that
10 your notes are for your specific and your individual
11 purposes, please use them only for the purpose of
12 refreshing your own memory. And again they are not
13 to be shared with anyone else. And I would remind
14 you that your notes are not considered any more
15 reliable than someone's recollection. Their
16 recollection or memory should be considered just as
17 reliable as notes taken by another juror.

18 Madam Forelady, it will be your added duty to
19 presides in the jury room and to be the jury
20 spokesperson here in the courtroom during jury
21 deliberations. And that's a very complex way of
22 simply saying that if the jury has questions during
23 deliberations, it's your responsibility to write them
24 out, to knock on the door and advise the bailiff that
25 the jury has a question.

1 And it will also be your responsibility to
2 fill out the verdict form, but I will give you
3 further instructions regarding that at the conclusion
4 of the case.

5 I would emphasize to the rest of the panel
6 that a foreperson is merely an administrative
7 function. The foreperson does not have any greater
8 vote or voice than anyone else on the jury, it is
9 purely administrative.

10 In order to preserve everyone's rights I would
11 give each party an opportunity to take exception to
12 anything that the Court has said by way of opening
13 instructions.

14 Are there any exceptions from the state?

15 MR. STUMBO: None from the state, Your Honor.

16 THE COURT: From the defense?

17 MR. WILLIAMS: None by the defense, Your
18 Honor.

19 THE COURT: And also I would add this
20 additional -- I don't know that it's an instruction
21 but more of way of an explanation. You'll see that
22 my law clerk and I both have these little black boxes
23 that are our laptops. And I usually say this during
24 opening jury qualification.

25 The judicial department went paperless about

1 six years ago so we have everything on this little
2 black box. We no longer get anything by mail. For
3 us to communicate with court administration,
4 communicate with our offices, our legal research,
5 everything is on these computers. So if you see us
6 hunched over them typing furiously, it means that we
7 are doing research or something else.

8 And I say that because many years ago when
9 they first gave me a laptop I thought, what am I
10 going to do with this on the bench, what is this
11 going to do with me? Now we have what is called a
12 virtual private network, if it is down I can't
13 function anymore. Shows you how completely dependant
14 we have become on computers.

15 So I say that because oftentimes I have jurors
16 ask, how was your Solitaire game or something. I
17 think people assume that we are doddling with these
18 computers, but we don't even have games on our
19 laptops and all of our memory is taken up with legal
20 research and other things.

21 So I tell you that to know that we are not
22 being inattentive to the proceedings, we are just
23 trying to make efficient use of your time.

24 State ready to proceed?

25 MR. STUMBO: State's ready, Your Honor.

1 THE COURT: You may proceed.

2 MR. STUMBO: May it please the Court.

3 THE COURT: Ladies and gentlemen, I would ask
4 that you give counsel your undivided attention.

5 MR. STUMBO: Choices have consequences.
6 Sometimes choices we make every day have good
7 consequences, they're good choices. Sometimes
8 consequences are horrific.

9 William Martin made a choice the night of July
10 29th, 2007, little over a year ago. A fine lady by
11 the name of Rugsy Stone paid the ultimate consequence
12 for his choice. Family members and friends of Ms.
13 Rugsy Stone are living with those consequences to this
14 day.

15 You see, ladies and gentlemen, that warm night
16 in July of last year, William Martin made a choice to
17 get behind the wheel of his Dodge pickup truck. Made
18 that choice after he had been under the influence of
19 alcohol and of other narcotics.

20 Ms. Stone was leaving her granddaughter's
21 house that night. She had just been over there to
22 visit her great granddaughter. Her granddaughter
23 Christy lived on Mack Street down at Gadsden, or
24 lived there last year, she has moved since. Ms.
25 Stone was riding in the passenger seat with her

1 grandson TJ.

2 TJ pulled out of Christy's driveway, about 100
3 feet down the road here comes the battering ram
4 driven by that man, crushed the back of that vehicle,
5 flips it over, caused significant injuries to Ms.
6 Ruggy Stone.

7 Now fortunately she didn't pass that night.
8 She was still with us for another two and a half
9 months. Her family was able to spend some time with
10 her in the hospital between that night and the night
11 in October when she passed away. Make no mistake,
12 ladies and gentlemen, she passed away because of his
13 choice.

14 Now it's Mr. Johnson and I's job in this case
15 to prove this case beyond a reasonable doubt. That's
16 kind of a legal term. Sometimes it's confusing in
17 court about what exactly does that mean, proof beyond
18 a reasonable doubt. There's nothing magical or
19 mysterious about that term, ladies and gentlemen, I
20 want you to know that. The Judge is going to tell
21 you what reasonable doubt is, what the law defines it
22 to be. It is essentially proof, ladies and
23 gentlemen, that leaves you convinced, firmly
24 convinced of the defendant's guilt. That's it,
25 firmly convinced.

1 After you've heard all the evidence and seen
2 all the exhibits Mr. Johnson and I intend to put
3 before you in this case, and you are firmly convinced
4 that William Martin got drunk, got behind the wheel
5 of a car, caused an accident that caused somebody to
6 die, then he's guilty. Remember that. It's not
7 complicated, it's not mysterious, it's not magical,
8 if you are firmly convinced, he's guilty.

9 Mr. Johnson and I, we gladly bear that burden
10 in this case. We believe after the evidence has been
11 put before you you'll have no doubt that man is
12 guilty.

13 And what do we intend to put before you? I
14 will give a little roadmap of what you are going to
15 hear in this case. First and foremost you're going
16 to get to hear from TJ, Ms. Stone's grandson that was
17 driving the Blazer that got flipped over.

18 Fortunately he did not sustain, miraculously he did
19 not sustain, any serious injuries but he was there.
20 He's going to tell you what happened that night. You
21 are going to get to see that night through TJ's eyes.

22 You're going to hear from Christy. Christy
23 came out when this collision happened essentially
24 right in front of her house out in the roadway.
25 You're going to get to hear Christy's story of what

1 she saw her grandmother go through that night. You
2 are going to get to hear from Christy's boyfriend
3 Charlie who was also there, what he saw and his
4 confrontation with Mr. Martin that night at the crash
5 scene.

6 You'll get to hear from Terry, Sr., TJ's
7 father, Ms. Stone's son, who was there at the crash
8 scene shortly after the accident and was with her
9 every day in the hospital until she passed away.

10 After that, ladies and gentlemen, you'll get
11 to hear from State Trooper Kevin Caldwell is here
12 with us today. He was the investigator on the scene.
13 You are going to get to hear what he did, how --
14 steps he took in the investigation of Mr. Martin.

15 You are going to get to hear from two
16 individuals that work with highway patrol who were
17 accident reconstructionists called the MAIT team.
18 You are going to get to hear these guys and what they
19 have to say in terms of how this accident happened,
20 how fast the cars were going.

21 You are going to get to hear from three
22 medical doctors in this case, ladies and gentlemen,
23 who treated Ms. Stone. The emergency room physician
24 who saw her when she came into the hospital emergency
25 room downtown in Richland. You are going to get to

1 hear from Dr. Bynoe, trauma surgeon at Richland. He
2 was the one who did the main surgeries on Ms. Stone
3 after the accident.

4 Ultimately you are going to hear from Dr. Dan
5 Love who works down at Baptist downtown where Ms.
6 Stone was transferred to for the last eight weeks of
7 her life. You are going to get to hear Dr. Love's
8 opinion as to why Ms. Stone died.

9 One of the things that Mr. Johnson and I have
10 to prove to you in this case is that Ms. Stone died
11 because of the accident. That she died ten weeks
12 later, ladies and gentlemen. You are going to get to
13 hear from the doctor who's going to tell you she died
14 because of the injuries she got in this wreck.

15 After you hear from them, you are going to
16 hear from the SLED folks who tested some blood that
17 was involved in this case and what their findings
18 were as to what Mr. Martin's state was that evening.

19 After you hear all of these witnesses, ladies
20 and gentlemen, you are going to see a clear picture
21 come in front of you. There is going to be but one
22 verdict you can reach, William Martin is guilty.

23 I'm going to come back at the end of this
24 case, we are going to wrap up all that evidence and
25 that picture is going to be clear as a bell, ladies

1 and gentlemen, William Martin is guilty of felony
2 driving under the influence resulting in death.

3 Thank you for your attention, thank you for
4 your time, look forward to being with you the next
5 few days.

6 THE COURT: Mr. Williams.

7 MR. WILLIAMS: May it please the Court.

8 THE COURT: You may proceed.

9 MR. WILLIAMS: Madam Forelady, ladies and
10 gentlemen of the jury, I first want to thank you for
11 being here. I heard the solicitor raise the issue of
12 choice and indicated that we are here as a result of
13 my client, Shoney, exercising a choice.

14 Well obviously I would disagree with that to
15 begin with. But it reminds me that you are here
16 through no choice. You received a summons to be here
17 for jury duty, you did exactly what you were ordered
18 to do. You came here because you are required to be
19 here by the Court.

20 And why should I say because that sounds ugly
21 like you were ordered to be here. Well it's
22 important to me because for the system to work we
23 have to know that our juries are number one
24 responsible, and number two that they're going to
25 apply the law as the law is given to them by the

1 Judge.

2 So that means that regardless of what story
3 you may hear, what system that the solicitor has to
4 give you in his opening statement to play on your
5 heartstrings to get you leaning one way or the other,
6 we have to know that you 12 plus 1 juror have no
7 choice. Your choice is to be a good juror because
8 you are required to be a good juror. You are sworn
9 in to be a good juror.

10 What that means is that means listening to the
11 witnesses that testify, using all of the analytical
12 strength that you have -- because you come from
13 different walks of life but you still have common
14 sense -- and determine what the truth is from that
15 witness or from those witnesses or from the lack of
16 witnesses.

17 But you see, that is what your no choice is,
18 you don't have a choice to just ignore the truth.
19 You don't have a choice of just saying, well, you
20 know I like the other side better than the other
21 side. You have no choice. You have to analyze this
22 evidence, and I believe you will. And you will make
23 a determination as to what the facts are.

24 Now once you determine the facts, then the
25 Judge, the Judge has no choice, she has to give you

1 the law, the correct law. Just like I have no
2 choice, I have to represent my client.

3 So we don't really a choice. Knowing that we
4 must do the best that we can to live up to our sworn
5 oath. Now that means that simply because we know
6 that it is sympathetic to have someone seriously
7 injured, we know it's sympathetic when someone loses a
8 loved one, so we all know that's not a good thing but
9 we don't let that influence our intelligence,
10 decisiveness in regards to looking at that evidence.

11 Because once you hear the evidence in this
12 case I think that you'll determine that the
13 unfortunate incident that happened back in 2007 was
14 that it was an accident. It was an accident and the
15 results of the accident are not directly related to
16 the accident.

17 You've learned it took two and a half months
18 before the elderly lady passed away. But you're
19 going to hear about a lot of other things, things
20 that may have happened to her while she was in the
21 hospital, things that she had happen to her before
22 she was in the hospital.

23 But to get to any of that you have to first
24 find that my client was driving improperly was the
25 cause of something. So you've got a lot of hurdles

1 and a lot of things that you have to look at before
2 you can simply take out your tape and just cover the
3 whole item and say, well, the easy thing here is just
4 to find him guilty because you have no choice.

5 I will welcome you 12 jurors, and the 13th
6 juror if one falls out, and I think that you will
7 make excellent choices in having no choice. Thank
8 you.

9 THE COURT: Ladies and gentlemen, we are going
10 to take advantage of this break to take our luncheon
11 recess. We are going to break until 2:15, that gives
12 you about an hour and 10 minutes for lunch.

13 During this break please do not discuss this
14 case among yourselves. Please don't talk with anyone
15 else. Please don't have any contact with anyone in
16 or about the courthouse. You will return directly to
17 the jury room, the bailiffs will show you how to do
18 that. And please be punctual, we will begin promptly
19 at 2:15.

20 Have a good lunch and please leave your
21 notepads in your seats. We will see you at that
22 time.

23 (Whereupon, the jurors exit the courtroom.).

24 THE COURT: Is there anything before we break
25 for lunch from the state?

1 MR. STUMBO: None from the state, Your Honor.
2 Just logistically, though, I have got four lay
3 witnesses that I intend to call this afternoon,
4 family members. And then follow that up with Trooper
5 Caldwell who will be a fairly lengthy witness in the
6 case. My MAIT team guys, experts, physicians are not
7 going to be here until tomorrow, most likely. I can
8 get the MAIT team guys here but I don't know. I have
9 five witnesses.

10 THE COURT: You'll have to make that judgment
11 call. I'm not going to break until about 5:00 or
12 5:15. You have to make that call of how many people
13 you think you can get in during that timeframe.

14 MR. STUMBO: I guess what I'm saying, I may
15 only have five. We may get those done before 5:00.

16 THE COURT: If you think -- I'm not going to
17 break at 4:00. So if you need to get you some more
18 witnesses that's -- like I said, I'm leaving that to
19 your judgment as to how many more witnesses you think
20 you need to call to get us through five o'clock.

21 MR. STUMBO: Okay. Yes, ma'am.

22 THE COURT: Anything from the state -- I mean
23 from the defense before we adjourn for lunch?

24 MR. WILLIAMS: None from the defense other
25 than the fact --

1 THE COURT: Is your client out on bond?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: He is going to have to be taken
4 into custody. Once the case is called any obligation
5 the bondsman has is terminated.

6 MR. WILLIAMS: Yes, ma'am.

7 THE COURT: Unless he gets him to write a new
8 bond and most defendants don't want to do that
9 because it costs a whole new fee.

10 All right, see you all after lunch, have a
11 good lunch.

12 (Whereupon, a recess was taken.)

13 THE COURT: One of the jurors apparently told
14 the foreperson that, how do I put it very succinctly,
15 apparently after jury selection he seemed to be
16 having a reoccurring memory about a bad experience he
17 had with a family member. I don't know all of it,
18 but I think we need to bring him out here and voir
19 dire him.

20 He mentioned it to the foreperson who then
21 told the bailiff. The bailiff instructed them both
22 not to discuss it in the jury room. I have no
23 concerns that it has not been discussed among the
24 rest of the panel, but he did mention it to the
25 foreperson and she basically, you know, told him not

1 to give her any detail, that she would advise the
2 court. And then as I indicated the bailiff
3 instructed them both not to discuss it any further.

4 Is there any exception to us bringing out the
5 juror and voir diring him and finding out exactly,
6 because I'm getting it secondhand and I need to get
7 it firsthand.

8 MR. STUMBO: No problem.

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: Please bring in 129, John M.
11 Pierce, who was the ninth juror picked.

12 (Whereupon, the juror enters the courtroom.)

13 THE COURT: Yes, sir, how are you?

14 A JUROR: Good.

15 THE COURT: Tell us your name and your juror
16 number.

17 A JUROR: John Pierce, juror 129.

18 THE COURT: Okay, sir, tell us what your
19 concerns are?

20 A JUROR: Well, I want to be fair and
21 objective here.

22 THE COURT: Yes, sir.

23 A JUROR: But I had a similar experience, you
24 know, where I was in a car wreck with my grandfather
25 and he was killed.

1 THE COURT: But it was not involving alcohol?

2 A JUROR: Yeah, it was.

3 THE COURT: Now when I asked that question is
4 there a reason you did not stand up?

5 A JUROR: Maybe I didn't hear you.

6 THE COURT: It's possible, it's a big room,
7 sometimes it echoes. How long ago was that?

8 A JUROR: When I was 15. So a long time ago.

9 THE COURT: Let me ask, sir, as a result of
10 this experience do you feel you can remain fair and
11 impartial?

12 A JUROR: Well, I think I can.

13 THE COURT: Well, there is no right or wrong
14 answer but I do need a yes or a no answer.

15 A JUROR: Okay.

16 THE COURT: And only you can search yourself,
17 tell us how -- again, there is no right or wrong
18 answer. I emphasize that. You just have to search
19 yourself and give us an answer you feel mirrors how
20 you feel you can -- if you can objectively listen to
21 the evidence, if you feel you can render a verdict
22 based solely on that evidence.

23 In other words if you can come to this court
24 with a black slate basically and disabuse your mind
25 of that experience and render a fair and just

1 verdict?

2 A JUROR: No, I cannot.

3 THE COURT: Sir, if you could step out into
4 the hall for me with the bailiff for just a moment.

5 A JUROR: Sorry.

6 THE COURT: No, don't apologize.

7 (Whereupon, the juror exits the courtroom.)

8 THE COURT: Okay. Is there any exception to
9 excusing the juror and seating the alternate from the
10 state?

11 MR. STUMBO: Sounds like a good plan to me,
12 Judge.

13 MR. WILLIAMS: None by the defense, Your
14 Honor.

15 THE COURT: I think sometimes jurors aren't --
16 they aren't paying attention. I don't think he was
17 deliberate in any way. I really frankly --

18 MR. WILLIAMS: He seems sincere.

19 THE COURT: Yes, and I appreciated his candor.
20 If he hadn't told us we would not have known.

21 MR. WILLIAMS: Your Honor, there is one other
22 item that the solicitor and I have discussed.

23 THE COURT: Dealing with this juror?

24 MR. WILLIAMS: No.

25 THE COURT: Let me deal with this juror first,

1 then we will deal with that.

2 MR. WILLIAMS: Okay.

3 (Whereupon, the juror enter the courtroom.)

4 THE COURT: Sir, based on what you've
5 represented to the Court, and again I'd like to thank
6 you on behalf of the state and the defense for your
7 candor. If you had not told us, we certainly would
8 have had no way of knowing that information so I
9 appreciate your candor with the Court.

10 We are going to excuse you from the trial of
11 this case. However I need you to call after 6:00 for
12 further instructions or check online. Thank you very
13 much. You have a great day.

14 A JUROR: Thank you.

15 (Whereupon, the juror exits the courtroom.)

16 THE COURT: So we will seat number 86, pray
17 nothing else happens.

18 Now you said there's another matter?

19 MR. WILLIAMS: Yes, Your Honor. The solicitor
20 and I have talked about sequestration and you'll note
21 we have -- already --

22 THE COURT: Of the witnesses?

23 MR. WILLIAMS: Of the witnesses. They are
24 sequestered as of right now, Your Honor.

25 THE COURT: You're doing that by agreement,

1 correct?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: Any other matters that we need to
4 address before bringing in the panel?

5 MR. STUMBO: None from the state, Your Honor.

6 MR. WILLIAMS: None from the defendant, Your
7 Honor.

8 THE COURT: Please bring in the panel.

9 (Whereupon, the jurors enter the courtroom.)

10 THE COURT: Ladies and gentlemen, I hope that
11 you all had a nice luncheon recess. We will now
12 resume the trial.

13 You may proceed.

14 MR. STUMBO: Thank you, Your Honor, may it
15 please the Court. State would call TJ Shealy to the
16 to the stand.

17 THE COURT: Thank you.

18 ~~MR. TJ SHEALY,~~

19 after having first been duly sworn to state the
20 truth, the whole truth and nothing but the truth,
21 testified on his oath as follows:

22 THE COURT: Mr. Shealy, I need you to speak
23 directly into the microphone.

24 Thank you. You may proceed, Mr. Stumbo.

25 MR. STUMBO: Thank you, Judge.

1 THE COURT: You're welcome.

2 DIRECT EXAMINATION

3 BY MR. STUMBO:

4 Q you go by TJ?

5 A Yes, sir.

6 Q TJ, how old are you?

7 A ~~18~~.

8 Q what is your birthday?

9 A 4/13/90.

10 Q So you are almost 19?

11 A Yes, sir.

12 Q Where do you live right now?

13 A I live with my dad on Mimosa.

14 Q His name is Terry?

15 A Yes, sir.

16 Q You say Mimosa, what town is that in?

17 A Gadsden.

18 Q Where are you working right now?

19 A I'm a cook at Ruby Tuesday.

20 Q How long have you had that job?

21 A Little over a year now.

22 Q Okay. And where did you graduate from high
23 school?

24 A Swansea High School.

25 Q This past year?

1 A Yes, sir.

2 Q Anybody else live with you and your dad?

3 A Just me, my dad, and his wife.

4 Q Now I am going to take you back to July of
5 last year. Where at that time was your sister
6 living?

7 A 536 Mack Street.

8 Q What is your sister's name?

9 A Christy.

10 Q And who lived with Christy?

11 A Now just her boyfriend Charlie and her two
12 kids and Charlie's kids.

13 Q Back on July 29, the day of the accident, what
14 were you doing that day?

15 A We had just come back from my orientation at
16 Ruby Tuesdays. And we stopped back by my sister's on
17 the way home because my grandma wanted to see her
18 great granddaughter.

19 Q When you say we, your grandmother was with
20 you?

21 A Yes, she rode with me. I did not have my
22 license at the time. She rode with me so I could
23 drive to my orientation.

24 Q You had your permit where you could drive with
25 an adult?

1 A Yes, sir.

2 Q And so she went with you to Ruby Tuesday?

3 A Yes, sir.

4 Q What is your grandmother's name?

5 A Rugsy.

6 Q After you all left Ruby Tuesday, which Ruby
7 Tuesday was that?

8 A The one on ~~Number 1 West Columbia~~.

9 Q Down by ~~Walmart?~~

10 A Yes, sir.

11 Q You still work there?

12 A Yes.

13 Q Where did you all go when you left there?

14 A We went to my sister's house because she
15 wanted to see her granddaughter. Her great
16 granddaughter on her birthday.

17 Q You were driving?

18 A Yes, sir.

19 Q Do you remember about what time of day this
20 was?

21 A Probably about ~~5:00, 6:00ish~~ when we got
22 there.

23 Q Okay. And you said your sister had two
24 children. How old are those kids?

25 A She has one that is seven and one that is

1 almost two.

2 Q What are their names?

3 A Lorianna and Charlie.

4 Q Charlie is the baby?

5 A Yes, sir.

6 Q Is that why you all went over there?

7 A Yes.

8 Q How long do you think you all ~~stayed?~~ Just an
9 estimate.

10 A ~~couple of hours, hour and a half maybe.~~

11 Q This was in the summertime, right?

12 A Yes, sir.

13 Q So was it dark when you all left?

14 A ~~It wasn't dark but it was turning like the sun~~
15 was going down, but it wasn't quite down yet.

16 Q Do you remember what time that was, 7:00,
17 8:00?

18 A ~~About 7:30~~ something like that.

19 Q All right. Now when you were leaving, where
20 were you going back to?

21 A ~~I was going to take my grandma home and then~~
22 ~~going home because my grandma lived right next to my~~
23 ~~dad's house. So I was going home and taking her~~
24 home.

25 Q She lived on Mimosa too?

1 A Yeah, she lived at 707 which is right
2 next-door.

3 Q All right. I'm going to show you something
4 here. Bear with me, TJ.

5 MR. WILLIAMS: May we approach, Your Honor?

6 THE COURT: You may.

7 (Whereupon, a discussion was held at the bench
8 off the record.)

9 THE COURT: You may proceed.

10 MR. STUMBO: Thank you, ma'am.

11 If I may approach the witness, Your Honor?

12 THE COURT: You may.

13 Q (By Mr. Stumbo) TJ, I'm going to be hand you
14 this pointer here. Can you see what is on the screen
15 here?

16 A Yes, sir.

17 Q Is there any driveway up there that looks like
18 it's relevant to where you were driving the car that
19 night?

20 A It looks like -- like close?

21 Q Right.

22 A Yes, sir.

23 Q Now I'd like for you to point where you turned
24 out onto the road from your sister's house.

25 A Okay.

1 Q So that label number one would represent your
2 car?

3 A Yes, sir.

4 Q And when you pulled out, this is Mack Street,
5 is there anything unusual when you pulled out of the
6 driveway? Did you see any cars coming?

7 A No, sir.

8 Q Did you check both ways to see if there were
9 any cars coming?

10 A Yes, sir.

11 Q When did you realize something was wrong?

12 A When I looked in my rear-view mirror after I
13 pulled out and I saw a white pickup, flying towards
14 me. And then that's when I realized he wasn't going
15 to stop and then he hit us.

16 Q About how far had you gotten out onto the
17 roadway when you noticed the truck bearing down in
18 the rear-view mirror?

19 A I would say right up in there.

20 Q Do you know about how fast you were driving?

21 A Probably going about 20, maybe just hit second
22 gear.

23 Q What made you notice the car coming? Did he
24 have his headlights on?

25 A No, sir? I always check my mirrors and stuff

1 just so I'm aware of what is going on.

2 Q Did you think he was going to stop or slow
3 down?

4 A At first, yeah, I thought he was. But then he
5 just kept driving.

6 Q Is there any way you could get out of the way?

7 A No, sir.

8 Q Tell us what it felt like when it hit your
9 car.

10 A It was real quick and everything was so fast.
11 All I remember was holding onto the steering wheel.
12 And that was it.

13 Q Where did your car ~~come to a rest~~ after you
14 were hit?

15 A In the ditch upside down on the -- way over
16 here. Right there.

17 Q On ~~the left side of the road~~?

18 A Yes, sir.

19 Q Were you able to talk to your grandmother
20 while you all were upside down on the car?

21 A I tried to talk to her at first when I got out
22 but she was unconscious, right after I got out of the
23 car. So I just kept trying to talk to her and then
24 she finally woke up so I could talk to her.

25 Q Were you hurt in any way? Can you tell if you

1 had any injuries or not?

2 A No, sir. My neck was a little sore but that
3 was about it.

4 Q How were you able to get out of the vehicle?

5 A My window was broken. I just crawled out of
6 my window.

7 Q Was your grandmother still restrained? Was
8 she in a seatbelt?

9 A Yes, she was in a seatbelt stuck upside down.
10 Her head was actually on top of the vehicle kind of
11 pinned in. Because when it flipped on her side, ~~her~~
12 ~~side got caved in~~ and she was stuck in the seat
13 upside down.

14 Q TJ, how were you able to talk to her? What
15 side of the car did you talk to her? Did you go to
16 the other side?

17 A Yes, sir. After I got out --

18 MR. WILLIAMS: Objection, leading, Your Honor.

19 THE COURT: Sustained, leading. Rephrase.

20 Q (By Mr. Stumbo) Which side of the car did you
21 talk to her on, TJ?

22 A On her side of the vehicle, passenger side.

23 Q And you said she was unconscious when you
24 first got out of the car?

25 A Yes.

1 Q She was able to communicate with you after
2 that?

3 A Barely. She was just telling me to get her
4 help and get her out.

5 Q Did anybody else come up on to the scene where
6 you all were at that point?

7 A My sister, Charlie and some other people that
8 I don't know.

9 Q When you say Charlie, not baby the Charlie,
10 what Charlie are you talking about?

11 A Christy's boyfriend Charlie.

12 Q ~~Anybody try to call 911 at that point?~~

13 A ~~Yes, sir, my sister called 911.~~

14 MR. WILLIAMS: ~~Objection, Your Honor, hearsay.~~

15 THE COURT: Basis. No speaking objections.

16 MR. WILLIAMS: It's speculation.

17 ~~THE COURT: He observed it. Overruled. It's,~~

18 ~~based on personal observation and the appropriate~~

19 ~~foundation has been established. Overruled.~~

20 Q (By Mr. Stumbo) Now, TJ, who were the first
21 people to get there? Was there law enforcement, EMS,
22 who came there first?

23 A I think the first people there were EMS. I
24 don't remember who was exactly first because I was
25 over there with my grandmother. So I think the first

1 person that was there was the state trooper.

2 Q Were you taken anywhere from the scene?

3 A Was I taken anywhere?

4 Q Yes.

5 A ~~Yes, sir, I rode with the paramedics in the~~
6 ~~ambulance with my grandma in the back.~~

7 Q When you got to the hospital, were you in the
8 same place where your grandmother was or did they
9 take you somewhere else?

10 A They took her first and then they took me out,
11 gave me some x-rays and stuff to make sure I was
12 okay.

13 Q Were you okay?

14 A Yes, sir.

15 Q After that night did you see your grandmother
16 again?

17 A Yes, sir.

18 Q Where did you see her?

19 A At the hospital.

20 Q ~~Did she ever come home?~~

21 A ~~Uh-uh.~~

22 Q ~~Do you remember when she passed?~~

23 A Do I remember when? ~~Yes, sir, because she was~~
24 ~~supposed to come home the next morning and she ended~~
25 ~~up passing that night before, October 12th.~~

1 Q Family there?

2 A Yes, sir. I wasn't there.

3 Q Still have clear memories of that night?

4 A Yes, sir.

5 THE COURT: Be very careful.

6 MR. STUMBO: Yes, ma'am.

7 Q (By Mr. Stumbo) When I say that night, I mean
8 the night of the accident which you told us about?

9 A Yes.

10 MR. STUMBO: No further questions at this
11 time.

12 THE COURT: Any questions of the witness?

13 MR. WILLIAMS: Yes, Your Honor.

14 ~~CROSS-EXAMINATION~~

15 BY MR. WILLIAMS:

16 Q Now you go by the name of TJ; is that correct?

17 A Yes, sir.

18 Q So we can establish a little bit more clearly,
19 the date we are referring to when this accident
20 happened was when?

21 A The date?

22 Q Yes.

23 A July 29th.

24 Q Of?

25 A 2007.

1 Q 2007. So that would be what, a year and --

2 A A couple of months ago.

3 Q A couple of months ago?

4 A A year and a couple of months.

5 Q A year and a couple of months; July, August,
6 September, October, November, December? Maybe four
7 months?

8 A Four.

9 Q Okay. Well now at the time that this occurred
10 I think you said that there was some issue with
11 driving so you had to have your grandmother ride with
12 you; is that correct?

13 A Yes, sir. I couldn't get nobody to take me up
14 for my orientation at work. My grandmother said she
15 would ride with me so I could drive up there.

16 Q Well, now, was there some issue about did you
17 not have a driver's license or something?

18 A I had my permit.

19 Q You had a permit at the time?

20 A Yes, sir.

21 Q And how old were you at the time?

22 A ~~17~~.

23 Q 17. And how long had you had your permit?

24 A I'm not sure exactly. I don't remember how
25 long I had it before that.

1 Q All right. So was this your grandmother's
2 car?

3 A It was actually my dad's.

4 Q So how did that work? Did you go -- because
5 you couldn't drive without having somebody in the car
6 with you, right?

7 A Yes.

8 Q So did you go across to your grandmother's
9 house and get her and then walk back to your house
10 and get in the car and drive from that location?

11 A No, I got my grandmother to come with me, then
12 we left.

13 Q Where did she live in relationship to your
14 house?

15 A Like 10 feet away.

16 Q All right, so you went to her house, she lived
17 next door?

18 A Yes.

19 Q Got her, got in your dad's car, told your dad
20 where you were going, right?

21 A Yes, sir.

22 Q And then drove from that location on Mimosa
23 down to Mack Street. How far was that?

24 A First we went to work.

25 Q Went to work?

1 A And then on the way back she wanted to see her
2 great granddaughter so we stopped by my sister's on
3 the way back.

4 Q All right. And that is on Mack Street?

5 A Yes, sir.

6 Q Now you've identified this chart which is
7 showing up here. And you pointed out where you saw
8 this white truck coming from. Well now, that street
9 doesn't really look like that, does it?

10 A Not exactly like that.

11 Q And tell the jury why it doesn't look exactly
12 like that.

13 A Because it's not as straight.

14 Q It's curvy, isn't it?

15 A Yes.

16 Q It's curvy, it's got hills and curves and you
17 cannot see straight going down that road, can you?

18 A You can see straight.

19 Q You can see straight? Well, let me ask this.
20 Now it's marked here private drive. Is there
21 anything on this particular chart that would indicate
22 to you that that's where your sister lives?

23 A No, sir.

24 Q It's not marked on here where your sister
25 lives, is it?

1 A No.

2 Q When you were going over your testimony with
3 the solicitor he showed you a chart and he told you
4 he wanted you to testify that that was the private
5 drive that you pulled out of?

6 A Yes, sir.

7 Q So there is nothing demonstrative about that
8 being the location where you came from. Now the
9 private drive that you came out of was actually a
10 dirt drive, wasn't it? And it goes downhill, doesn't
11 it?

12 A Yes, sir.

13 Q And it's actually curved, isn't it?

14 A ~~Up further, yes.~~

15 Q So actually this private drive is kind of
16 going like that, it goes downhill, it's a dirt drive
17 and you have some blind areas when you pull out,
18 don't you?

19 A No, sir. There is a corner further down that
20 you can't see right over here, but ~~you can see~~
21 ~~everything that is close.~~

22 Q You can see everything that's close?

23 A ~~That's around the corner, yeah.~~

24 Q And how close is close to you when you pull
25 out of the driveway?

1 A Couple hundred foot.

2 Q You can see up to 200 feet?

3 A I don't know exactly how far it is.

4 Q How far can you see when you pull out of the
5 driveway?

6 A As far as my eyes can see.

7 Q As far as your eyes can see?

8 A Yes, sir.

9 Q So that means you can see a mile?

10 A Maybe.

11 Q Two miles?

12 A Maybe.

13 Q Three miles?

14 A Maybe.

15 Q Five miles?

16 A No.

17 Q Okay. Now when you pull out of that driveway,
18 you pointed up here on this chart as to the location
19 as to where you turned around and looked and saw this
20 white truck speeding in behind you?

21 A I said about somewhere in there. I did not
22 say it was exactly.

23 Q Well, how did you determine that that was the
24 spot where you saw this white truck coming up on you?

25 A I just assume because at the time I pulled out

1 and I was driving.

2 Q Was there anything on this piece of paper here
3 that would indicate feet, miles, yards, anything?

4 A No, sir.

5 Q So how is it that you can pick out a spot up
6 here on this chart and say, well, that's where you
7 turned around and saw that he was pulling out? Or
8 saw somebody behind you speeding? You cannot really
9 say that, can you?

10 A Can't, but --

11 Q Because it's not true?

12 A It's not drawn to scale.

13 Q You've got to have a scale, don't you?

14 A (Affirmative head shake.)

15 Q Why did you say that?

16 A I just said it because it's about that
17 distance. I don't know exactly for sure of course,
18 but, just for a reference, yeah.

19 Q All right. But when you pulled out, let me
20 ask you some more about that day. Whose birthday was
21 it?

22 A My grandma's.

23 Q And what day of the week was it?

24 A I don't remember exactly what day.

25 Q Wouldn't that be important? I mean if it were

1 a Sunday you would remember if it were a Sunday,
2 wouldn't you?

3 A Probably.

4 Q So since you don't remember it as being a
5 Sunday then it probably wasn't a Sunday, was it?

6 A Not that I remember.

7 MR. STUMBO: Objection. Your Honor,
8 argumentative.

9 THE COURT: Basis.

10 MR. STUMBO: Argumentative. He is putting
11 words in his mouth.

12 THE COURT: No speaking objections.
13 Overruled, I'm giving him some latitude.

14 Sir, please answer the question yes or no and
15 then you may explain your answer.

16 Q (By Mr. Williams) Was it on a weekend?

17 A I don't remember.

18 Q Were you still in school at this time?

19 A Yes, sir. It was over the summer, but it was
20 before my senior year.

21 Q Now do you recall what the weather was like?

22 A Weather was pretty good.

23 Q So you don't remember what day of the week it
24 was but you know that the weather was good. Is that
25 right?

1 Q So when you said speeding up on you, you,
2 really couldn't tell that he was speeding up on you,
3 all you could tell was that he was getting closer to
4 you; is that correct?

5 A Yes, sir.

6 Q You couldn't tell how fast he was going, could
7 you?

8 A I couldn't say exactly but I know he wasn't
9 going the speed limit because that's too fast.

10 Q How fast were you going?

11 A Probably about 20 or 25.

12 Q You were going 20 and what's the speed limit
13 there?

14 A I have no idea. Probably right there on that
15 point on that street, 55.

16 Q 55. So the speed limit is 55, you are going
17 20, and this car is coming up on you; is that
18 correct?

19 A Yes, sir.

20 Q Now that doesn't necessarily mean that he is,
21 exceeding the speed limit, does it?

22 A It doesn't.

23 Q So you really don't know how fast he was
24 going, all you can say is that he was closing in on
25 you; is that correct?

1 A Very quickly, yes, sir.

2 Q All right. Now where was he, referring to the
3 truck, because you couldn't see who was driving it,
4 could you?

5 A No, sir.

6 Q Where was the truck shortly before the
7 collision?

8 A Shortly before the collision?

9 Q When you first saw it.

10 A When I first saw? Where was it at? I guess
11 right there.

12 Q Right there?

13 A Yes, sir.

14 Q So that would be before you get to the private
15 drive. Now is there a curve there?

16 A Where the car is? Right there?

17 Q Yes. I'm asking.

18 A Yes, sir. There is a curve right after that.

19 Q There is a curve after it or before that?

20 A Right after where number two is, so I guess
21 that means after.

22 Q When you say after you mean between number two
23 and number one?

24 A No, before.

25 Q Before number two. So what you are saying is

1 there is a curve somewhere below here?

2 A Yes, sir.

3 Q ~~So you would have seen him after the curve;~~ is
4 that correct?

5 A Yes, sir.

6 Q And you saw him because you looked around and
7 saw him or you looked in your rear-view mirror or
8 what?

9 A why did I see him?

10 Q Yeah.

11 A I was looking in my mirror.

12 Q All right. There is no noise, was there?

13 A No, sir.

14 Q And you were only going 20 miles an hour?

15 A Somewhere around there, yes, sir.

16 Q ~~How is it that you know that you were only~~
17 going 20 miles an hour?

18 A ~~Because I just pulled out.~~ I wasn't going
19 really fast. And I did not know my speed limit at
20 all times.

21 Q And how far down the road had you gotten
22 before you pulled out?

23 A How far down the road I got before I pulled
24 out?

25 Q I mean before you actually saw the vehicle

1 come out?

2 A How far?

3 Q Uh-hum.

4 A I'm not sure exactly how far feet-wise or
5 distance-wise.

6 Q Well, that's important, isn't it?

7 A Yes, sir.

8 Q Do you think it might have been 20 feet?

9 A I think more.

10 Q What did you think it was?

11 A I'd say 50 or 75 maybe.

12 Q So you saw the white truck when you were 50,
13 feet down the road going 20 miles an hour?

14 A Yes, sir.

15 Q Okay. And then how long was it from the time
16 in which you saw the white truck was it before you
17 were hit in the rear end?

18 A Not very long.

19 Q Seconds?

20 A Seconds.

21 Q Five seconds?

22 A I would say more about 10.

23 Q And that's counting 1-Mississippi,
24 2-Mississippi, 3-Mississippi, 4-Mississippi,
25 5-Mississippi, 6-Mississippi, 7-Mississippi,

1 8-Mississippi, 9-Mississippi, 10-Mississippi?

2 A Yes, sir.

3 Q Counting that slowly?

4 A Yes, sir.

5 Q So you watched the truck for a long time?

6 A I mean I did not watch it the whole time, but
7 I saw it coming, yes, sir.

8 Q Now when the vehicle struck your vehicle, it
9 pushed your vehicle where?

10 A Pushing us off the road over here. And then
11 we ended up flipping right there and going off into
12 the ditch upside down.

13 Q So when you flipped you went to the right-hand
14 side off the road?

15 A No, sir, I went to the left.

16 Q Okay, I'm sorry, I was watching your red dot.
17 Did you not point over here with the red dot?

18 A I'm sorry. We went like this over to the left
19 side.

20 Q So you never went to the right?

21 A No, sir.

22 Q And you flipped?

23 A Yes, sir.

24 Q And when you flipped did you go head over tail
25 or did you go sideways?

1 A Sideways on the passenger side.

2 Q All right. Now obviously after this happened
3 the way you describe it, you got out the window and
4 then what did you do?

5 A Started talking to my grandma trying to see if
6 she was okay.

7 Q Then when did you do?

8 A I kept doing that until the paramedics got
9 there.

10 A Well, now you've already testified that
11 someone called 911?

12 A Yes.

13 Q Now did you have a cell phone with you in the
14 car?

15 A It wasn't be my phone, it was my dad's. It
16 was a prepaid phone.

17 Q So there was a prepaid phone in the Jimmy that
18 you had?

19 A Yes, sir.

20 Q So you called 911?

21 A No, sir, I did not call.

22 Q So when you testified earlier that someone
23 called 911, I think you said your sister, was she
24 there?

25 A Yes, sir, she was.

1 Q I'm sorry?

2 A Yes, sir, I think she was there.

3 Q Well, let's don't leave out parts. You had
4 the wreck, you talked to grandma, what happens next?
5 Somebody comes upon the scene?

6 A Yes, sir.

7 Q Who comes upon the scene?

8 A ~~I guess my sister was the first person I saw.~~

9 Q Your sister. Okay. Now before the wreck
10 happened where was your sister?

11 A She was walking inside because she had just
12 told me bye.

13 Q So she was inside the house at her house; is
14 that correct?

15 A No, sir. I didn't say she was inside. I said
16 she was probably walking inside.

17 Q Probably waking. You did not see her so you
18 don't know?

19 A Yes.

20 Q But in any event she was at her house, right?

21 A Yes, sir.

22 Q So she left her house. Did she drive down to
23 the location where you were at?

24 A No, sir, she ran.

25 Q She ran from the location where she was to the

1 location of your car?

2 A Yes.

3 Q Okay. Now how far was it from where the car
4 ended up to where the collision occurred?

5 A How far?

6 Q Yes.

7 A I'm not sure.

8 Q Well, couldn't have been too far because your
9 sister ran, right?

10 A Yes.

11 Q ~~Maybe 50 yards?~~

12 A ~~I guess.~~ I'm not sure so I'm not going to
13 say.

14 Q Is that about right?

15 A I don't know.

16 Q Okay. In yards, now I'm giving you yards
17 instead of feet to make it easier. About half a
18 football field?

19 A Half a football field? No.

20 Q Not that far?

21 A Uh-uh.

22 Q Maybe 20 yards?

23 A ~~20 yards sounds about right.~~

24 Q Okay. Now you see her use your father's cell
25 phone to call 911?

1 A I -- yes, sir, I saw her.

2 Q Did you see her? You hesitated. Did you see
3 her use the telephone?

4 A I saw her pick it up. I did not see her
5 calling because I was still checking on my grandma
6 and I wasn't really concerned because I knew she was
7 calling 911.

8 Q ~~So you never really saw anyone call 911, is~~
9 ~~that correct?~~

10 A NO, SIR.

11 Q Now when the vehicle gets there, referring to
12 the paramedic vehicle, was it more than one or just
13 one?

14 A Just one vehicle? Yes, sir.

15 Q And the paramedics got there before the
16 police?

17 A I don't remember. I think they do but I'm not
18 sure.

19 Q Well --

20 A Because I wasn't really paying attention to
21 all that. I was worried about my grandma.

22 Q Okay. And there was nothing wrong with you
23 though, right?

24 A No, just my neck was sore from the contact.

25 Q When the paramedics get there you get in the

1 ambulance with your grandmother and they transport
2 the two of you all to the hospital; is that correct?

3 A Yes, sir.

4 Q And in that you were riding with the ambulance
5 you gave the hospital people the information about
6 how the wreck happened?

7 A Yes, sir.

8 Q I want you to review that please, sir. That's
9 good, just the first page is the single thing I need
10 to ask you about.

11 ~~Did you provide the information to the~~
12 ~~hospital about how the wreck happened?~~

13 A I provided all the information.

14 Q ~~Did you tell the hospital that she was~~
15 ~~driving?~~

16 A ~~No, sir.~~ I told them I was driving because I
17 was.

18 Q Do you know who else would have given
19 information to the hospital?

20 A No, sir.

21 Q Now did you observe my client on the scene?

22 A Yes, sir, I saw him get out of the truck.

23 Q All right. Did he come over to where you were
24 or did he stay in the area where his truck was?

25 A He pretty much stayed in his area.

1 Q All right. Now the damage that was done to
2 the vehicle that you were in, where was the damage
3 done?

4 A Mostly on the rear end.

5 Q Okay. And anywhere else?

6 A It was totaled. The vehicle was totaled.

7 Q Well, it rolled over, didn't it?

8 A Yes.

9 Q So you would have had some damage maybe to the
10 roof?

11 A Probably.

12 Q And it was damaged in the rear area. Did you
13 look at the vehicle that my client was driving?

14 A No, sir.

15 Q Can you see where the damage was on his
16 vehicle?

17 A No, sir.

18 Q Where did he end up?

19 A Off on the right side of the road. On the
20 opposite side of where we are at pretty much.

21 MR. WILLIAMS: Okay. That's all the questions
22 I have, Your Honor.

23 THE COURT: Any redirect of the witness?

24 MR. STUMBO: Briefly, Your Honor.

25 THE COURT: You may proceed.

1 REDIRECT EXAMINATION

2 BY MR. STUMBO:

3 Q TJ, Mr. Williams asked how fast you were going
4 when his truck hit you. Was your focus on your
5 speedometer at that time?

6 A No, sir.

7 Q What was your focus on?

8 A Making sure I was on the road right and there
9 were no other cars around me.

10 Q What were you looking at?

11 A The roadway.

12 Q Did you see anything in your rear-view at that
13 point? Anything in your rear-view mirror?

14 A The truck.

15 Q How about when you got out of that vehicle
16 what was your focus on at that point?

17 A After the wreck?

18 Q Who was your focus on at that point?

19 A My grandma.

20 Q Did you have a tape measure with you?

21 A A tape measure? Did I have one?

22 Q Uh-hum.

23 A I didn't have one, no, sir.

24 Q You said you were 18 years old?

25 A (Affirmative head shake.)

1 Q Have you ever done an accident reconstruction
2 in your life?

3 A Never.

4 Q At any time did you go back out there with a
5 tape measure?

6 A No, sir.

7 Q Go back out there to take pictures of
8 anything?

9 A No, sir.

10 Q Where did you go right after the wreck?

11 A To the hospital.

12 Q Your grandmother was with you?

13 A Yes, sir.

14 MR. STUMBO: No further questions, Your Honor.

15 THE COURT: Any objection to the witness being
16 excused from the state?

17 MR. STUMBO: No, Your Honor.

18 THE COURT: From the defense?

19 MR. WILLIAMS: None by the defense.

20 THE COURT: Sir, you are excused.

21 You may call your next witness.

22 MR. STUMBO: Your Honor, state calls Christy
23 Shealy to the stand.

24 ~~MS. KRISTIN RENEE SHEALY,~~

25 after having first been duly sworn to state the

1 truth, the whole truth and nothing but the truth,
2 testified on her oath as follows:

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MR. STUMBO:

6 Q Good afternoon, Christy, how are you?

7 A Good, how are you.

8 THE COURT: Is it Christy or Kristin?

9 THE WITNESS: My name is ~~Kristin~~ but I go by
10 ~~Christy~~.

11 THE COURT: Could you spell your first name
12 for the court reporter.

13 THE WITNESS: K-r-i-s-t-i-n.

14 THE COURT: Thank you. You may proceed.

15 Q (By Mr. Stumbo) Christy, how old are you?

16 A 26.

17 Q And do you have any siblings?

18 A Yes, sir. A ~~brother, TJ~~ he's 18. And a
19 sister Rebecca, she's 20.

20 Q TJ is the guy back here in the red shirt?

21 A Yes, sir.

22 Q And where do you currently live?

23 A In Pelion.

24 Q Okay. And how long have you lived in Pelion?

25 A Almost a year.

1 Q Before you moved to Pelion, where did you
2 live?

3 A On Mack Street.

4 Q And that's where?

5 A In Gadsden.

6 Q In Gadsden?

7 A Yes.

8 Q What was the address on that?

9 A 536.

10 Q Okay. What is your father's name?

11 A Terry Shealy.

12 Q And who lives with you right now?

13 A Who lives with me right now? ~~My fiance,~~ two
14 of his children and my two children.

15 Q What your fiance's name?

16 A ~~Charlie McConkle.~~

17 Q What are your kids' names?

18 A Ashley, she's 17; Tyler is 13; Lorianna is 6;
19 and Charlie is 18 months.

20 Q I'm going to take you back to July of last
21 year. How old was Charlie, your baby, at that time?

22 A She was two months old.

23 Q And who was your grandmother on your dad's
24 side?

25 A Ruggy Stone.

1 Q And on July 29th, 2007 did you see your
2 grandmother that day?

3 A Yes, it was her birthday.

4 Q Where had she come from when she came to your
5 house?

6 A She had went -- my dad and his wife and my
7 dad's sister Debra took her out to eat to Red Lobster
8 I believe for her birthday.

9 Q And that was for lunch?

10 A Yes.

11 Q Was she with TJ that day too?

12 A Yes. Not when she went out to eat, no, sir, I
13 don't think so.

14 Q When she came to your house?

15 A Yes, she was with TJ.

16 Q And who had driven to the house, was it your
17 grandmother or TJ?

18 A TJ.

19 Q Do you remember what car they were in?

20 A Jimmy Blazer.

21 Q Was that TJ's Blazer?

22 A It was my grandmother's Blazer.

23 Q TJ was driving it?

24 A Yes.

25 Q And about what time of day was it when they

1 came to your house, morning, afternoon, evening?

2 A It was, I would say, between early to
3 mid-afternoon. I'm not sure of the exact time.

4 Q Stay for a little while?

5 A Yes, sir.

6 Q What was the purpose of the visit that day?

7 A Just to visit. She wanted to come see my
8 children. She just came by to visit.

9 Q Did you take any pictures that day?

10 A Yes, sir.

11 MR. STUMBO: Beg the Court's indulgence.

12 MR. WILLIAMS: Your Honor, I have a matter of
13 law to take up with Court outside the presence of the
14 jury.

15 THE COURT: Please approach.

16 (Whereupon, a discussion was held at the bench
17 off the record.)

18 THE COURT: You may proceed.

19 Q (By Mr. Stumbo) Did your grandmother spend
20 some time with you that day?

21 A Yes, sir.

22 Q Did she spend some time with your children?

23 A Yes, sir.

24 Q And was it afternoon, evening, when did they
25 leave the house?

1 A I'm not sure exactly what time it was. It was
2 early evening. It wasn't late.

3 Q Still light outside?

4 A Yes.

5 Q When they left, did they leave in the same
6 Jimmy?

7 A Yes, sir.

8 Q Who was driving?

9 A TJ.

10 Q Did you go outside to see them off?

11 A Yes, sir.

12 Q Where were you when they were pulling out of
13 the driveway?

14 A ~~Standing on my porch or my steps.~~

15 Q Did you see them actually pull out onto the
16 road?

17 A Yes, sir.

18 Q What did you do after that?

19 A I just ~~proceeded to walk into the house.~~ I
20 was holding my daughter and ~~I heard it.~~

21 Q You heard -- what did you hear?

22 A I heard a collision, sounded like a bomb was
23 dropped on my front yard.

24 Q What did you do after you heard that sound?

25 A I handed the baby off to my fiance and I ran

1 down the road barefoot.

2 Q What did you see when you ran down the road?

3 A Well, the car was upside down. I seen my
4 brother TJ jump out of the car, run around the car.
5 He was saying, granny, he said granny a few times.
6 And I just ran straight to my grandma to find out if
7 she was okay, to see if I could get her to respond to
8 me.

9 Q Was she able to respond to you?

10 A Not at first. She was unresponsive for a few
11 seconds, then she came to and I just held her hand
12 and asked her if she was okay, and her name and stuff
13 like that just to see if she was coherent.

14 Q After that what did you do?

15 A I got TJ's phone and called 911.

16 Q About how long did it take for anyone to
17 respond there to the scene? You don't have to give
18 me an exact time.

19 A Probably 10 minutes. No longer than that,
20 maybe less. But it wasn't no longer than 10 minutes.

21 Q Did your grandmother, just by your
22 observations, appear to be injured?

23 A Yes, sir.

24 Q You gathered that from the way she looked,
25 what she said?

1 A Well I seen that she was bleeding from the
2 back of her head and her left -- I think it was her
3 left forearm she was missing a good part of her skin
4 right there. But those were the only two injuries I
5 seen.

6 Q What position was the car in when she was in
7 the vehicle?

8 A It was upside down with the passenger side
9 being on the actual roadway, and the driver's side
10 kind of in a ditch I guess you could say. It was
11 kind of sideways.

12 It wasn't on the roadway all the way, just
13 part of the passenger side was.

14 Q How was the top of the car? Was it intact or
15 crushed in?

16 A It was crushed in. Not all the way, I could
17 still see through the passenger window but it was
18 still crushed in.

19 Q Were the windows intact, were they broken?

20 A No.

21 Q The windows were broken?

22 A Yes.

23 Q The time period before, around 10 minutes
24 before there was people on the scene, did you have
25 any interaction with the defendant, William Martin?

1 A He stepped out of his car and he put his hands
2 on his head and he was crying saying, I'm sorry.
3 Then he got back in his truck.

4 Q How close were you to him?

5 A He was about in the middle of the roadway and
6 I was close to him but I wasn't, you know, standing
7 side by side with him. I would say probably a little
8 bit further than me and her.

9 Q You and the court reporter?

10 A Uh-hum. Yes, sir.

11 Q Is there anything else that he said or did
12 during your interaction with him?

13 A Just, I'm sorry, I'm sorry. I didn't see you.
14 Just you could tell he was sorry. He knew he was
15 wrong.

16 Q Did you say anything to him?

17 A No, sir, not that I can remember because I
18 didn't -- I was too upset because that was my
19 grandmother and my brother. I was more concerned
20 with her safety. I knew he was okay, he was out of
21 the car walking, but I was more concerned with her
22 than I was with him.

23 Q Did anybody else there, any family, have any
24 interaction with the defendant?

25 A No. Nothing other than my fiance who after he

1 got back in the car seen him throwing objects out of
2 the car --

3 MR. WILLIAMS: Objection, Your Honor, with
4 regards to --

5 THE COURT: Yes. Ma'am, you can only testify
6 as to what you know of your own personal knowledge.
7 You cannot tell us what someone else said.

8 sustained, hearsay. Ladies and gentlemen, you
9 are to give absolutely no consideration to the last
10 portion of the answer. You are to disregard it and
11 disabuse it from your mind.

12 You may proceed.

13 MR. STUMBO: Thank you, Your Honor.

14 Q (By Mr. Stumbo) You said that he got out of
15 his car. What kind of vehicle was he in?

16 A A ~~white Dodge truck~~.

17 Q And was it on the same side of the road as the
18 flipped-over Jimmy?

19 A No, sir. It was opposite.

20 Q And where did he go after you talked to him?

21 A He went back to his truck, in his truck, got
22 on his phone.

23 Q He had a cell phone?

24 A Yes, sir. It looked like he did from standing
25 on the opposite side of the road it looked like he

1 was using a phone.

2 Q where was your baby at that time? You said
3 you ran out of the house to the scene. Who had the
4 baby?

5 A At first Charlie had her. And an older couple
6 who was there right after the accident they actually
7 pulled in my driveway and the lady told Charlie that,
8 she could --

9 MR. WILLIAMS: Objection, hearsay.

10 THE COURT: Sustained, hearsay. Ma'am, you
11 cannot say what someone else said.

12 THE WITNESS: I'm sorry.

13 THE COURT: That's okay.

14 MR. STUMBO: I will follow up with a question.

15 THE COURT: You may proceed.

16 Q (By Mr. Stumbo) You saw this older couple?

17 A Yes.

18 Q And that they were holding the baby?

19 A Yes.

20 Q So you knew the baby was okay?

21 A Yes.

22 MR. STUMBO: No further questions at this
23 time.

24 THE COURT: Any cross-examination of the
25 witness?

1 MR. WILLIAMS: No questions, Your Honor.

2 THE COURT: Any objection to the witness being
3 excused from the state.

4 MR. STUMBO: None, Your Honor.

5 THE COURT: From the defense?

6 MR. WILLIAMS: None by the defense, Your
7 Honor.

8 THE COURT: Ma'am, you are excused.

9 THE WITNESS: Thank you.

10 THE COURT: You're welcome.

11 Madam Forelady, ladies and gentlemen, we are
12 going to take advantage of this break and give you a
13 short afternoon recess. We will break for about 10
14 minutes to give you an opportunity to refresh
15 yourselves.

16 During the break please do not discuss this
17 case, and please leave your note pads in the seats.
18 We will be out until 3:40. If you'll go with the
19 bailiffs.

20 (Whereupon, the jurors exit the courtroom.)

21 THE COURT: Anything before we break from the
22 state?

23 MR. STUMBO: Nothing from the state, Your
24 Honor.

25 THE COURT: From the defense?

1 MR. WILLIAMS: Nothing from the defendant,
2 Your Honor.

3 THE COURT: We will be at ease until 3:40.
4 Enjoy your break.

5 (Whereupon, a recess was taken.)

6 THE COURT: Is the state ready to proceed?

7 MR. STUMBO: We are, Your Honor.

8 THE COURT: Is the defense ready to proceed?

9 MR. WILLIAMS: Defense is ready.

10 THE COURT: Please bring in the panel.

11 (Whereupon, the jurors enter the courtroom.)

12 THE COURT: State may call its next witness.

13 MR. STUMBO: Your Honor, state calls Charlie
14 McCorkle to the stand.

15 ~~MR. CHARLES WILLIAM MCCORKLE,~~
16 after having first been duly sworn to state the
17 truth, the whole truth and nothing but the truth,
18 testified on his oath as follows:

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. STUMBO:

22 Q Good afternoon, Mr. McCorkle. Who are you
23 currently residing with?

24 A Christy.

25 Q Is she your fiancée?

1 A Yes, sir.

2 Q And do you all have any children together?

3 A Yes, sir.

4 Q How many?

5 A We have one together. I have three from a
6 previous marriage, and I have custody of two of them.
7 So we have four kids in the household.

8 Q How long have you lived in Lexington County?

9 A 10 years or so.

10 Q Where were you born?

11 A Lancaster.

12 Q You moved down to Lexington?

13 A Yes, sir. Well I have been down here for
14 about 18, 19 years.

15 Q Who do you work for?

16 A Capital Tile.

17 Q Supposed to be at work today?

18 A Yes, sir.

19 Q You here because I gave you a subpoena to be
20 here?

21 A Yes, sir.

22 Q Where did you live July of last year?

23 A 536 Mack Street.

24 Q And, Charlie, just to back up a little bit, go
25 ahead and get this out in the open.

1 A Okay.

2 Q You've had some trouble with the law before?

3 A Yes, sir.

4 Q About ~~12 convictions?~~

5 A Yes, sir. Pled guilty.

6 Q Those go back how far?

7 A In the '80s. To the '80s.

8 Q How old were you at that time?

9 A I'm 38 now, so math wasn't my strongest

10 subject. Back when I was a teenager.

11 Q All right. As far as your felony convictions,

12 you pled to burglary one time?

13 A Yes, sir.

14 Q Did you do some time for that?

15 A Yes, sir.

16 Q Younger when that happened?

17 A Yes, sir.

18 Q And strong armed robbery?

19 A That was the wrong place at the wrong time.

20 Q You pled to it though?

21 A Yes, sir.

22 Q For your role in it?

23 A Yes, sir.

24 Q Did you do any time on that one?

25 A No, sir.

1 Q Your other convictions were, they big court
2 like this or?

3 A Small court.

4 Q Have you ever had any DUI?

5 A Yes, sir, one.

6 Q Let's go back to that night in July, July
7 29th. Were you at home?

8 A Yes, sir.

9 Q The night of the accident?

10 A Yes, sir.

11 Q And who was home with you?

12 A My fiancée and my kids.

13 Q And anybody pay you all a visit that day?

14 A Yes, sir.

15 Q Who was that?

16 A Granny.

17 Q By granny, what was her name?

18 A Rugsy.

19 Q Rugsy Stone?

20 A Yes, sir.

21 Q And was anybody else with Ms. Stone?

22 A Yes, sir, TJ. She came to visit my youngest
23 baby. She wanted to come see the grandbaby.

24 Q Her name is Charlie?

25 A Yes, sir.

1 Q Now do you remember about what time of day
2 they came over?

3 A I want to say around 3:00 or 4:00. I ain't
4 exactly sure, it has been a year. I think TJ had
5 just got off of work. It might have been a little
6 earlier.

7 Q Did they stay a while?

8 A Little while, yes, sir.

9 Q When they left was it still light outside or
10 was it dark out there?

11 A Yes, sir.

12 Q Do you remember what happened when they left?
13 Just tell us what you remember hearing or seeing.

14 A ~~Just a real loud explosion.~~ As soon as we
15 heard it we kind of knew just from the sound you
16 could tell it was an automobile accident. We ran out
17 the front door, me holding the baby and my fiancée,
18 and we seen the GMC Jimmy a hundred yards or so down
19 in front of our house turned upside down.

20 And we took off running, I was holding the
21 baby and she took off running barefooted. And when I
22 got to the edge of the road and seen what was going
23 on I stopped with my child and she ran on down there.

24 And I stood there for a little bit and a
25 couple came up and said, if you need to go down there

1 we'd be more than glad to watch your child in your
2 house. So I felt obligated to go down there and see
3 if I could assist.

4 Q When you heard a loud explosion, were you in
5 the house or outside?

6 A Sitting in my living room.

7 Q When you all came out on the front porch,
8 could you see the vehicles?

9 A Yes, sir. Off to your right.

10 Q Between your front porch and that section of
11 the road, is there anything between you and there?

12 A Just a yard. No fence or nothing. Some
13 trees.

14 Q Thick trees?

15 A No, sir.

16 Q You could see through them?

17 A Yes, sir.

18 Q You say this couple came up and offered to
19 hold the baby?

20 A Yes, sir.

21 Q And when they offered, you hand the baby to
22 them?

23 A Well, I walked them to the house. I mean a
24 real nice respectful looking older couple. I mean
25 wouldn't just leave my child with anybody.

1 Q What did you do after that?

2 A Ran down there to see if I could assist. I
3 seen granny was trapped in the vehicle. So I ran to
4 see if I could help my girl with anything or do
5 anything, and that's when I noticed him throwing beer
6 out of his truck. Smelled alcohol.

7 Q Okay. Was that the first thing you saw when
8 you went up? Did you go first to the Blazer or first
9 to the truck?

10 A I went -- the truck was on this side,
11 right-hand side of the road, granny was on the left.
12 Just a two-lane road so I was in the middle. So the
13 first thing I noticed was him throwing beer in the
14 woods. So when the state trooper pulled up I let him
15 know that.

16 I didn't go mess with anything or go around or
17 do anything. And he was crying, you know, he didn't
18 do anything. And then a few seconds later he was
19 talking about, I'm sorry.

20 Q ~~But you saw him throw bottles,~~ cans or what?

21 A Bottle.

22 Q Did you say anything to him when you saw him
23 throw the bottle?

24 A ~~I told him he did not need to be throwing~~
25 anything. He was also trying to -- he was standing

1 on the telephone and I told him he needed to get in
2 his vehicle and wait for the police to get there.

3 Q How close did you get to the defendant?

4 A From, I mean, a couple of feet away.

5 Q You were having a conversation with him?

6 A Oh, yes, sir.

7 Q So ~~you smelled alcohol~~?

8 A Yes, sir.

9 Q Coming from the defendant?

10 A Yes, sir.

11 Q Just for the record, this man who you saw
12 getting out of the truck and throwing beer bottles,
13 is he here in the courtroom?

14 A Yes, sir, right there.

15 Q Blue shirt?

16 A Yes, sir.

17 MR. STUMBO: Let the record reflect the
18 witness has pointed out the defendant.

19 THE COURT: Let the record so indicate.

20 Please proceed.

21 Q (By Mr. Stumbo) Now did the police or EMS,
22 did they respond right away? Was there some time?

23 A There was a little bit of time before they got
24 there. We was on the scene so quick that when we got
25 there the Jimmy was still rocking and we seen TJ

1 crawling out of it. That's how quick we were there.

2 I mean as soon as we heard the bam, we were
3 outside. We observed TJ climbing out to go around to
4 see if he could help granny because she was trapped
5 in the seatbelt, but she was in and out of
6 consciousness.

7 Q Were you able to check on her?

8 A Oh, yes, sir. I mean she was squeezing my
9 fiance's hand and talking. And then she would go out
10 for a minute, you know, wouldn't get no response so
11 we were real worried about her.

12 Q So Mr. Martin said a couple things to you?

13 A Yeah. I mean he was saying he was sorry. At
14 first he said, I don't know what happened, I don't
15 know what happened. And then shortly after that he
16 was talking about, I'm sorry. So I mean you could
17 tell he was in a different state than we were.

18 Q ~~Did he appear to be upset?~~

19 A ~~I mean he wasn't really upset. I mean he was~~
20 ~~at first he was like he didn't do anything or didn't~~
21 ~~know what happened. And then a few seconds later he~~
22 ~~was crying saying he was sorry.~~

23 Q Did you go to the hospital that night with the
24 family?

25 A No, I stayed home with my child.

1 MR. STUMBO: No further questions at this
2 time, Your Honor.

3 THE COURT: Any questions of the witness?

4 MR. WILLIAMS: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q Mr. McCorkle.

8 A Yes, sir.

9 Q The solicitor brought up the fact that you had
10 12 prior convictions, it goes back to the '80s?

11 A Yes, sir.

12 Q And he talked about that you had a burglary,
13 said something about a robbery. Now that robbery
14 wasn't way back in the '80s, was it?

15 A No, sir, 2000-something. 2002, I believe.

16 Q So that was 2002. So that was just five years
17 ago that you were convicted of the robbery?

18 A Yes, sir.

19 Q Now have you ever gone by the name of James
20 Timothy Kelligan, K-e-l-l-i-g-a-n?

21 A ~~James Timothy Kelligan~~? No, sir. But there
22 was an incident one time involving a traffic stop in
23 Georgia where they got license -- it was a mishap. I
24 mean, I don't know how to -- ask me that question one
25 more time.

1 Q Did you ever tell the police that your name
2 was James Timothy Kelligan?

3 A I don't know if I told -- that's been years
4 ago. I don't know if I told the police that I was
5 James Timothy Kelligan. I was driving his vehicle.

6 Q Okay. So you're not sure if you told them
7 that you were a different person?

8 A Not then, no, sir. That has been a long time
9 ago.

10 Q So you are saying you probably did tell them
11 that?

12 A I could have, but I don't remember. I don't
13 want to say yeah and I don't want to say no if I'm
14 not positive.

15 Q As I understand your testimony, you were
16 inside the house, your fiance was on the front porch?

17 A We were both in the house.

18 Q You were both in the house?

19 A Yes, sir.

20 Q Okay. Was the door closed?

21 A The screen door was shut but the front door
22 was open. You know how mobile homes have the glass
23 door and then the solid door.

24 Q Had granny already left by then?

25 A By when?

1 Q By the time you were sitting down in the
2 living room I guess?

3 A She was sitting with us. She came to visit
4 the child. We were all sitting together. Then she
5 left.

6 Q Okay.

7 A And shortly after she left we heard the
8 collision.

9 Q Okay. I guess what I am focusing on is at
10 some point in time she and TJ left?

11 A Yes, sir.

12 Q And you and your fiance went inside the house?

13 A We were already inside the house.

14 Q So you and your fiance never went outside the
15 house?

16 A Yeah, when the wreck happened.

17 Q But before that --

18 A We walked them out.

19 Q Okay. You walked them out, and then you went
20 back in?

21 A Yes, sir.

22 Q So at the time that the wreck happened both
23 you and your fiance were sitting inside the house; is
24 that right?

25 A Yes, sir.

1 Q And you heard a collision and you knew it was
2 a collision?

3 A You could tell by the sound, yeah, that it was
4 vehicles being involved, yes, sir.

5 Q And you all got to the collision in time to
6 see the Jimmy still rocking back and forth?

7 A Yes, sir. That's how close it was to our
8 house. wheels still rolling.

9 Q Now did you go straight to the Jimmy?

10 A When I first went outside I stopped in the
11 road because I had my child.

12 Q Okay. Then there was this older couple was
13 driving behind and pulled in the yard?

14 A Came up and seen over and asked if there was
15 anything they could do to help and offered to hold my
16 child.

17 Q What was their name?

18 A I don't remember.

19 Q So you gave your child to two people who you
20 don't even know who their names were?

21 A Yes, sir.

22 Q Did you make it to the road before your fiance
23 got to the road?

24 A No, sir.

25 Q Okay. And when you were standing out there on

1 the side of the road talking to these two older
2 people that you don't know their names, is that when
3 you saw my client reach inside his vehicle and throw
4 out this beer container?

5 A ~~No. It was after -- I took them inside my~~
6 ~~house with my child and make sure everything was all~~
7 ~~right. I was walking back down there, that's when I~~
8 ~~observed him throwing bottles out of the truck.~~

9 Q Where was he throwing the bottles out of?

10 A Out of his truck into the woods right beside
11 the truck.

12 Q What part of the truck was he reaching inside
13 of and throwing them out of?

14 A The passenger door.

15 Q So he was reaching inside the passenger door?

16 A He was standing -- the truck was on the side
17 of the road here. He was standing on this side of
18 the truck with the door open. And I observed him
19 throwing beer bottles into the woods, yes, sir.

20 Q ~~Did you secure these beer bottles?~~

21 A No, sir. I did not want to tamper with
22 anything. I let the trooper know when he got there
23 what I observed.

24 Q When you saw him throwing these beer bottles
25 out, now these were bottles, right, they weren't

1 cans?

2 A No, sir, bottles.

3 Q ~~But they didn't break when he threw them out?~~

4 A ~~It was woods. I didn't hear anything break.~~

5 Q So when the trooper gets there you show him
6 where these beer bottles are; is that correct?

7 A I show him -- let him know where he was
8 throwing them. I didn't know exactly where they
9 went.

10 Q How many did he throw out?

11 A One or two.

12 Q ~~Was it one or two?~~

13 A ~~One.~~

14 Q Okay. What kind of beer bottle was it?

15 A I don't know that.

16 Q How do you know that was a beer bottle?

17 A ~~It was a brown bottle.~~ I mean you know a beer
18 bottle.

19 Q Did you have one in your hand?

20 A No, sir. I had -- no, sir.

21 Q You had --

22 A I had just got rid of my child. What would I
23 be doing with a beer bottle?

24 Q Had you been drinking?

25 A No, sir.

1 Q Do you drink beer?

2 A Every now and then.

3 Q ~~Do you drink it out of a brown beer bottle?~~

4 A ~~I usually drink mine, yes, sir, Bud Light~~
5 ~~bottle.~~

6 Q Did you see whether or not this bottle that
7 you say you showed the trooper the location, did you
8 see whether or not they took any fingerprints off
9 this bottle?

10 A No, sir, I did not observe that.

11 MR. WILLIAMS: That's all I have, Your Honor.

12 THE COURT: Any redirect of the witness?

13 MR. STUMBO: Briefly, Your Honor.

14 THE COURT: You may proceed.

15 REDIRECT EXAMINATION

16 BY MR. STUMBO:

17 Q Charlie, you said you drank beer out of a
18 bottle before?

19 A Yes, sir.

20 Q What color are those bottles typically?

21 A Brown.

22 Q And what you saw him throwing out of the car
23 appeared to be a brown beer bottle?

24 A Yes, sir.

25 Q You said as far as number, definitely one,

1 maybe two?

2 A Yes, sir.

3 Q But no more than?

4 A No, sir.

5 Q Your record, you said you had a DUI?

6 A Yes, sir.

7 Q Is that something you're proud of?

8 A No, sir.

9 MR. STUMBO: No further questions, Your Honor.

10 THE COURT: Any objection to the witness being
11 excused from the state?

12 MR. STUMBO: None, Your Honor.

13 THE COURT: From the defense?

14 MR. WILLIAMS: None by defendant, Your Honor.

15 THE COURT: Sir, you are excused.

16 You may call your next witness.

17 MR. STUMBO: State calls Terry Shealy, Sr.

18 MR. WILLIAM TERRY SHEALY, SR.,

19 after having first been duly sworn to state the
20 truth, the whole truth and nothing but the truth,
21 testified on his oath as follows:

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. STUMBO:

25 Q Senior or junior?

1 A Senior.

2 Q You go by William?

3 A I go by Terry.

4 Q Terry, do you have any children?

5 A Yes, sir.

6 Q Are they in the courtroom here today?

7 A Yes, sir.

8 Q TJ?

9 A Yes, sir.

10 Q Kristin?

11 A Yes, sir.

12 Q Do you have any other kids besides them?

13 A Yes, sir. I have four other kids.

14 Q Terry, where do you live currently?

15 A 703 Mimosa Drive, Gadsden.

16 Q Who lives with you right now?

17 A My son, TJ.

18 Q And any other family members that live there
19 on the property?

20 A Yes, sir, my sister stays right next to me in
21 the trailer and her son.

22 Q Have there ever been any other family members
23 that live there?

24 A Oh, yes, sir. Like I said I have six kids and
25 a wife that stays with me.

1 Q How about your mother?

2 A She used to stay right beside me where my
3 sister stays right, until the accident.

4 Q Your mother's name is?

5 A Ruggy Jeanette Stone.

6 Q Now just briefly something we are going to
7 talk about, do you have any prior convictions, have
8 you had any trouble with the law?

9 A Yes, sir.

10 Q And what were those convictions for? What do
11 they involve?

12 A Possession with intent to distribute marijuana
13 twice.

14 Q Did you do any jail time on those?

15 A No, sir. I got probation both times.

16 Q When was the most latest one?

17 A Yes, sir, 2008 in June.

18 Q Is that something that you are proud of?

19 A No, sir. Some experiences I've learned from.

20 Q Terry, I'm going to take you back to July of
21 last year, 29th of July. Do you remember what you
22 were doing that day?

23 A Yes, sir. We was celebrating my mama's
24 birthday.

25 Q That's Ms. Ruggy?

1 A Yes, sir.

2 Q What did you all do to celebrate her birthday?

3 A Me and my sister and my wife took her out to
4 the Red Lobster to eat dinner for her birthday.

5 Q That was early in the day?

6 A Yes, sir, about lunchtime.

7 Q And when you left her who was she with?

8 A She was with my son TJ.

9 Q Okay. Why did she go with TJ?

10 A She went over to see her great great
11 granddaughter who was about two weeks old.

12 Q Now at that time, Terry, where was TJ working?

13 A If I'm not mistaken I think he just started at
14 Ruby Tuesday I think, sir. Or, just finished up
15 working at Substation Two. I think he was either
16 working there or at Ruby Tuesday, one of the two.

17 Q Your mother was driving with him that day?
18 Riding with him?

19 A Yes, sir.

20 Q At that time could TJ drive on his own?

21 A I think he didn't have a license yet. He had
22 a permit I think.

23 Q So he needed an adult to drive with him?

24 A Yes, sir.

25 Q How old was TJ at that time?

1 A 17 I think.

2 Q Now that night did anything out of the
3 ordinary happen?

4 A No. Like I say we took mama out to eat dinner
5 that day. And she wanted to go over and see her
6 great grandbaby.

7 Q Did you go over with her to see her great
8 grandbaby?

9 A No. She wanted TJ to drive her over there.
10 She just got her other vehicle, and she wanted TJ to
11 drive her over there. He was excited about driving
12 his granny over there to see the great grandbaby.

13 Q Where did you go? Do you remember where you
14 went?

15 A Where did I go? I went home.

16 Q What happened that night when you were at
17 home?

18 A We got a call about 7:30, 8:00 o'clock, said
19 mama had been in a wreck.

20 Q Where did you go when you got that call?

21 A Went straight to the scene of the accident.

22 Q About how long did it take you to get there?

23 A I would say about 10, 15 minutes from my
24 daughter's house, from Mimosa to Mack Street in
25 Gadsden.

1 Q When you get there what's the first thing you
2 see when you get there?

3 A The ambulance people trying get mama out of
4 the Blazer. It was turned upside down in the ditch.

5 Q Were you able to communicate with your mother
6 at that point?

7 A Yes. She was conscious, yes, sir.

8 Q Did you go with her that night?

9 A I went with the ambulance, TJ and mama to the
10 hospital, yes, sir.

11 Q You rode in the ambulance with them?

12 A Yes, sir.

13 Q Got to the hospital, talked to the doctors
14 there at the hospital?

15 A Yes, sir.

16 Q That were working on her?

17 A Yes, sir.

18 Q Terry, when did your mother pass away?

19 A October 12, 2007.

20 Q So some weeks later?

21 A 12 weeks.

22 Q Between the time she went into the emergency
23 room that night and October 12th, the day she died,
24 was she in the hospital that entire time?

25 A Yes, sir. I watched her suffer for 12 weeks.

1 Q How often did you go to the hospital?

2 A Every day.

3 Q You were there when she passed?

4 A Yes, sir.

5 Q Were you in consultation with the physicians
6 that were treating her at that time?

7 A Yeah. She was busted up pretty good on the
8 inside. Her back was broken in five places. Yes,
9 sir. She couldn't eat. She had a punctured lung,
10 two different places I think. She had problems
11 breathing.

12 Q You were there during this time to help?

13 A Yes, sir.

14 Q Did the doctors decide what treatment was
15 needed?

16 A Yes, sir.

17 Q And when she passed was she on a ventilator or
18 had she been taken off the ventilator?

19 A ~~She had been taken off the ventilator. She~~
20 ~~told me she didn't want to be on there no more.~~

21 Q Was that a decision that was made to take her
22 off between you and the doctor?

23 THE COURT: Please approach.

24 (Whereupon, a discussion was held at the bench
25 off the record.)

1 THE COURT: You may proceed.

2 MR. STUMBO: Thank you, Your Honor.

3 Q (By Mr. Stumbo) Do you remember the name of
4 the doctor who was her treating physician at Baptist
5 when she passed away?

6 A I'm not sure. She had three doctors that I
7 was talking to. ~~Dr. Love~~, I think that's who it was,
8 sir, if I'm not mistaken.

9 MR. STUMBO: I have no further questions.

10 THE COURT: Any questions for the witness in
11 cross-examination?

12 MR. WILLIAMS: Yes, Your Honor.

13 THE COURT: You may proceed.

14 CROSS-EXAMINATION

15 BY MR. WILLIAMS:

16 Q Mr. Shealy.

17 A Yes, sir.

18 Q Are you certain that the two convictions you
19 have referenced dealt with marijuana or did they
20 refer to another drug?

21 A The first one was marijuana and I think
22 cocaine too. I think the first one, yes, sir.
23 You're right. The second one was marijuana by
24 itself, yes, sir.

25 That's my bad, I forget about that first one.

1 It was so long ago, 1994.

2 Q And you just went on probation this year for
3 the second charge?

4 A June, yes, sir.

5 Q And when did your mother die?

6 A October 12th.

7 Q Of what year?

8 A Last year.

9 Q Now the solicitor was asking you about the
10 type of problems that your mother had while she was
11 in the hospital. Obviously the doctor would be the
12 one who would know the diagnoses of those items,
13 wouldn't he?

14 A Yes, sir.

15 Q Because that's why we pay those doctors to
16 tell us what the truth is about the ailments that
17 someone has, right?

18 A Yes, sir.

19 Q Now before she had the wreck she was diabetic,
20 wasn't she?

21 A Yes, sir.

22 Q And she didn't just stay in one hospital, did
23 she?

24 A You mean after the wreck, sir?

25 Q Yes, sir.

1 A No, sir. They transferred her from Richland
2 to I think Baptist Hospital, seventh floor there.

3 Q So she went from one hospital to another,
4 hospital, correct?

5 A Correct.

6 Q And didn't the family have issues about some
7 of the treatment that she received at the hospital?

8 A We was told on two difficult occasions to my,
9 knowledge, sir, that she was overdosed, overmedicated,
10 or however you correct pronunciation of that is, yes,
11 sir.

12 Q And you actually consulted with an attorney in
13 reference to this, didn't you?

14 A Yes, sir, we sure did.

15 Q She actually had, as the hospital records
16 show, she actually had some infections --

17 A Staph infection, yes, sir.

18 Q -- that she picked up in the hospital,
19 correct?

20 A Yes, sir.

21 Q And the family was going to, if you could,
22 proceed with the medical malpractice case against the
23 hospital, weren't you?

24 A Yes, sir.

25 MR. WILLIAMS: That's all I have, Your Honor.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION.

3 BY MR. STUMBO:

4 Q Just one question, Mr. Shealy. The medical
5 malpractice case that Mr. Williams just referenced,
6 is that an ongoing thing right now?

7 A No, sir. They said that they did a thorough
8 investigation of it and there was no evidence of
9 malpractice. We didn't have enough evidence to go to
10 court or anything like that. Our best interest would
11 be drop it, to leave it alone.

12 Q You consulted with a doctor about the staph
13 infection medications?

14 A Yes, sir.

15 Q And she obtained those infections and
16 medications through treatment for her injuries?

17 A For the injuries, yes, sir.

18 MR. STUMBO: No further questions, Your Honor.

19 THE COURT: Any objection to the witness being
20 excused from the state?

21 MR. STUMBO: None, Your Honor.

22 THE COURT: From the defense.

23 MR. WILLIAMS: None by the defendant, Your
24 Honor.

25 THE COURT: Sir, you are excused.

1 You may call your next witness.

2 MR. JOHNSON: State calls Trooper Caldwell.

3 MR. KEVIN MIDDLETON CALDWELL,

4 after having first been duly sworn to state the
5 truth, the whole truth and nothing but the truth,
6 testified on his oath as follows:

7 THE COURT: You may proceed.

8 MR. JOHNSON: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. JOHNSON:

11 Q Trooper Caldwell, where do you work?

12 A South Carolina Highway Patrol.

13 Q How long have you worked there?

14 A Almost two years in January.

15 Q What are your duties?

16 A To enforce the laws of the state and to make
17 sure the roadways are safe for everybody traveling up
18 and down the roadways of South Carolina.

19 Q Do you patrol?

20 A Yes, sir.

21 Q What kind of training did you get to have that
22 job?

23 A I went to approximately 21 weeks at the South
24 Carolina Criminal Justice Academy. It entailed nine
25 weeks of basic law which is what normal police go

1 through, which would be your sheriff's office,
2 deputy, stuff like that, they go through nine weeks.
3 Then we do an additional nine weeks plus two which
4 would be 11 weeks to get your 21, I believe,
5 somewhere right around there.

6 During that time we do accident
7 reconstruction, we do several hours of DUI classes,
8 and training specialized to highway patrol.

9 Q Were you on duty on July 29th, 2007?

10 A I was.

11 Q Tell me about that.

12 A I was in -- I'm assigned to Lexington County
13 so obviously some people out there I'm sure. But I'm
14 assigned to Lexington County. I was on routine
15 patrol. I was actually on Old Orangeburg Road in
16 Lexington County. We had an overturned green Ford
17 F150 that was off the road. We towed that and we got
18 a BOLO, which is a general broadcast be on the
19 lookout for, of some cars that were doing some drag
20 racing up the road.

21 I proceeded to go there, and then I got a call
22 from dispatch about a collision on Mack Street on
23 July 29th in Lexington County, and I proceeded to
24 proceed to the scene.

25 Q All right. What time did you get the call?

1 A I was dispatched at 8:05 p.m. and I arrived at
2 the scene at 8:26 p.m.

3 Q Lexington County is in what state?

4 A South Carolina.

5 Q What time did you get on scene?

6 A 8:26 p.m.

7 Q Who was there when you got there?

8 A There were several emergency vehicles, I
9 believe. I'm not sure if there was a fire truck,
10 ambulance. There were several other cars on the
11 scene, minus -- including the two that were involved
12 in the collision.

13 Q All right. Did you see the defendant there?

14 A I did.

15 Q Where was he at?

16 A Sitting behind the driver -- behind the
17 steering wheel of his pickup truck.

18 Q Do you see the defendant in the courtroom
19 today?

20 A I do. It's Mr. William Conrad Martin, sitting
21 right here at the table beside Mr. Williams.

22 Q All right. And what did you do?

23 A At that point I observed -- well, when I got
24 out of the patrol car and actually I was behind, I
25 walked up. I observed Mr. Martin sitting behind the

1 steering wheel, observed his vehicle on the way I
2 approached it was off the road into the ditch, a
3 slight embankment.

4 The other vehicle was somewhat in the road
5 overturned down another slight embankment with half
6 of it hanging in the road.

7 Q Did you speak to the defendant?

8 A I did.

9 Q Did you smell anything on the defendant?

10 A I did.

11 Q What did you smell?

12 A Smelled the odor of an alcoholic beverage on
13 his breath while he was speaking to me. Also when he
14 was speaking to me I noticed that his speech was
15 slurred.

16 Q What did the defendant say to you?

17 A I asked who was driving, he admitted that he
18 was driving the pickup truck. I asked him what
19 happened, he said he was sorry and he tried to slow
20 down and hit them in the rear.

21 Q Did you ask him anything else?

22 A I asked him had he been drinking, after I
23 could smell the alcohol and noticed the slurred
24 speech while he was talking to me. And he said he
25 had not been drinking but he had drank the night

1 before.

2 Q Now did he tell you that at first?

3 A I'm sorry?

4 Q When you asked him did he say that at first?

5 A No. He said he had not been drinking.

6 Q What did you say to him?

7 A I said I can smell alcohol on your breath.

8 Q Was he under arrest at that time?

9 A No, he was not.

10 Q He wasn't in handcuffs?

11 A No, he was not.

12 Q Now who was in the Jimmy?

13 A Well, the Jimmy was unoccupied at the time I
14 got there. I believe the ambulance had taken Ms.
15 Stone and Mr. Shealy to the hospital at the time I
16 arrived on the scene.

17 Q Did you speak to Mr. Shealy later on?

18 A I did.

19 Q You took a statement from him?

20 A I did.

21 Q Now who did EMS transport from the scene if
22 anybody?

23 A I'm sorry, I cannot hear you.

24 Q Did EMS transport?

25 A Yes, they did.

1 Q Who did they transport?

2 A They transported Ruby Will Stone and Mr.
3 Shealy, Jr., I believe.

4 Q All right. Now do you have a camera in your
5 car?

6 A I do have a camera in my car. Currently?

7 Q On ~~July 29th~~ did you have a camera?

8 A No, sir. ~~It was being repaired.~~

9 Q All right. Tell me about what kind of efforts
10 were being made to repair that camera, keep the unit
11 in working order?

12 A I was assigned a 2005 Crown Vic which had a
13 camera in it at the time of this collision in 2007.
14 And for approximately six months out of that year
15 that camera was being repaired at Motorola over off
16 of Broad River Road and Piney Grove where we take
17 them to get repaired. It was documented that it was
18 turned in. During the time of this collision was one
19 of the times it was being repaired.

20 Since that time that car has been pulled
21 because of stuff going wrong, actually it was getting
22 higher mileage on the car. I have been issued a
23 different car at this time.

24 Q Did you submit a sworn affidavit regarding the
25 camera?

1 A I did.

2 Q Now when you talked to the defendant, what was
3 the purpose of your questions?

4 A The first time I talked to him?

5 Q Right. Why were you asking him questions?

6 A To determine what happened in the collision,
7 determine who the drivers were, same questions I ask
8 at any wreck I show up to. The first thing I ask is
9 is anybody hurt. Obviously I knew somebody was hurt
10 from this one because the ambulance beat me there.
11 Then I ask, who was driving, are you all in agreement
12 with what happened, what happened. Obviously I
13 couldn't do that with Mr. Shealy.

14 Q Were there other people standing around?

15 A Yes.

16 Q Did anybody try to talk to you from the family
17 of Ms. Stone?

18 A Yes, sir. Charlie and Christy, the two that
19 have already testified, did speak to me.

20 Q All right. Now did anybody come out there
21 besides you highway patrol?

22 A Yes. My corporal, Corporal Chris Shelton came
23 out. He's my immediate supervisor, he helped process
24 the scene.

25 (Whereupon, State's Exhibit Nos. 1 through 14

1 are marked for identification.)

2 Q (By Mr. Johnson) Trooper Caldwell, I'm going
3 to hand you what has been marked State's Exhibit 1
4 through 14 for identification. Take a look at that.
5 Tell me what that is.

6 THE COURT: Is there any exception to the
7 photos?

8 MR. WILLIAMS: Yes, Your Honor. Foundation.

9 THE COURT: Please approach and bring the
10 photos with you.

11 (Whereupon, a discussion was held at the bench
12 off the record.)

13 THE COURT: You may proceed.

14 MR. JOHNSON: Thank you, Your Honor.

15 Q (By Mr. Johnson) Trooper Caldwell, did anyone
16 take photos that night?

17 A They did.

18 Q Who?

19 A My immediate supervisor, who I had already
20 advised, came out to the scene, Corporal Chris
21 Shelton.

22 Q What did he take photos of?

23 A The scene.

24 Q Does that include the vehicles?

25 A Yes, sir.

1 Q And the roadway?

2 A Yes, sir.

3 Q Okay. And did you review -- did you have a
4 chance to review all those photos?

5 A I did.

6 Q Now, I will show you State's Exhibit 1 through
7 14. I will ask you, do those appear to be a fair and
8 accurate representation of the scene there that night
9 and the vehicles and the road?

10 A Yeah. Yes, it's accurate.

11 Q All right.

12 MR. WILLIAMS: Your Honor, at this time I move
13 these exhibits into evidence.

14 THE COURT: Any objection?

15 MR. WILLIAMS: The objection stated
16 previously.

17 THE COURT: I think you need to establish who
18 took them. Lay a little more foundation...

19 Q (By Mr. Stumbo) Trooper Caldwell, who was the
20 trooper that took these photos?

21 A Corporal Chris Shelton.

22 Q What did he do with them after he took them?

23 A He developed them.

24 Q And did he enter them as part of this case?

25 A He did.

1 Q where are they maintained?

2 A The general sessions package.

3 Q where does the highway patrol maintain them
4 after they're collected?

5 A There, sir.

6 Q Okay. And did you retrieve them for the
7 general sessions packet?

8 A That is correct.

9 Q And when you did that, what did you do with
10 them?

11 A Placed them in an envelope along with the
12 other information and gave it to the solicitor.

13 THE COURT: I'm sorry, I cannot hear you. Can
14 you repeat that answer please?

15 THE WITNESS: Yes. After I got them from the
16 server I placed them with the rest of the information
17 that was provided to the solicitor, and then went to
18 the grand jury, and that came back with the
19 indictment.

20 Q (By Mr. Johnson) Okay. At that time did you
21 review all those photos?

22 A I did.

23 Q And do you feel those photos are a fair and
24 accurate representation, and of the same photos that
25 you saw today, a fair and accurate representation of

1 the scene that night?

2 A They are, yes.

3 THE COURT: Marked and admitted subject to the
4 objection. However the appropriate foundation has
5 been laid so the objection goes to the weight, not to
6 the admissibility.

7 (Whereupon, State's Exhibit Nos. 1, 2, 3, 4,
8 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 are admitted
9 into evidence.)

10 MR. JOHNSON: Thank you, Your Honor. May I
11 publish this to the jury?

12 THE COURT: You may.

13 MR. JOHNSON: I was going to pass it to the
14 jury.

15 THE COURT: Do it on the ELMO so we don't have
16 to wait to ask questions and everybody can see them
17 at one time.

18 MR. JOHNSON: Yes, Your Honor.

19 Q (By Mr. Johnson) Trooper Caldwell, I'm going
20 to show you State's Exhibit 1. Trooper, what is that
21 a picture of?

22 A The roadway.

23 Q Okay. What is significant about the roadway
24 in that picture?

25 A I've got a glare from this light.

1 THE COURT: Sir, you can come down and look at
2 them. But I need you to speak loudly so the court
3 reporter can hear everything you are saying.

4 THE WITNESS: I can speak pretty loud.

5 THE COURT: Thank you.

6 Q (By Mr. Stumbo) What is significant about the
7 roadway in that photograph, Trooper?

8 A Well, what is significant about it is this
9 area right here.

10 Q Indicate with the laser pointer. What did you
11 indicate?

12 A The area right here.

13 Q What is that?

14 A That is the area of impact.

15 THE COURT: I need you to speak up. I can't
16 hear you and your back is to the jury.

17 THE WITNESS: The area of impact.

18 Q (By Mr. Stumbo) Trooper, I'm going to show
19 you State's Exhibit No. 2. Is that the same area of
20 the collision?

21 A Yes.

22 Q Okay. And State's 3 as well?

23 A Yes, sir.

24 Q All right. Trooper, State's 4, tell me about
25 that, what is that?

1 A That is a picture of the defendant's front
2 pickup truck, the Dodge Ram that he was driving.

3 Q Okay. His Dodge Ram truck?

4 A That's correct.

5 Q And State's Exhibit 5. What is that?

6 A That is the license plate in the rear left
7 panel of his same pickup truck.

8 Q Where was that truck located when the photo
9 was taken?

10 A It was still off the right side of the roadway
11 up against the embankment.

12 Q All right. State's 6. Is that the same
13 truck?

14 A That is. It's hard to tell here but there are
15 skid marks that lead to the final rest of that pickup
16 truck right there.

17 Q All right. State's 7, is that the same scene?

18 A That is.

19 Q All right. As well as State's Exhibit 8?

20 A Yes.

21 Q And what are those marks in the roadway there?

22 A Right here?

23 Q Right.

24 A These are skid marks.

25 Q All right. And State's 9?

1 A Another picture of the same. You can see the
2 pickup is approximately right there where that is
3 reflected on the license plate right there.

4 Q I'm going to switch over and show you this
5 vehicle. State's Exhibit 10, what is that?

6 A That is a picture of the vehicle that Mr.
7 Shealy and Ms. Stone were driving in.

8 Q And Ms. Stone was located where in that
9 vehicle?

10 A In the passenger seat.

11 Q And State's 11?

12 A That is another rear picture of the GMC Jimmy
13 that was driven by Mr. Shealy.

14 Q All right. State's 12?

15 A That is the front side picture of the same GMC
16 Jimmy.

17 Q These last two photos, tell me what is
18 significant about State's 13? This particular area
19 of the ground?

20 A Again, I'm going to have to -- Your Honor, may
21 I?

22 THE COURT: Yes, sir.

23 A This picture is the final rest of the GMC
24 Jimmy, or where the vehicle was.

25 Q (By Mr. Johnson) All right. As well as

1 State's Exhibit 14, same area?

2 A That is correct. That's the same final rest
3 where the GMC Jimmy came to rest off to the left side
4 of the road.

5 Q Thank you, Trooper.

6 Trooper Caldwell, did you advise the defendant
7 of anything at that time after you questioned him?

8 A I'm sorry?

9 Q After you questioned the defendant, observed
10 the scene, did you advise him of anything at that
11 time?

12 A I did.

13 Q What?

14 A After I spoke with him and he admitted being
15 the driver, told me he was sorry and tried to slow
16 down, smelled alcoholic beverage on his breath, had
17 slurred speech, I informed him of his Miranda rights
18 in order to do field sobriety tests.

19 Q All right. Now how did you advise him of his
20 Miranda rights?

21 A I read them off of a card that I read off to
22 everyone.

23 Q Do you have that card on you?

24 A I do.

25 Q Can you take it out?

1 A I have it right here in front of me.

2 Q Can you read it off to me the way you read it
3 off that night?

4 A I can. You have the right to remain silent.
5 Anything you say can and will be used against you in
6 a court of law. You have the right to talk to an
7 attorney or have him or her present with you when you
8 are being questioned.

9 If you cannot afford to hire an attorney, one
10 will be appointed to represent you before any
11 questioning. You can decide at any time to exercise
12 these rights and not answer any questions or make any
13 statements. Do you understand these rights as I have
14 explained them to you? Having these rights in mind,
15 do you wish to talk to us now?

16 Q What did you do after that?

17 A After that I proceeded to give him some field
18 sobriety tests.

19 Q You offered the tests?

20 A Yes.

21 Q Did he take them?

22 A He did.

23 Q Tell me about those tests.

24 A Well, the first test I offered him was
25 commonly referred to as HGN, which is the horizontal

1 gaze nystagmus.

2 Q All right. What is that? Tell me about that.

3 A What that is is a jerking of the eyes, and
4 it's normally related to alcohol. There is a small
5 percentage that has it involuntarily.

6 Q How do you actually perform the test?

7 A Well, what I do is I actually use this exact
8 same pen every time. The first thing I'm doing, I
9 ask them if they can see this gold badge on this pen.
10 And usually they're no further -- they're probably
11 closer than me and the court reporter here.

12 If they indicate by yes, I know that they can
13 see. Obviously he was driving so I knew he could
14 see. The first I am doing is checking for equal
15 pupils, make sure they're equal and I check for that.
16 I check for equal tracking, and then I go into the
17 test of HGN.

18 What that is is I basically hold this pen up
19 above the eyes and going from side to side following
20 the eyes checking for three things which is lack of
21 smooth pursuit. Basically in layman's terms what
22 that would be is if you have not consumed alcohol,
23 your eyes should smoothly roll across. Like an
24 example would be if you rolled a marble across a
25 polished piece of glass, it's going to ride real

1 smooth, it's going to go straight across.

2 The example of someone being intoxicated would
3 be a jerking or a jumping across there on that lack
4 of smooth pursuit, giving that eye -- take that same
5 marble we were using as an example and roll it across
6 a piece of sandpaper. It's not going to roll as
7 smooth as it would with the glass. So that's the
8 first thing I'm checking for.

9 Second thing I'm checking for is distinct and
10 sustained nystagmus at maximum deviation. And what
11 that is, taking the same pen, you can see the badge,
12 take it to maximum, all you are doing is moving your
13 eyes all the way to the corner where you cannot see
14 any white in the eye. Notice my eyes will stay,
15 they're staying normal, they're not jerking. On
16 someone that has consumed alcohol the eyes are going
17 to have a jerking on there. You are checking that in
18 the right and left eye.

19 The last thing is you are checking it prior to
20 45 degrees. You are checking it approximately
21 between the shoulder blade and the chin, if the
22 subject is holding his head correctly, and you are
23 checking for the same jerking.

24 I checked that on Mr. Martin and he had all of
25 the clues indicated that we are trained with and at

1 the academy.

2 Q So lack of smooth pursuit, how did he fair?

3 A He failed in both the left and the right eye.

4 Q The distinct and sustained nystagmus at
5 maximum deviation, how did he do on that?

6 A He failed in both the left and the right eye.

7 Q Also nystagmus onset prior to 45 degrees, how
8 did he do on that?

9 A He failed on both the left and the right eye.
10 Meaning there was jerking in all three tests.

11 Q And the screening that you did, what did you
12 do for -- you tracked him for those three things,
13 what did you do, check, what other things did you
14 check with regard to his pupils?

15 A Like I mentioned we are checking for equal
16 pupil, equal tracking, those are the things. And the
17 last thing you are checking for is vertical nystagmus
18 which is when I take the pen vertically and raise it
19 and then for jerking on the eye.

20 And I do this -- when I am explaining it to
21 them I tell the subject what I want you to do is put
22 your hands and feet together, hands down by your
23 side, I want you to look at the gold badge. And I
24 ask everybody if they can see it, yes they can see
25 it.

1 If they have glasses I have them removed. He
2 did not have glasses. Made sure he didn't have any
3 contacts. Raised it slightly above his eyes where he
4 meet his eyes and doesn't raise his head up, and then
5 we proceed with the test that I was talking about,
6 the lack of smooth pursuit, distinct and sustained
7 nystagmus at maximus deviation, and the onset of
8 nystagmus prior to 45 degrees which he failed in both
9 eyes and all three.

10 Q Equal pupils, what does that mean?

11 A It means that his pupil size was equal. One
12 was not dilated and the other one not being dilated.

13 Q Is that to ensure the accuracy of your test?

14 A That is.

15 Q And did he have equal tracking?

16 A He did. He was able to follow the pen.

17 Q What about the vertical nystagmus?

18 A He did not have vertical nystagmus.

19 Q What does that mean?

20 A Typically on a person of very high
21 concentration, the only time I've personally seen it
22 in two years is when the person has been above .28 or
23 .30 on a breathalyzer, and it is jerking still in the
24 eyes when you have them look straight up and
25 following a pen.

1 Q What is the next test you performed?

2 A The next test, in accordance with NHTSA, which
3 is the safety, which is the way we learn these tests
4 to do them in this exact same sequence, was the walk
5 and turn.

6 And basically what I do on that test is I put
7 the subject in a position and ask him to stay in that
8 position and do not begin the test until I say so. I
9 can demonstrate it if you want me to demonstrate it
10 for the jury.

11 Q That's all right. Now were those the
12 instructions you gave to him?

13 A Yes. I told him to put his left foot in front
14 of his right, hands down by his side and stay in that
15 position until I told him to begin his steps. I told
16 him like I tell everybody, all you have to do is
17 follow me, be able to repeat the test exactly like I
18 do it, and you'll have no problems.

19 What he did is number one he couldn't keep his
20 left foot in front of the right, he kept stepping off
21 balance and having -- if you are standing like this
22 he kept having to do this so he wouldn't fall over.
23 That was one of the clues that we are looking for.

24 The second thing is he started to do the test
25 after I had already instructed him to stay in that

1 position, do not begin the test, I do so because I
2 have to demonstrate it. Without demonstrating I
3 don't know how he knew what he was supposed to do.

4 Q Did you have any problems with the first nine
5 steps?

6 A He did. On the first nine steps he stopped
7 walking, he missed heel to toe. What we do is we
8 instruct them we are going to take nine steps, heel
9 to toe fashion. Anybody that has not been impaired
10 should be more than easy to do it, I do it several
11 times a night sometimes.

12 All you do is walk nine heel to toe, turn
13 around, come back, I demonstrate the exact way I want
14 it done. All they have to do is be able to copy.
15 And he missed -- he stopped walking, he missed heel
16 to toe, he stepped off line the first nine, he raised
17 -- or excuse me, he had his hands behind his back on
18 the first nine which I instructed him to keep his
19 hands down by his sides at all times. We also asked
20 him to count out loud so we know how many steps
21 they're taking. He took nine steps.

22 Q Second nine any problems?

23 A Well before the second nine I asked him to do
24 the turn which I demonstrated for him. On the turn
25 he twirled instead of doing the turn the way I

1 instructed, he almost falls over, and he takes both
2 feet off line to keep his balance.

3 On the second nine coming back, same things
4 I'm looking for, I'm looking to see if he stops
5 walking, it's only nine steps you should be able to
6 walk nine steps. You should be able to do heel to
7 toe if you're not impaired, he missed heel to toe.
8 And if he steps off line, all we are looking at is a
9 short, straight line. Everybody should be able to
10 walk in a straight line, he was not able to do that.
11 And he only took eight steps.

12 Q All right. Was he supposed to count out loud?

13 A He was and he did not count out loud after
14 several times of me telling him, don't forget to
15 count out loud.

16 Q When did he start taking the test? On time?

17 A Well he started too soon. As I indicated I
18 put him in that position, told him to remain in that
19 position.

20 What this is is an instruction on stay in a
21 following instruction. Anybody that's impaired it's
22 a two-part test, you should be able to pay attention
23 and follow the instructions of the test. He was not
24 able to do that and he failed this test.

25 Q All right. What was your next test?

1 A The next test I did was the one-leg stand.
2 Tell him -- first I ask if they have any problems.
3 He instructed that he had no problems with either
4 leg. I said, do you have any problems standing on
5 either leg? He said no.

6 I asked him to choose whatever leg, I don't
7 care which leg you choose, hold approximately six
8 inches off the ground, stand up straight, hands down
9 by your side and you look at your toe and you count
10 out in this manner, like Mr. Williams did, 1,001,
11 1,002, 1,003. Or I believe he did 1-Mississippi, but
12 it's the same concept. And we monitor him for -- and
13 he put his leg down. Or excuse me, he swayed while
14 balancing.

15 Q So did he pass that test?

16 A No.

17 Q All right. Did you record all the results
18 that he had on his tests?

19 A I did and submitted them to the general
20 sessions package.

21 Q All right. And what did you do after the
22 testing?

23 A After that, and the evidence that I had prior
24 with the alcohol on the breath, slurred speech, the
25 results of the test, told me that Mr. Martin was

1 impaired and under the influence. I placed Mr.
2 Martin under arrest and advised him of his Miranda
3 warnings and read off the exact same card that I read
4 earlier.

5 Q What time did you place him under arrest?

6 A I believe I testified I arrived on scene at
7 8:05 -- excuse me, I was en route at 8:05, arrived on
8 scene at 8:26 and placed him under arrest at 9:00
9 p.m.

10 Q Highway patrol keep a record of that?

11 A They do.

12 Q All right. Trooper, let me ask you now you
13 said you gave him Miranda warnings?

14 A That is correct.

15 Q What is the applied consent warning?

16 A Any time a subject is arrested for driving
17 under the influence, you have what is called an
18 implied consent form. See if I can find mine. All
19 this basically says is it explains to the defendant
20 what exactly is going on, what is going to take place
21 from that point and his rights.

22 Q All right. And did you read him a portion of
23 the applied consent form?

24 A I did. After I placed him under arrest, put
25 the cuffs on him, read him his Miranda rights again,

1 got him to the patrol car, set him in the front seat
2 because we transport in the front seat of highway
3 patrol, buckled him in, sat down with him and read
4 him his implied consent form. The portion that
5 applied to him which is the B section of that form.

6 Q All right.

7 (Whereupon, State's Exhibit No. 15 is marked
8 for identification.)

9 Q (By Mr. Johnson) Trooper Caldwell, under the
10 implied consent form, what section did you read?

11 A Section B.

12 Q And following that, did you search the area
13 for any physical evidence regarding this
14 investigation?

15 A I did.

16 Q What did you find?

17 A I arrived on scene I did spoke with Mr.
18 Martin, also spoke with Christy and Charlie and they
19 -- Charlie informed me that --

20 MR. WILLIAMS: Objection, hearsay, Your Honor.

21 THE COURT: Sustained, hearsay.

22 Q (By Mr. Johnson) Following your conversation
23 with Charlie, what did you do?

24 A I searched the area.

25 Q What area?

1 A The area immediately around the defendant's
2 truck.

3 Q Okay. And what did you find?

4 A A 12 ounce beer bottle, brown in color that
5 was cool to the touch with approximately a quarter of
6 alcohol still in the bottle.

7 Q Okay.

8 MR. WILLIAMS: Objection, it wasn't provided
9 to the defense.

10 THE COURT: Please approach, no speaking
11 objections.

12 (Whereupon, State's Exhibit No. 16 is marked
13 for identification.)

14 (Whereupon, a discussion was held at the bench
15 off the record.)

16 THE COURT: Madam Forelady, ladies and
17 gentlemen, I have a matter of law I need to take up
18 with the attorneys. It will be very brief. During
19 the break please don't discuss the case. Please
20 leave your notepads in your seats.

21 We appreciate your patience.

22 (Whereupon, the jurors exit the courtroom.)

23 THE COURT: What is the state seeking to
24 introduce?

25 MR. JOHNSON: Your Honor, this is a beer

1 bottle seized by the highway patrol that evening. It
2 was maintained in their evidence and the trooper
3 brought down today. I showed it to Mr. Williams this
4 morning when I had it in my hand.

5 THE COURT: I'm sorry, I can't hear you.

6 MR. JOHNSON: Judge, when I received the
7 bottle from the trooper, Trooper Caldwell who's
8 testifying, I walked over to show it to Mr. Williams
9 this morning and indicated he had that one bottle to
10 be used in evidence seized by highway patrol that
11 even and maintained by their evidence room until this
12 date.

13 THE COURT: What is the basis of the
14 objection?

15 MR. WILLIAMS: It was not provided in
16 discovery.

17 THE COURT: What duty did they have to provide
18 it to you?

19 MR. WILLIAMS: Well, they -- I actually went
20 to the solicitor's office to look at what documents
21 they had, which included an awful lot of medical
22 reports.

23 THE COURT: Did you make a Brady request for
24 any of it?

25 MR. WILLIAMS: I did.

1 THE COURT: And did it specifically address
2 what it would be covering?

3 MR. WILLIAMS: It addressed anything the state
4 -- physical documents and any physical evidence which
5 may be attempted to be introduced in the trial of the
6 case. I met with the solicitor.

7 THE COURT: Did they give you a list
8 indicating that this bottle was something they sought
9 to introduce but it was not physically in their
10 possession but that you could inspect it?

11 MR. WILLIAMS: No, Your Honor, not the way you
12 are describing it or anything like that.

13 THE COURT: What did you all provide to him?

14 MR. JOHNSON: Your Honor, I mean essentially
15 it's in the reports of the trooper reference the
16 bottle.

17 THE COURT: Did you ever put him on notice
18 that you planned to use the bottle in evidence?

19 MR. STUMBO: No, ma'am. We did not provide
20 Mr. Williams with any exhibit list before the trial.

21 THE COURT: Now, you got his Rule Five?

22 MR. STUMBO: Yes, sir -- yes, ma'am.

23 THE COURT: You don't think that covers that?

24 MR. STUMBO: Yes, ma'am. We believe it did
25 cover it, but we didn't have the bottle in our

1 possession at the time Mr. Williams --

2 THE COURT: Case law says you have access to
3 it. You have some level of dominion and control over
4 it.

5 MR. STUMBO: That's correct. Mr. Williams
6 could have gone over to the highway patrol central
7 evidence over on South Road and looked at it.

8 THE COURT: Certainly could have. Mr.
9 Williams, are you saying you did not know it existed
10 at all?

11 MR. WILLIAMS: I'm saying that I did not -- it
12 was not in the solicitor's care so I did not know
13 that it was going to be introduced as an exhibit in
14 this trial.

15 THE COURT: Certainly you could have surmised
16 that if it was in the report. This is a felony DUI
17 case, there is testimony that things were being
18 thrown out of your client's car and that a bottle was
19 in the report, you did not think they were going to
20 try to introduce this?

21 MR. WILLIAMS: The police had custody of this
22 item. I don't have a right to get this item until
23 they provide me access to it.

24 THE COURT: Did you ever request to go look at
25 it?

1 MR. WILLIAMS: Your Honor, when I filed the
2 discovery motion he needs to put me on notice that
3 he's going to introduce this item as part of the
4 trial of this case. He did not tell me that he was
5 going to introduce the tire off of the vehicle which
6 was involved. He did not tell me he was going to
7 introduce the broken glass that was involved in this
8 case.

9 THE COURT: I think I would know they were
10 going to use the bottle against my client.

11 MR. WILLIAMS: Well, we could surmise that he
12 would introduce the tire, and show that it was a
13 blown-out tire.

14 THE COURT: That doesn't meet any element of
15 the offense. Certainly him being inebriated is an
16 element of the offense.

17 MR. WILLIAMS: I'm not sure that this bottle
18 meets any element of the offense if they can't tie it
19 directly to my client.

20 THE COURT: Circumstantially it can be
21 inferred from the testimony so far that it was in his
22 car, that he was drinking and he threw it out the
23 window.

24 MR. WILLIAMS: Your Honor, there was no
25 evidence that I would know that they maintained

1 possession of the bottle. Because it is standard
2 practice by the highway patrol when you get to a DUI
3 case for them not to have the bottle. Oftentimes
4 they don't have the bottle in a DUI case.

5 And they will tell you when you try the case,
6 we don't have to maintain that.

7 MR. JOHNSON: Your Honor, Mr. Williams never
8 asked me to go look at the evidence being kept at the
9 evidence location. We have all the documentation
10 just like in a drug case. We don't keep cocaine in
11 our office. It's in evidence.

12 THE COURT: What exactly did your Rule 5
13 request, Mr. Williams?

14 MR. WILLIAMS: Your Honor, if you have the
15 original file there, there should be a copy in that.
16 The date July 31st, 2007. It was filed July 31st,
17 2007.

18 And under Section E in the first motion of
19 discovery and disclosure of evidence it referenced,
20 on the third page, all evidence tending to show that
21 any acts or conduct by the defendant were done
22 without criminal intent. Then it also asked that --

23 THE COURT: That wouldn't fall into that
24 category.

25 MR. WILLIAMS: You're right. I am still going

1 -- motion for reciprocal discovery and evidence with
2 certification. Under one it lists tangible objects.

3 THE COURT: Which date are you referring to?

4 MR. WILLIAMS: Same date, Your Honor, they're
5 all dated July 31st. I have one September 18th, and
6 one July 31th. I have two requests.

7 MR. JOHNSON: September 18th was my reciprocal
8 Rule 5.

9 THE COURT: I'm sorry, I misunderstood.

10 MR. WILLIAMS: Under one on that last motion,
11 we request tangible objects or copies of portions
12 thereof which are or may be in position, custody and
13 control of the state, its agents or attorneys.

14 THE COURT: Had you known that this bottle
15 existed, what would have done differently?

16 Is there some expert you want to look at it.

17 MR. WILLIAMS: Well I would have wanted to
18 know if they have done a fingerprints analysis of
19 that.

20 THE COURT: You can still get that
21 information, I don't see any prejudice -- you haven't
22 shown me any prejudice to your client. Them simply
23 not disclosing it is not the basis for it to be
24 excluded. And I'm still not completely convinced
25 that you weren't on notice.

1 I think this is a little -- I don't want to
2 use the word disingenuous, but I think you knew that
3 this bottle was around.

4 MR. WILLIAMS: Your Honor, I assure the Court,
5 I try a lot of DUI cases. I assure the Court
6 oftentimes the beer container is not produced in the
7 DUI trial or the bottle container.

8 THE WITNESS: That doesn't mean I still would
9 not ask about it. I'd want to know for sure.

10 MR. JOHNSON: Your Honor, just for the Court's
11 information --

12 THE COURT: Were any fingerprint analysis done
13 on the bottle?

14 MR. JOHNSON: No, ma'am.

15 THE COURT: Is the bottle available for Mr.
16 Williams to conduct a fingerprint on it if he desires
17 to do it?

18 MR. JOHNSON: It's right here. It has been in
19 evidence the entire time. It would be available for
20 Mr. Williams.

21 THE COURT: Mr. Williams, do you desire the
22 time to procure a fingerprint expert to take
23 fingerprints from the bottle?

24 MR. WILLIAMS: Not now, Your Honor. I'm not
25 sure I can prove chain of custody.

1 THE COURT: I think the state is saying they
2 can sufficiently prove it based on what I've heard so
3 far. It has been kept in their evidence locker. I
4 don't have any -- and that is to your benefit, you
5 can always argue that.

6 The issue now becomes one of prejudice. I'm
7 not going to excuse the bottle. I'm going to give
8 you access to the bottle to perform any tests you
9 want to perform on it. And I will give extra time to
10 do that. We'll adjourn if we have to to allow you to
11 do it. But that's not the basis for the bottle to be
12 excluded.

13 This is not a circumstance where you did not
14 know of the bottle existence, it is in all of the
15 reports as I understand it, and that is
16 uncontroverted. And certainly I do believe the state
17 should have made you aware that they planned to
18 introduce it against him, but the remedy is to give
19 you access to the evidence now so that you can
20 provide any testing for it that you'd like to have
21 done.

22 MR. WILLIAMS: Your Honor, for the Court's
23 edification, whoever sent the discovery materials by
24 the solicitor's office did not call it a beer bottle,
25 they called it a bottle of alcohol.

1 THE COURT: There is a difference.

2 MR. WILLIAMS: I think there is.

3 THE COURT: Beer is alcohol.

4 MR. JOHNSON: It says beer bottle, Your Honor.

5 THE COURT: Either way it's a bottle showing
6 circumstantially that your client was drinking in his
7 vehicle before this happened. And that it was
8 discarded from his vehicle, and that they intended to
9 introduce it.

10 Again the question becomes do you need access
11 to the information or the bottle so that you can have
12 an expert perform any fingerprint tests on it or
13 would you like the state to undertake that?

14 MR. WILLIAMS: Your Honor, you know, the last
15 time I looked it wasn't my job for them to do their
16 job.

17 THE COURT: Well it's not their job to take
18 fingerprints if they don't feel like they need that
19 to prove an element of their case, is it?

20 MR. WILLIAMS: No.

21 THE COURT: A lot of time they don't take
22 fingerprints, it's not their job. They only have to
23 determine what they need to prove the elements of
24 there offense. It's not their job to prove your
25 client -- to exculpate him.

1 MR. WILLIAMS: That's true.

2 THE COURT: So they don't have any duty to
3 fingerprint the bottle. Of course you can always
4 argue that later.

5 MR. WILLIAMS: Yes, ma'am.

6 THE COURT: That's what make for a wonderfully
7 entertaining trial, from both sides.

8 MR. WILLIAMS: In answer to the Court's
9 direction, I don't think I would have sufficient time
10 to have --

11 THE COURT: You have more than sufficient
12 time. There are lots of fingerprint folk you can
13 call upon that would be more than happy.

14 MR. WILLIAMS: I would not want to withhold
15 the trial.

16 THE COURT: It won't take that long. I have
17 had them done in less than 24 hours in Charleston.
18 They're always available at the right price. If you
19 call them, they'll do it. That's with me using the
20 public defender's budget. They can become available,
21 and if they know they're going to get paid right
22 away, certainly.

23 MR. WILLIAMS: But again, Your Honor, if they
24 came back with no fingerprints then we would be in
25 the same position we are in right now.

1 THE COURT: Well, that's a strategic position
2 you'll have to make. It's not for me to advocate for
3 one side or the other. My only job is to make sure
4 there is a level playing field.

5 So to the extent that you have not had the
6 evidence in your possession, I'm offering you the
7 ability to have it to perform any tests that you'd
8 like to perform and to have that evidence available
9 to you one way or the other so that you can make a
10 fully informed strategic decision on your client's
11 behalf.

12 I give you the option. It's up to you. I
13 take no posture on it. I just think that if they did
14 not give it to you remedy is to give it to you and to
15 give you whatever time is necessary to perform
16 whatever tests you think are appropriate.

17 MR. WILLIAMS: At this late date, Your Honor,
18 we don't seek to perform any tests on it.

19 THE COURT: Well, I take exception to the
20 reference to the characterization at this late date.
21 Because in the Court's experience you can get the
22 test done if you need to get them done. You can get
23 them done overnight if you need to. I have had them
24 done in as short a time as that.

25 I think if you need to contact someone you

1 certainly can do it. They still have a full day's
2 worth of witnesses. And I would give you the
3 opportunity to recall this witness to cross-examine
4 him regarding -- and actually what I would do if
5 that's what you really want to do perform tests, I
6 will hold in abeyance ruling on admitting the bottle
7 so you can have it tested and they'll have to recall
8 him to admit the bottle.

9 And that way that gives you the full ability
10 to have cross-examination before having the bottle
11 going before the jury at all.

12 MR. WILLIAMS: I think I've already answered
13 the Court's question.

14 THE COURT: So you don't want to get it
15 tested?

16 MR. WILLIAMS: I don't seek to test the
17 bottle.

18 THE COURT: Okay. Is there anything else you
19 seek to do with the evidence?

20 MR. WILLIAMS: I still haven't waived my
21 objection to laying proper foundation yet.

22 THE COURT: Well, they have to do that. I
23 don't think we've given them an opportunity to lay
24 any foundation yet. We haven't even gotten into
25 questioning yet.

1 You want to go through those series of
2 questions right quick so I can deal with this outside
3 the jury's presence?

4 MR. JOHNSON: Yes, ma'am.

5 THE COURT: Go ahead.

6 IN-CAMERA EXAMINATION

7 BY MR. JOHNSON:

8 Q Trooper Caldwell, tell me about what physical
9 evidence that you seized on the scene. Tell me about
10 it.

11 A It was a brown bottle of alcohol.

12 Q Okay. Where was it at?

13 A I'm sorry? It was in close proximity of the
14 defendant's vehicle.

15 Q Okay. And when you seized it, how did it
16 feel?

17 A Cool to the touch.

18 Q Anything in it?

19 A Still had a quarter of alcohol in it.

20 Q What did you do with that alcohol?

21 A I poured it out.

22 Q And what did you do with the bottle?

23 A Secured the bottle in a bag that's inside of
24 that.

25 Q You secured it in the bag?

1 A Yes.

2 Q What did you do with the bag?

3 A Put it in the evidence.

4 Q Took it and did what with it?

5 A Took it to the evidence locker.

6 Q Okay..

7 A A form for the proper chain of command, which
8 you have a copy of, and it has been with highway
9 patrol ever since that time.

10 Q Now I will show you State's Exhibit 16 and ask
11 you if you recognize State's Exhibit 16.

12 MR. WILLIAMS: Your Honor, I withdraw the
13 objection dealing with the introduction of the Bud
14 Light beer container.

15 THE COURT: Okay, the objection is withdrawn.

16 Please bring in the panel. Thank you, sir.

17 We are not going to finish this case tomorrow,
18 are we?

19 MR. WILLIAMS: No, ma'am. In fact one of my
20 medical doctors, he's a trauma surgeon at Richland,
21 is booked tomorrow. He told me he can be here first
22 thing Wednesday morning.

23 THE COURT: I'm not going to delay the
24 presentation of your case. We will talk about it
25 tomorrow, but doctors can be very interesting that

1 way. When we get to Wednesday he will have another
2 reason why he can't come. We'll have to deal with
3 it. I may have to call him myself. We will figure
4 it out.

5 MR. JOHNSON: Yes, ma'am.

6 THE COURT: Please bring in the panel.

7 (Whereupon, the jurors enter the courtroom.)

8 THE COURT: Thank you, ladies and gentlemen.

9 We appreciate your patience.

10 You may proceed.

11 MR. JOHNSON: Thank you, Your Honor.

12 Q (By Mr. Johnson) Trooper Caldwell, I am going
13 to show you what has been marked State's Exhibit 16
14 and ask you if you recognize that?

15 A I do.

16 Q What is that?

17 A It is the beer bottle that I recovered from
18 the scene in the vicinity of the defendant's truck.

19 Q Is it in substantially the same condition now
20 as it was then?

21 A Minus it's not cool to the touch. It was cool
22 to touch that night and it had a quarter alcohol in
23 it. Now it does not.

24 MR. JOHNSON: Your Honor, at this time I move
25 State's Exhibit 16 into evidence.

1 THE COURT: Marked and admitted without
2 objection.

3 (Whereupon, State's Exhibit No. 16 is admitted
4 into evidence.)

5 MR. JOHNSON: At this time I'm going to
6 publish it to the jury and actually hand it to the
7 jury.

8 THE COURT: I prefer you put it on the ELMO or
9 show it. But you can't ask question while you are
10 doing that and we need to move along.

11 You can show it to the jury.

12 MR. JOHNSON: Yes, ma'am.

13 Q (By Mr. Johnson) Trooper Caldwell, now is
14 that the bottle you seized that night?

15 A It is.

16 Q All right. You said it was how full?

17 A Approximately a quarter of alcohol still in
18 it, it was cool to the touch.

19 Q And what kind of information did you put on
20 the outside of the baggie that you put it in?

21 A The evidence bag we fill out the name of the
22 defendant, which is William Conrad Martin; his
23 address; his license number; tag number on the
24 vehicle; make of the vehicle, which was Dodge; and
25 year, which is 2007; the exhibit, which is in this

1 case a 12-ounce bottle of Bud Light; the date of
2 seizure, which was July 29, 2007; time I seized it,
3 21:00.

4 Q All right. And --

5 A Mack Street location, my name, and the ticket
6 number that was charged to the defendant.

7 Q All right. And did you seize anything else at
8 the scene in that area or was that it?

9 A That was the only bottle I seized in that
10 area.

11 Q Okay. And where did you take the defendant
12 after that?

13 A I found the bottle after the subject's in
14 custody and been Mirandized, as we testified early I
15 had already had Mirandized, did the field sobriety,
16 did Miranda again, did the consent form that I
17 testified to, searched, found the bottle, had the
18 subject in the front seat, was filling out some
19 pertinent information, then I left the scene and
20 headed to the Lexington County detention center with
21 the defendant in custody.

22 Q Where did you take him?

23 A Lexington County detention center.

24 Q Where at within the detention center?

25 A To the breathalyzer room to offer him a breath

1 test to determine the alcohol concentration on his
2 breath.

3 Q Were the events in that room videotaped?

4 A They were.

5 Q The video camera in that room, was that
6 working that evening?

7 A It was.

8 Q And did you read him any of his rights?

9 A I did. I read him his Miranda rights again
10 off the same card. I also read him the implied
11 consent in full.

12 Q Trooper Caldwell, I'm going to show you
13 State's Exhibit 15 and ask you if you recognize that?

14 A I do.

15 Q What is that?

16 A It's the implied consent form that was read
17 after in custody in the patrol car and then in full
18 at the detention center in the breathalyzer room.

19 Q All right. Did you read that while -- when
20 you read that, was that videotaped?

21 A It was.

22 Q And you talked about Miranda. How did you
23 read Miranda again?

24 A Off the same card that I read early for the
25 jury.

1 Q Okay. And the form that you have, the implied
2 consent form, did you sign it?

3 A I signed where the officer's name is, yes.

4 Q All right. And did the defendant sign it?

5 A He refused to sign it.

6 Q All right. And what section did you read to
7 him from that form?

8 A At the B.A. Room I read him driving under the
9 influence, the top section, A, B, C, D, E and F.

10 Q Okay.

11 A Not F. You were not reading F, excuse me.

12 Q Okay. Did you advise the defendant that you
13 all were being videotaped at the time?

14 A I did.

15 Q All right. Now what happened? Did he take
16 the test?

17 A He refused the test.

18 Q What happened after that?

19 A About the time we were finishing up after I
20 read him his rights -- well, first time informed him
21 he was being videotaped, then I read him his rights,
22 then advised him of his implied consent form, told
23 him that I was going to offer him a breath test to
24 determine alcohol concentration, he refused.

25 He refused to sign the form, gave him a copy

1 of the form, finishing up and he passed out. Fell
2 over headfirst in the video room.

3 Q What did you do in response to that?

4 A I immediately notified the detention center.
5 They got their medical personnel to come check him.
6 And then because he was not charged yet officially
7 and was not property of the detection center, I
8 called for an ambulance and had an ambulance come
9 pick him up at the detention center.

10 Q Now what time did you call for EMS?

11 A I called for ambulance 11:03 p.m.

12 Q At that time was the videotaping over?

13 A I'm not sure if it was still running but the
14 sequence of events and everything was finished.

15 Q But at that time was he removed from the room?

16 A He was.

17 Q And at that time was the videotape ended?

18 A It was.

19 MR. JOHNSON: Your Honor, at this time I move
20 State's Exhibit 15 into evidence.

21 THE COURT: Any objection?

22 Show it to Mr. Williams.

23 MR. WILLIAMS: No objection, Your Honor.

24 THE COURT: Marked and admitted without
25 objection.

1 (Whereupon, State's Exhibit 15 is admitted
2 into evidence.)

3 MR. JOHNSON: Your Honor, I'm going to publish
4 it on the overhead at this time.

5 THE COURT: You may proceed.

6 MR. JOHNSON: Thank you.

7 Q (By Mr. Johnson) Trooper Caldwell, now what's
8 the purpose -- tell me again about the purpose of
9 informing him of his rights?

10 A I inform the subject of his rights and what
11 tests are going to be offered.

12 Q Now tell me about that test you offered him.
13 what were you asking him to do?

14 A Submit to a breath test to determine the
15 alcohol concentration.

16 Q And he didn't want it?

17 A He refused to.

18 Q All right. And at the bottom where it says
19 time, did you record the time?

20 A I started to apparently on that form. It was
21 22, which is 10, and then B.A. Room.

22 Q Okay. Now is there some other way that
23 highway patrol maintains the time record of when you
24 called EMS?

25 A Through our dispatch.

1 Q Okay. And did you check that?

2 A I did.

3 Q All right. Is that how you maintain your
4 knowledge to be prepared to testify about the time
5 you called EMS?

6 A That's how I maintain time for everything.
7 That's how I maintain time of what time I went on the
8 scene, what time I was en route, what time the
9 collision happened, what time they got the call, what
10 time EMS got the call. We verify everything through
11 dispatch.

12 Q Time of arrest is what?

13 A Time of arrest was 9:00 p.m.

14 Q Okay. Trooper, I want to ask you one quick
15 question here. How was the camera working in the
16 B.A. Room?

17 A Fine.

18 Q Had any problems with it that day?

19 A No. Recorded everything.

20 MR. WILLIAMS: We have no objection to playing
21 the videotape.

22 THE COURT: Marked and admitted without
23 objection. You may proceed.

24 MR. JOHNSON: Thank you, Your Honor.

25 (Whereupon, State's Exhibit No. 17 is admitted

1 into evidence.)

2 Q (By Mr. Johnson) Now, Trooper Caldwell,
3 State's Exhibit 17, do you recognize that?

4 A I do.

5 Q What is that?

6 A That's the video that I have seen that
7 accurately depicts the night in that B.A. Room. It's
8 a disc of that video.

9 MR. WILLIAMS: Your Honor, at this time I'm
10 going to publish this to the jury on the overhead.

11 THE COURT: You may proceed.

12 (Whereupon, the videotape is played in open
13 court.)

14 THE COURT: Counsel approach for me, please.

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 THE COURT: Madam Forelady, ladies and
18 gentlemen, we are going to take advantage of this
19 break in testimony to take our evening recess. We
20 appreciate you all bearing with us as we went a
21 little beyond what would normally be the evening
22 recess.

23 During this break please do not discuss this
24 case among yourselves or with anyone else. Please do
25 not allow yourself to be exposed to any media

1 coverage about this case, radio, television,
2 Internet, newspapers.

3 Again, when you return to the courthouse in
4 the morning return directly to your jury room.
5 Please don't have any contact with anyone.

6 I know it may seem simple, and I have to catch
7 myself as a matter of fact when I have friends that
8 serve on jury duty or people at church because the
9 first question you want to ask is what kind of case
10 are you hearing. That's just human nature.

11 And it is very -- by the same token it is a
12 natural reaction to say, you know I'm hearing this
13 case about blah, blah, blah, blah. It may seem
14 really simple and innocent but it really is not.
15 Because for you to do that, to begin to talk about
16 it, requires you to process what you've heard, and to
17 draw conclusions based on that. And that by its very
18 nature is jury deliberations. And you're only
19 allowed to do that in your jury room once you've
20 heard all the evidence, arguments, and the court's
21 instructions on the law.

22 I would ask that you very carefully abide by
23 that instruction. I hope you have a wonderful
24 evening, we will resume in the morning at 9:30. If
25 you will leave your notepads in your seats we will

1 see you then. Have a good evening.

2 I know it's dark, if anyone feels like they
3 need someone to walk them to their car, let me know
4 and I will have a deputy escort you.

5 (Whereupon, the jurors exit the courtroom.)

6 THE COURT: Officer, you may step down. I
7 remind you you are still under oath. You are not to
8 have any discussion regarding your testimony with
9 anyone. Thank you.

10 Is there anything else we need to take up
11 before we adjourn for the evening from the state?

12 MR. STUMBO: Nothing from the state.

13 THE COURT: From the defense?

14 MR. WILLIAMS: Nothing from the defense.

15 THE COURT: And I assume any motion regarding
16 Jackson versus Denno have been withdrawn since there
17 was no -- or are there additional statements that
18 we're going to need to have an in-camera hearing
19 regarding?

20 MR. STUMBO: The only statements we intended
21 to introduce have already been introduced.

22 THE COURT: I assume you had no problem with
23 them coming in so we didn't --

24 MR. WILLIAMS: No, Your Honor.

25 THE COURT: All right. That then resolves

1 that issue. You all have a good evening, get some
2 rest. I will see you in the morning.

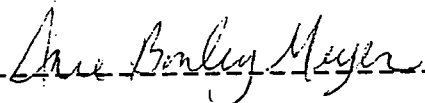
3 (whereupon, the evening recess was taken.)

4 * * * * *

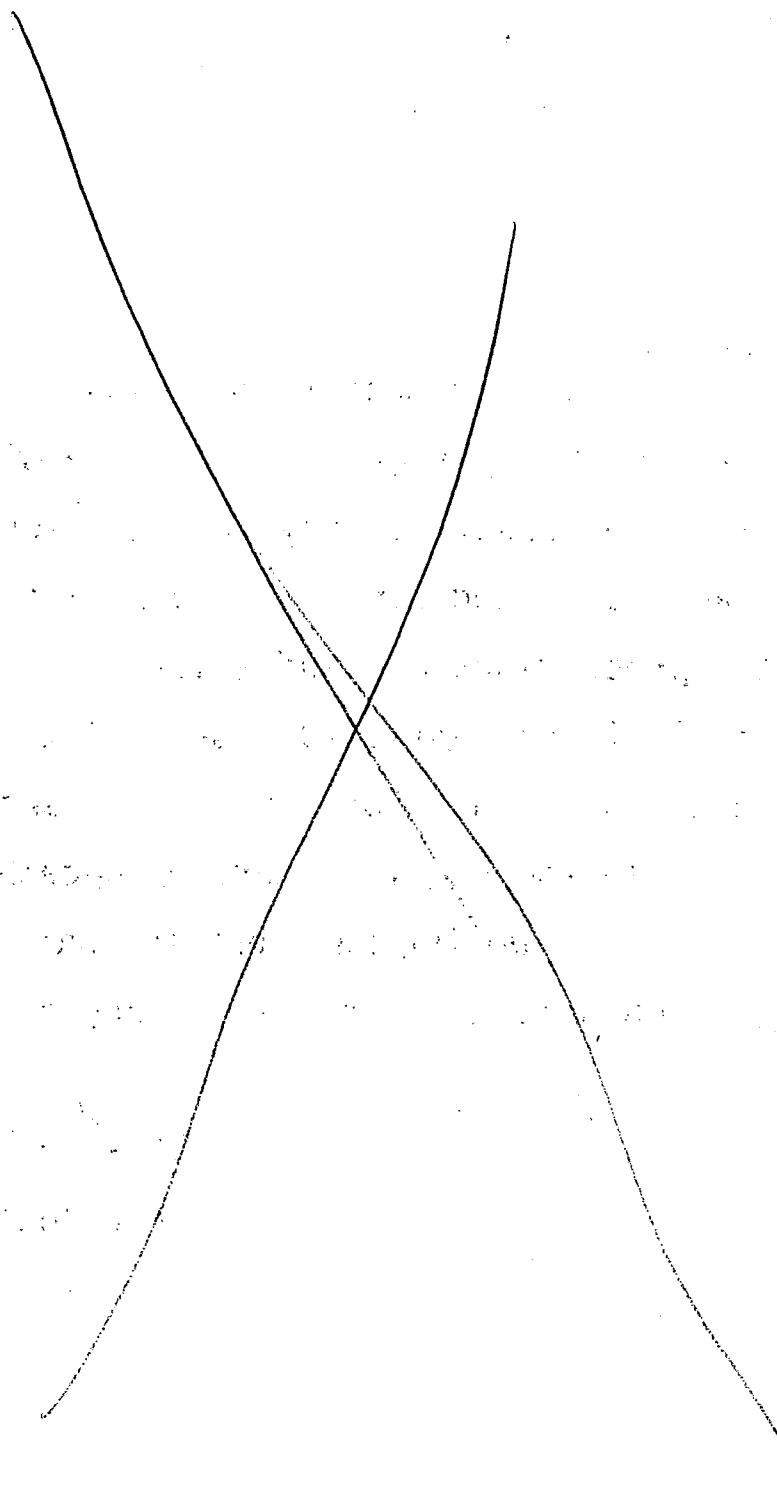
1
2 C E R T I F I C A T E
3 -----
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5
6

7 I, the undersigned, ANNE BOULEY MEYER,
8 Official Court Reporter for the State of South
9 Carolina, do hereby certify that the foregoing is a
10 true, accurate, and complete transcript of record of
11 all the proceedings had and evidence introduced in
12 the trial of the captioned case, relative to appeal,
13 in the Circuit Court for Lexington County, South
14 Carolina, in the session starting December 1, 2008.

15 I do further certify that I am neither
16 of kin, counsel, nor interest to any party hereto.
17

18 -----
19

20 Anne Bouley Meyer, RPR
21 Circuit Court Reporter
22
23
24
25



1 STATE OF SOUTH CAROLINA
2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS
2007-GS-32-1374

3 STATE OF SOUTH CAROLINA)

4 Plaintiff)

5 V.)

TRANSCRIPT OF RECORD

6 WILLIAM CONRAD MARTIN,)

7 Defendant.)
-----)

8
9 DECEMBER 2, 2008
CHARLESTON, SOUTH CAROLINA
10 VOLUME 2

11
12
13 B E F O R E :

14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15

16
17
18 A P P E A R A N C E S :

19 MR. DAVID STUMBO, Assistant Solicitor
20 MR. OLA JOHNSON, Assistant Solicitor
REPRESENTING THE STATE

21 MR. ROBERT T. WILLIAMS, ESQUIRE
22 REPRESENTING THE DEFENDANT
23

24
25 ANNE BOULEY MEYER, RPR
CIRCUIT COURT REPORTER

1 THE COURT: Is the state ready to proceed?

2 MR. STUMBO: State is ready, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. WILLIAMS: Defense is ready, Your Honor.

5 THE COURT: Okay. Please bring in the panel.

6 (Whereupon, the jurors enter the courtroom.)

7 THE COURT: You may be seated. Just pass the
8 notebooks out. As you realize one is not yours,
9 continue to pass them down so that it won't take so
10 long to go through.

11 Good morning, ladies and gentlemen. I hope
12 you all had a restful evening. We will now resume
13 the trial.

14 Trooper, if you would retake the stand for me.
15 I'll remind you that you are still under oath.

16 Mr. Johnson, you may resume your examination.

17 MR. JOHNSON: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. JOHNSON:

21 Q (By Mr. Johnson) Trooper Caldwell, after the
22 defendant passed out in the B.A. room, what did you
23 do?

24 A First I notified the Lexington County
25 Detention Center people, and then they had their

1 medical person come check because he was not in
2 custody at the jail and had not officially been
3 charged.

4 He had me call the ambulance. I called the
5 ambulance at 11:03 p.m. The ambulance got there.
6 And I followed the ambulance and the defendant to the
7 Lexington County emergency room.

8 Q When you called the ambulance was the
9 videotape finished?

10 A Yes.

11 Q And the time of arrest was what?

12 A 9:00 p.m.

13 Q All right. Now on the way you said you
14 followed the ambulance, where did you go?

15 A We went to the Lexington E.R, Lexington
16 Medical Center on 378 I-26, Lexington County.

17 Q Did you talk to anybody over the radio on the
18 way?

19 A I talked to my corporal, Chris Shelton, who I
20 alluded to yesterday as my immediate supervisor.

21 Q Now after getting to Lexington Medical Center
22 -- let me jump back a little. You said earlier --
23 tell me about the video affidavit from the stop.
24 Tell me about the camera that was supposed to be in
25 your car.

1 A As I spoke to you yesterday at that time I was
2 equipped with a 2005 silver Crown Vic fully marked
3 car that had a camera that was assigned to me.
4 Approximately six months out of that year of 2007 it
5 was inoperable, the camera was. It had been taken to
6 Motorola on several occasions.

7 This happened to be one of the occasions.
8 It's documented that it had a problem, still had a
9 problem. It was over at Motorola off of Broad River
10 Road and Piney Grove being repaired by the
11 technicians there.

12 Q Oh July 29, 2007 was the camera in your car at
13 all?

14 A No, it was actually at Motorola.

15 Q And it was not operating?

16 A That is correct. That's why the affidavit was
17 submitted.

18 Q All right.

19 (Whereupon, State's Exhibit No. 18 is marked
20 for identification.)

21 MR. WILLIAMS: We have no objection to the
22 production of the affidavit.

23 THE COURT: Marked and admitted without
24 objection.

25 MR. JOHNSON: Thank you, Your Honor.

1 (Whereupon, State's Exhibit No. 18 is admitted
2 into evidence.)

3 Q (By Mr. Johnson) Trooper Caldwell, I'm going
4 to show you what has been admitted as State's Exhibit
5 18. Please look at that and tell me what that is.

6 A It is the affidavit I submitted for failure to
7 produce videotape. It was marked in section B.

8 Q Is it a sworn affidavit?

9 A It is.

10 Q All right. And where did you submit that?

11 A I submitted that to the general sessions
12 package after it was signed by a notary public noting
13 that my camera was inoperable.

14 Q Okay. Did you keep it in the file there at
15 highway patrol?

16 A I did. I kept a copy of it and also submitted
17 it to the general session packet handed up to the
18 solicitor for indictment.

19 Q Let's go back to Lexington Medical Center.
20 When you got there, did you have a conversation with
21 the defendant?

22 A I did.

23 Q And what did you tell him?

24 A That we had found out that the injuries to Ms.
25 Stone were severe to the extent that it was great

1 bodily injury, and that the charge was now felony
2 DUI, not driving under the influence as we originally
3 thought.

4 Q Did you advise him he was under arrest for
5 that?

6 A Yes, I did.

7 Q All right. And did you inform him of anything
8 else that was going to happen there at the hospital?

9 A I did.

10 Q What was that?

11 A I informed him of his Miranda again, read him
12 his Miranda rights off the same card that I did
13 yesterday to the jury. Also informed him of his
14 implied consent, the bottom section now which applied
15 to the felony DUI was read to him in its entirety.

16 Q All right. And tell me about this. You have
17 a blank consent form you read to him?

18 A I do. I have a copy. I believe you have a
19 copy.

20 (Whereupon, State's Exhibit No. 19 is marked
21 for identification.)

22 MR. WILLIAMS: We have no objection to the
23 introduction of the consent.

24 THE COURT: Marked and admitted without
25 objection State's next in line.

1 MR. JOHNSON: Thank you, Your Honor.

2 (Whereupon, State's Exhibit No. 19 is admitted
3 into evidence.)

4 Q (By MR. JOHNSON) Trooper Caldwell, I'm going
5 to show you State's Exhibit 19 which is in evidence.
6 Tell me what that is.

7 A That is the second implied consent that was
8 read to Mr. Martin at the hospital. The bottom
9 section was read because it was felony DUI at this
10 point.

11 Q All right. Now did you sign the bottom of
12 that form?

13 A I did.

14 Q Did the defendant?

15 A He refused to sign again same as he did in the
16 B.A. room.

17 Q Okay. Did you write anything regarding that
18 at the bottom of the consent form regarding his
19 refusal?

20 A I wrote, refuse to sign.

21 Q Okay. Now tell me about this, you said a
22 sample would be taken from him?

23 A Under felony DUI I instructed him that we have
24 the right to take a sample from him.

25 Q Okay. Who took the sample?

1 A A licensed technician, Jennifer Brinkley
2 Adkins, from Lexington Medical Center.

3 Q What time was the sample taken?

4 A Sample was taken at 11:59 p.m.

5 Q Was this recorded by you on a form?

6 A That is correct.

7 Q All right. Was there a licensed medical
8 person that was in charge of this recorded on that
9 form?

10 A He was.

11 Q Was that a doctor?

12 A That was Dr. James Shannon, I believe.

13 Doctor's handwritings are very hard to read
14 sometimes.

15 Q All right. And tell me about the sample.
16 What happened? Was it in your presence?

17 A It was.

18 Q It was taken in your presence?

19 A It was.

20 Q What did Ms. Adkins do?

21 A She took two vials of blood from the
22 defendant.

23 Q What did she do with it?

24 A She gave one to me which I secured into a kit
25 and kept in my presence. She gave the second one to

1 me and I gave that to the defendant in the hospital
2 room.

3 Q Were they sealed in any way?

4 A They were.

5 Q Tell me about that.

6 A They were sealed with labels that are provided
7 in the kit which I'm sure that the SLED personnel is
8 going to be able to provide you with.

9 Q Did you sign any of these labels?

10 A I did.

11 Q What was the purpose of that?

12 A To ensure the integrity that it was taken in
13 my presence from the defendant who was directly in
14 front of me, probably closer than this court
15 reporter.

16 Q Okay. You gave one to the defendant you said?

17 A I did.

18 Q What did you do with your sample?

19 A I secured it into the kit. Secured the kit,
20 kept the kit with me. I was actually working the
21 whole night but when you get an accident like this
22 naturally there's a lot of paperwork that's involved.
23 Then I took it directly to SLED the following morning
24 as soon as they opened.

25 Q What time did you take it to SLED?

1 A I dropped it off at SLED as soon as their
2 forensic I guess department opened at 8:37 a.m.

3 Q Who did you give it to?

4 A Tammy Bannister.

5 Q Does she work for SLED?

6 A She does.

7 Q Was it in your care, custody and control the
8 whole time?

9 A It was.

10 Q Up until the point you gave it to her?

11 A It was.

12 Q Did you watch Ms. Adkins as she collected the
13 sample?

14 A I did.

15 Q Did she tamper with it after she collected it?

16 A She did not.

17 Q Did it become unsealed at any time, the sample
18 that you took to SLED, before you got it to SLED?
19 Did it ever become unsealed?

20 A It did not. It was sealed in my presence,
21 taken in my presence, kept in my presence until it
22 was released to SLED.

23 Q Trooper Caldwell, considering the evidence,
24 based on your experience and your knowledge and your
25 training, and everything in your investigation, what

1 was the cause of the wreck?

2 MR. WILLIAMS: Objection, Your Honor.

3 THE COURT: Basis.

4 MR. WILLIAMS: Qualifications.

5 THE COURT: Please approach.

6 (Whereupon, a discussion was held at the bench
7 off the record.)

8 THE COURT: Proceed.

9 MR. JOHNSON: Thank you, Your Honor.

10 Q (By Mr. Johnson) After you read the Miranda
11 to the defendant, did he say anything to you?

12 A Which time?

13 Q Just on the scene.

14 MR. WILLIAMS: Your Honor, I have a matter of
15 law to take up with the Court outside the presence of
16 the jury.

17 THE COURT: Please approach.

18 (Whereupon, a discussion was held at the bench
19 off the record.)

20 THE COURT: You may proceed.

21 MR. JOHNSON: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 Q (By Mr. Johnson) Trooper Caldwell, tell me
24 once again what happened to that other vial of blood
25 that you did not take to SLED?

1 A It was given to the defendant.

2 Q By you?

3 A That is correct.

4 Q In the hospital?

5 A That is correct.

6 Q All right. Was that sealed?

7 A That was. It was actually in a plastic bag
8 after it was sealed.

9 MR. JOHNSON: No more questions, Your Honor.

10 THE COURT: Mr. Williams, any questions for
11 the witness?

12 MR. WILLIAMS: Yes, Your Honor.

13 THE COURT: You may proceed.

14 CROSS-EXAMINATION

15 BY MR. WILLIAMS:

16 Q I'm sorry, Officer, what is the proper way to
17 address you? What is your rank?

18 A Trooper.

19 Q Just trooper?

20 A Yes.

21 Q Trooper Caldwell, as I understood your
22 testimony yesterday did you say you had been on the
23 force for two years?

24 A I said almost two years in January.

25 Q Well, now when was this wreck?

1 A July 29, 2007.

2 Q And how long had you been on the force at the
3 time that this wreck actually occurred?

4 A From January 2007.

5 Q So approximately ~~six months?~~

6 A Actually that would be closer to eight months
7 if you count January.

8 Q Well, when did you join?

9 A January 2007.

10 Q Okay. Which day in January did you join?

11 A 13th maybe, I'm not sure.

12 Q So maybe six months?

13 A Seven -- six to eight. You can estimate.

14 Q Trooper, when you went on the force, I guess
15 before you went on the force, you obviously had to go
16 to the academy, didn't you?

17 A That is correct.

18 Q And how long was the academy training that you
19 had?

20 A As I testified yesterday approximately 21, 22
21 weeks.

22 Q All right. So you had actually been on the
23 road for how long?

24 A Graduated in May, end of May, so two months.

25 Q Well, okay. So basically you had been on the

1 road for two months and you had a direct supervisor
2 who was Corporal Shelton; is that correct?

3 A That is correct.

4 Q Now what you were testifying about how long
5 your video camera had been out of, I think you
6 indicated that it had been out of sync approximately
7 six months; is that right?

8 A Throughout the whole year of 2007,
9 approximately six months.

10 Q Well, at the time in which you had this wreck
11 that you had to deal with, how long had your video
12 camera been out of work?

13 A I can't recall. As soon as I came out I had
14 problems with it.

15 Q So you don't really recall when your camera
16 started having problems?

17 A I know for approximately six months out of
18 2007 it was at Motorola.

19 Q But you can't recall when in relationship to
20 this wreck that you had a problem with the camera?

21 A I can tell you that on July 29th, 2007 the
22 camera was inoperable.

23 Q Does that mean your camera wasn't in your car?

24 A That is correct.

25 Q All right. And when was the last time that

1 you checked on it prior to this event during that
2 year?

3 A I checked approximately every two weeks. I
4 called Motorola and checked on it. They said they
5 would get back to me. Like anything you drop off to
6 get repaired, it takes a lot of time.

7 Q So that means you checked on it two weeks
8 before this accident happened?

9 A I assume. I'm not sure.

10 Q Well, let me ask you. We have an affidavit
11 which has been introduced into evidence. It says at
12 the time of the defendant's arrest that the vehicle
13 that you were operating had video equipment which was
14 inoperable. And that reasonable efforts had been
15 made to maintain the equipment in optimal condition?

16 So are you saying that those reasonable
17 efforts are that you had called and checked on it?
18 Is that what you're saying by that affidavit?

19 A I'm saying that I made the appropriate action
20 to take it to Motorola. It's not my job to fix the
21 camera. I'm not a technician.

22 Q Right. And this would have been signed when?

23 A I'd have to review it. You have it in your
24 hand.

25 Q Did you do it contemporaneously with the

1 arrest?

2 A You mean after the arrest?

3 Q Yes. About the same time.

4 A Yes, about the same time.

5 Q All right. If you would look and tell me the
6 time in which you did that affidavit.

7 A July 29, 2007.

8 Q When was the wreck?

9 A July 29, 2007.

10 Q And who was the notary on that affidavit?

11 A That is my corporal, Chris Shelton.

12 Q All right.

13 A It might be 1st Sergeant Phelps. It's hard to
14 read that signature.

15 Q You don't remember who you got to sign the
16 affidavit?

17 A I know it's signed by a commissioned notary
18 public. It looks like 1st Sergeant Kenneth Phelps.
19 It's a copy.

20 Q Where's the original?

21 A I'm not sure.

22 Q You said 1st Sergeant who now?

23 A I believe it looks like 1st Sergeant Kenneth
24 Phelps, he's the 1st Sergeant at Lexington County.
25 He's the first person above my supervisor which is

1 Corporal Chris Shelton.

2 Q Was your 1st Sergeant out on the accident
3 scene that particular night?

4 A No, he wasn't.

5 Q Well, now you would have to agree, would you
6 not, that this wreck occurred at what time?

7 A I believe 7:55. But I'm going to have to
8 refer to my notes to be certain of that. It's
9 correct 19:55, 7:55.

10 Q And you remained with the defendant on the
11 scene at the jail and at the hospital up until what
12 time?

13 A We left the hospital at 2:34 in the morning.

14 Q And what would the date of that be?

15 A July 30th.

16 Q So exactly when during this time span did you
17 see your 1st Sergeant?

18 A I did not.

19 Q So if this is your 1st Sergeant's signature
20 that it was sworn to before him on the 29th day of
21 July 2007, then that's just not true, is it?

22 A You'd have to talk to the 1st Sergeant about
23 that.

24 Q What does it say on the affidavit?

25 A It's says July 29th.

1 Q But he couldn't have signed --

2 A Which is the day it was inoperable which is
3 the day this was put out.

4 Q Would you please publish what it says on the
5 bottom of the affidavit?

6 A The same day as I just read, July 29, 2007.

7 Q If you read the bottom part of the affidavit
8 where it says sworn to before me?

9 A Subscribed to before me this 29th day of July,
10 2007. I'm assuming that's Phelps, notary republic,
11 state of South Carolina. My commission expires
12 4/21/2014.

13 Q So the affidavit says that you swore to him on
14 the date July 29, 2007 that your video equipment
15 wasn't working, but that's just not true because you
16 didn't see him on that day?

17 A I didn't swear to him that it was not working.
18 It was not working on July 29, 2007.

19 Q But the affidavit says --

20 THE COURT: Please approach.

21 (Whereupon, a discussion was held at the bench
22 off the record.)

23 Q (By Mr. Williams) So am I correct that you
24 did swear to the 1st Sergeant on that date?

25 A It is signed July 29, 2007.

1 Q Now let me take you back to the date that that
2 occurred. You got called, I think you were out doing
3 other things; is that correct?

4 A I was at another collision on Old Orangeburg
5 Road.

6 Q And it had nothing to do with my client,
7 right?

8 A The second collision?

9 Q Whatever collision you were out on Old
10 Orangeburg Road?

11 A No. He was busy over at Mack Street.

12 Q And when you came over to Mack Street you
13 arrived at the scene, you saw two vehicles out there
14 on the scene that were obviously involved in a wreck;
15 is that correct?

16 A That's correct.

17 Q And it's my understanding that you did not
18 videotape anything on the roadway or any of the
19 vehicles because you had equipment that was not --
20 you had ineffective equipment, inoperative equipment?

21 A The affidavit for failure to produce the
22 videotape.

23 Q Now did you place a call to your supervisor?

24 A About the collision?

25 Q Yes.

1 A I did.

2 Q Now your supervisor was in here just a little
3 while ago, wasn't he?

4 A He was.

5 Q And ~~did you ask him when he came out there to~~
6 use his car and ~~his camera to videotape~~ anything?

7 A I did not.

8 Q Does he have a camera in his car?

9 A I'm sure he does but you need to ask him.

10 Q So you were out there with your supervisor who
11 had a camera, who could use the camera -- he wouldn't
12 turn you down using his camera to do the field
13 sobriety tests?

14 A Oh, I'm sure he wouldn't.

15 Q But you didn't do that?

16 A I'd have to check the log. I'm not sure if
17 the arrest was made by the time he arrived on scene
18 or not.

19 Q So now you don't know if he was out there or
20 not?

21 A No. I've already testified that he was out
22 there.

23 Q Okay. So let's see --

24 A I don't know exactly what time he arrived.

25 Q Could he not have videotaped the scene?

1 A He took pictures of the scene.

2 Q Could he have not videotaped the scene?

3 A He took pictures of the scene.

4 Q Could he have not videotaped the scene?

5 A I believe that's a question you need to ask
6 him if you're going to ask him about something. I
7 can't speak for what he could or could not have done.

8 Q There's no question but the video equipment in
9 your corporal's car was not used to videotape the
10 scene, the road or the field sobriety tests?

11 A That's a question you need to ask my corporal.

12 Q Don't you know?

13 A I have no idea if he had a camera working or
14 if he recorded anything. That's a question you need
15 to ask the corporal.

16 Q Who was in charge of this case?

17 A I'm the lead investigator.

18 Q And as lead investigator who's in charge of
19 maintaining all the evidence and putting it in the
20 general session file?

21 A That would be me.

22 Q And you're telling me that you don't know
23 whether or not there was another videotape used that
24 particular night?

25 A I'm telling you I do not know what time the

1 corporal arrived. I don't know what time -- if the
2 arrest had already taken place at nine o'clock or if
3 he arrived after nine o'clock.

4 ~~My primary objective is to find out what~~
5 ~~happened in the collision and make appropriate~~
6 charges. My charge at this time was to place your
7 client under arrest for driving under the influence
8 because I believe that's what it was.

9 Q Now, the roadway which you went to, we've seen
10 this straight diagram which has been shown up here on
11 the board. Is it your testimony to the jury that the
12 roadway which was actually out there was a straight
13 road?

14 A No, it's not exactly straight. I believe
15 there's MAIT team coming to testify about all that.
16 They're the experts.

17 Q Were you there on the scene?

18 A I was, yes, sir.

19 Q When you observed it that particular night did
20 you observe that it was a curvy road?

21 A Has some curves in it, yes, sir.

22 Q Was there a curve directly where the driveway
23 was?

24 A It's back behind the driveway.

25 Q How far?

1 A I don't know. I didn't measure it.

2 Q Does part of the driveway actually meet the
3 curve of the road?

4 A Again that's a questions you need to ask the
5 MAIT team.

6 Q Did you not see it?

7 A I saw the curve. I saw the driveway.

8 Q And were they in close proximity to each
9 other?

10 A I'm not sure of the exact feet. The MAKE team
11 took the measurements.

12 Q Was that important to you when you wanted to
13 charge my client with driving under the influence
14 whether or not they had pulled out of the curve or
15 not?

16 A I believe that your client was at fault in the
17 collision. I placed him under arrest for driving
18 under the influence.

19 Q Now how many other people were on the scene?

20 A I have no idea. There were several emergency
21 people, there were several of Mr. Martin's family,
22 there were several of now deceased Ms. Stone's
23 family.

24 Q Well, when you got to the scene you obviously
25 came up and you checked on the individuals and

1 determined who the drivers were; is that correct?

2 A I was informed by EMS who the driver of the
3 one vehicle was.

4 Q So the EMS people were there before you got
5 there?

6 A That is correct.

7 Q And so you never talked to the young son, the
8 grandson, to see if he was driving or whether or not
9 grandma was diving?

10 A Yes, we spoke to him.

11 Q I'm sorry?

12 A Yes, we have a statement from him.

13 Q When did you speak to the grandson?

14 A ~~My corporal spoke with him first~~, and I got a
15 written statement from him after my corporal got --
16 spoke with him. ~~I got the written statement on~~
17 ~~August the 7th~~.

18 Q So it's your testimony that you didn't talk to
19 the grandson who allegedly was driving on July 29,
20 2007. The first statement you got was August 7th of
21 that year from him?

22 A That was the first written statement we
23 received.

24 Q Well, did you talk to the grandson that
25 particular night?

1 A I just advised you that my corporal spoke to
2 the grandson that night.

3 Q Does that mean you talked to him?

4 MR. JOHNSON: Objection, asked and answered.

5 THE COURT: Sustained. Asked and answered.

6 Move on, Mr. Williams.

7 Q (BY Mr. Williams) Exactly who did you talk to
8 that night?

9 A Well, your client, Mr. Martin for one.

10 Q Anybody else?

11 A EMS, Charlie, Christy, Mr. Shealy at the
12 hospital. I believe TJ was also at the hospital that
13 night.

14 Q Now when you were -- I think it's your
15 testimony that you found this Bud Light container,
16 beer bottle on the side of the road; is that correct?

17 A That's correct.

18 Q Tell me, please, exactly where on the side of
19 the road you found the beer bottle?

20 A As I testified to yesterday in close proximity
21 of the defendant's truck.

22 Q What does that mean in close proximity to you?
23 Can you give me dimensions on that?

24 A I can give you dimensions, probably as close
25 as me to you are, if not closer.

1 Q Stop me when I get there.

2 A That's good. Probably right in there.

3 Q Now as I understand it, the defendant's truck
4 was stuck in a ditch on the right-hand side of the
5 road?

6 A That's correct.

7 Q The beer bottle which you're referencing was
8 found approximately the distance from you to me; is
9 that correct?

10 A Estimate.

11 Q Now as we've already discussed there's a
12 certain amount of foliage out on the side of the
13 road, isn't there?

14 A There's actually a slight embankment.

15 Q There's an embankment where you cut the road
16 into the road, isn't there?

17 A I guess that's what they did.

18 Q Easement, you cut more than what you need for
19 the road, the highway department?

20 A That's right, and it's banked up.

21 Q And it's banked up to help drainage?

22 A I would imagine.

23 Q Where in reference to the embankment did you
24 find the beer container?

25 A Approximately the same distance up on the

1 embankment.

2 Q So it would be on the higher part of the land;
3 is that correct?

4 A It would be about the middle of the
5 embankment.

6 Q Was it on the side of the hill?

7 A On the embankment.

8 Q Wasn't rolling down?

9 A As you just alluded to there was a bunch of
10 foliage planted in the foliage and did not roll.

11 Q So you couldn't see it because the foliage; is
12 that correct?

13 A I found the bottle, yes.

14 Q Are you certain that someone didn't hand you
15 the bottle?

16 A I'm certain someone did not hand me the
17 bottle.

18 Q Now who directed you to the area to look for a
19 beer bottle?

20 A As the subject testified yesterday, Charlie
21 did.

22 Q Charlie did?

23 A Charlie and Christy told me the approximate
24 vicinity where they saw him throw, as they said
25 yesterday, brown bottle, what appeared to be a bottle

1 of alcohol in that proximity. I searched that
2 proximity and found one, that one, it was cool to the
3 touch, had a quarter of alcohol in it.

4 Q Let's go back to cool to the touch. When did
5 this happen?

6 A When did what happen?

7 Q The wreck. What month and date?

8 A July 29, 2007.

9 Q Now would that be the winter months, spring
10 months or the summer months?

11 A As far as I know July always falls in the
12 summer.

13 Q And when you found this bottle how long was it
14 that it took you to find this bottle from the time in
15 which you arrived at the scene?

16 A I arrived at the scene at 8:26. Placed your
17 client under arrest 9:00 p.m. Found the bottle
18 sometime around that time.

19 Q Sometime around when?

20 A Around the 9:00 p.m. time.

21 Q So you arrested him first, then you found the
22 bottle?

23 A That's correct.

24 Q Where did you place my client when you went
25 looking for the bottle?

1 A In the front seat of my patrol car securely
2 in, locked doors.

3 Q So you put him in the car, then you walked
4 around and started searching the area; is that
5 correct?

6 A That's correct.

7 Q How long did you search the area?

8 A Didn't take long. Pretty much pin-pointed
9 about where the bottle was.

10 Q 20 minutes, 30 minutes?

11 A A lot less than that.

12 Q 15 minutes?

13 A A lot less than that.

14 Q 10 minutes?

15 A Probably 5, if that.

16 Q So from the time in which you were on the
17 scene, you were on the scene maybe an hour before you
18 found the bottle?

19 A 30 minutes maybe.

20 Q 30 minutes?

21 A I don't know. 8:26 when I arrived, arrested
22 your client at 9:00. So I completed the field
23 sobriety before 9 o'clock.

24 Q And when was the bottle supposedly thrown out?

25 A I have no clue. After the collision, so after

1 7:55.

2 Q Which is what? What time is that?

3 A 7:55 p.m.

4 Q So that's how long from the time in which you
5 arrived? Over an hour?

6 A 8:26 which is not an hour.

7 Q All right. You've got the bottle sitting out
8 there for an extreme period of time in the
9 summertime, right, and it's still cold as hell?

10 MR. JOHNSON: Objection.

11 THE COURT: Basis of the objection.

12 MR. JOHNSON: State his opinion about the
13 extreme.

14 THE COURT: Please approach. No speaking
15 objections.

16 (Whereupon, a discussion was held at the bench
17 off the record.)

18 THE COURT: Rephrase the question, please.

19 Q (By Mr. Williams) So, Mr. Witness,
20 essentially this was the end of July, correct?

21 A That's correct, July 29.

22 Q And you found this beer bottle which was cold
23 to the touch after some period of time after you had
24 arrived on the scene.

25 A I actually said cool to the touch. I didn't

1 say cold.

2 Q All right. So it's cool to the touch. You
3 actually found some alcohol inside of it, correct?

4 A There was approximately a quarter of a beer
5 left.

6 Q Was there a top on it?

7 A There was not.

8 Q Now were there any rocks on the side of the
9 embankment?

10 A I'm sure there were. There were rocks
11 everywhere.

12 Q There was no evidence that the bottle was
13 broken when it was thrown out; is that correct?

14 A The bottle is right there, intact.

15 Q Why is it that you didn't maintain the
16 contents of the bottle to determine what was in the
17 bottle?

18 A That's not necessary.

19 Q Well --

20 A I can testify that alcohol was in that bottle.
21 Alcohol was in the bottle.

22 Q Did you taste it?

23 A No, sir, I did not.

24 Q Did you test it?

25 A I did not.

1 Q You can testify that there was a beer bottle
2 which smelled of alcohol and had some liquid in it,
3 can't you?

4 A That's correct.

5 Q Now in determining who actually had possession
6 of this beer bottle did you take this beer bottle to
7 forensics to have fingerprints taken off of the beer
8 bottle?

9 A I did not.

10 Q So you don't know whether or not fingerprints
11 were discoverable on the bottle or not?

12 A I have no clue.

13 Q Now this beer bottle that you're talking
14 about, where did you put that? You said you
15 maintained it. Where did you put it?

16 A In the evidence locker and it was taken to our
17 evidence holding.

18 Q Did you put it in your car to begin with?

19 A Yes, I have to transport it from the scene to
20 the evidence locker.

21 Q All right. So you went to the evidence locker
22 before you took the defendant to Lexington County
23 jail?

24 A No, I did not. First priority is take the
25 subject to custody.

1 A So you kept the beer bottle in your car for a
2 period of time and then you took him to the data
3 master room; is that correct?

4 A That's correct. Then he passed out, then we
5 went to the hospital, then he got checked out, then
6 we got done with the hospital and I took him to jail,
7 then I took the bottle to the office.

8 Q And where was the bottle during this time?

9 A Secured in my car.

10 Q Did you take a picture of the beer bottle?

11 A I have the beer bottle there.

12 Q Did you take a picture of where the beer
13 bottle was found?

14 A I did not.

15 Q Is it important to document where you find
16 evidence?

17 A Talking about the beer bottle?

18 Q Yes.

19 A If the case was on open container.

20 Q Well --

21 A It's a felony DUI case.

22 Q So it's not important to document?

23 A I know where the bottle was taken from.

24 Q Why would you not take a picture of where it
25 was found?

1 A I didn't take a picture.

2 Q Was anyone out there with a camera taking
3 pictures?

4 A There was.

5 Q And who was that?

6 A As I alluded to Corporal Chris Shelton.

7 Q All right. Now were you out there when
8 Corporal Chris Shelton was taking pictures?

9 A I was.

10 Q Did you direct him to the area where you found
11 the beer bottle?

12 A You mean after I'd already found and secured
13 the beer bottle?

14 Q Did you say, here's a beer bottle, please take
15 a picture of where it's located?

16 A I had already secured the beer bottle prior to
17 him.

18 Q Which means that your Corporal Chris Shelton
19 was out there when you were out there with the
20 defendant, doesn't it?

21 A Yes.

22 Q What time did he leave?

23 A Did he leave the scene?

24 Q Yes.

25 A I believe he left at 10:34, but you have to

1 check with him.

2 Q Did anyone -- you were talking about who was
3 out there. You talked about emergency personnel, you
4 talked about family members on both sides?

5 A Uh-hum.

6 Q Now a wrecker driver came out there at some
7 point in time, did they not?

8 A Yes, the vehicle had to be moved.

9 Q Okay. And who was the wrecker driver?

10 A I'd have to refer to my notes. One of the
11 wreckers was Misused Towing and the other was Dave's
12 Towing.

13 Q Did you remain at the scene until after the
14 vehicles were hauled off?

15 A One vehicle was. I cannot remember if your
16 defendant's vehicle was hauled off or not.

17 Q So the towing trucks were gone before you left
18 the scene?

19 A I cannot remember if his was. I believe that
20 to my best recollection I believe the defendant's was
21 gone. I know it was loaded up.

22 Q Okay.

23 A I don't know if they left the scene. You
24 know, keep no records ain't my priority during this
25 case.

1 Q What was your priority during this case?

2 A Finding an appropriate charge, making the
3 appropriate charge, placing your client under arrest.

4 Q All right.

5 A Make sure the family and victims were taken
6 care of.

7 Q Now, when you left was anybody else on the
8 scene?

9 A I'm sure there were.

10 Q Do you remember?

11 A There were still vehicles. There were still
12 family. There was still cars out there. Who was out
13 there, I have no idea.

14 Q But you saw your Corporal Chris Shelton leave?

15 A No, I did not.

16 Q So you really don't know when he left?

17 A As I just testified, I don't know. You'd have
18 to check.

19 Q Was there an outfit known as the MAIT team who
20 were out there when you were out there?

21 A They were not out there when I left.

22 Q Tell the jury what the MAIT team is.

23 A That's our accident reconstruction. They are
24 our specialists. They will be testifying shortly
25 after me I believe.

1 Q To your knowledge when do they come out to the
2 scene?

3 A You'll have to ask them.

4 Q So you were not even there when they showed
5 up?

6 A I had to take your defendant to jail.

7 Q Do you know when they came out there?

8 A They're fixing to be in this chair, you can
9 ask them.

10 MR. JOHNSON: He's answered that, objection.

11 THE COURT: I'm going to give him a little
12 latitude. Overruled.

13 Would you like to restate the question, sir?

14 Do you remember the question?

15 THE WITNESS: He asked me when they were out
16 there or do I know when they were out there?

17 MR. WILLIAMS: Yes.

18 THE WITNESS: I don't know. They're going to
19 be here in about an hour. You can ask them. They'll
20 be able to tell you. Should be logged and
21 everything.

22 Q (By Mr. Williams) Okay. Well, after you got
23 -- wasn't there a bunch of trash out there along side
24 the highway too?

25 A It's a road in Lexington County, I'm sure

1 there's a lot of trash in every road in Lexington
2 County.

3 Q Now the pictures which were introduced into
4 evidence which were State's Exhibits 1 through 14,
5 those pictures were pictures that were taken by your
6 Corporal Chris Shelton; isn't that correct?

7 A That's correct.

8 Q And referring to State's Exhibit Number 14 and
9 State's Exhibit Number 13, obviously there was a lot
10 of trash out on that side of the road; isn't that
11 correct?

12 A I see EMS trash there where they tended to the
13 victim, yes, there was trash.

14 Q Did you see any other trash out there?

15 A Water bottles, and it's hard to make out
16 anything else.

17 Q Water bottles?

18 A There's a water bottle right there.

19 Q Do you remember the EMS -- whether or not EMS
20 had the water bottles?

21 A Again that wasn't my priority to see if they
22 were nourished by water.

23 Q Referring to State's Exhibit Number 7, we may
24 have to show that?

25 A Do you need this back?

1 Q Yeah, probably.

2 A I may need to step down to look at it.

3 Q When you look at this exhibit it shows
4 obviously a blue light, doesn't it?

5 A Yes.

6 Q Police car with a blue light on it, right?

7 A That's correct.

8 Q And even though it's real dark there's a
9 vehicle over on the right-hand side of the road?

10 A The tag illuminated.

11 Q Right.

12 A I believe that's your client's car.

13 Q That's Mr. Martin's truck?

14 A As far as I know.

15 Q Now do you know whether or not that was your
16 patrol car that was out there?

17 A I can tell you that's not my patrol car.

18 Q Whose patrol car would that be?

19 A I would have to assume Corporal Chris Shelton.

20 Q Now you have a camera in your car now, don't
21 you?

22 A I have a 2008 Crown Vic and it's equipped with
23 a camera that's operational.

24 Q Where is the camera in your car?

25 A Right at the driver's window.

1 Q When does your camera come on?

2 A When I turn it on.

3 Q Does it come on when your blue lights are
4 activated?

5 A Sometimes.

6 Q When you perform field sobriety tests with
7 your camera working, where do you place the
8 defendant?

9 A In front of the patrol car.

10 Q So in this particular situation if there was a
11 camera working and the defendant was doing field
12 sobriety tests, he would be in front of this patrol
13 car, wouldn't he?

14 A Provided your defendant wasn't already under
15 arrest by the time the corporal arrived out there,
16 yes.

17 Q ~~But again you don't know?~~

18 A Again, that's a question you need to ask the
19 corporal.

20 Q Now you said earlier that you actually read
21 the implied consent warnings only twice?

22 A I believe I read it three times.

23 Q So earlier if you said twice, you didn't mean
24 twice, you actually read it to him three times?

25 A I don't know if you said twice or three times.

1 We can have the court reporter read it back if you
2 need to.

3 Q Do you know how many times you read the
4 implied consent form?

5 A Once in the car, once in the B.A. room, once
6 in the hospital. That's at least three times. I
7 read it any more than that, I don't know. I know it
8 was read three times to your client.

9 Q All right. At the same time that you gave him
10 his implied consent warning you gave him the Miranda
11 warnings; is that correct?

12 A Prior to the implied consent every time off
13 the card that I've already read to the jury.

14 Q So you gave him his implied consent warnings
15 and Miranda warnings while he was sitting in the
16 patrol car; is that correct?

17 A Actually the first time was probably out,
18 standing outside as soon as I placed the handcuffs on
19 him.

20 Q So when you said you gave it to him in the
21 patrol car, you didn't mean in the patrol car, you
22 gave it to him out on the side of the road first?

23 A In the patrol car, out on the side of the
24 road, it was right there at that time. As soon as
25 your client was placed under arrest he was advised of

1 his Miranda warnings, he was read his implied
2 consent.

3 Q Is there some reason why you didn't document
4 the time as reflected in the State's Exhibit No. 15
5 when you gave him his Miranda warnings and implied
6 consent warnings?

7 A I started to. It was 10:00 o'clock when he
8 was at the B.A. room, and I obviously didn't finish
9 it on that form.

10 Q So that document is the one which you did at
11 the B.A. room?

12 A That is correct.

13 Q All right. Do you have another document when
14 you were on the side of the road that you gave him
15 his implied consent warning?

16 A That's the same one.

17 Q It's the same one?

18 A Yes. You're only required to read it once to
19 him. He received it three times.

20 Q Why did you give it to him three times if
21 you're only supposed to give it to him one time?

22 A To cover my bases. Same reason I read the
23 Miranda several times, to know that he knows his
24 rights and he knows what he's being charged with,
25 knows what he has a right to do.

1 Q All right. Now let me ask you to look at
2 State's Exhibit No. 19. Tell me when you gave that
3 implied consent warning.

4 A This implied consent was for the felony DUI,
5 once we realized how severe Ms. Stone's injury was.
6 It was read at 11:55 p.m. at the hospital where we
7 took blood from your client.

8 Q And you read the bottom portion of that
9 statement?

10 A That's correct, because he was charged with
11 felony DUI.

12 Q And you read that to him before the blood was
13 drawn; is that correct?

14 A That is correct.

15 Q Now, when you -- well, obviously had the
16 defendant in the data master room, we heard him ask
17 about having an attorney present or talking to an
18 attorney, didn't he?

19 A He did. I believe he also said I plead the
20 Fifth or something like that.

21 Q Did you -- did you give him the opportunity to
22 call an attorney?

23 A I did not.

24 Q Did you give him the opportunity to call
25 anyone?

1 A I did not.

2 Q The -- when he fell out, did you tell -- and
3 you had the paramedics there, the paramedics
4 transported him to Lexington County Hospital?

5 A Yes, I didn't transport him.

6 Q Do you know the names of the paramedics?

7 A I do not. They work for Lexington County.

8 Q Did you talk to the doctor or the nurse at the
9 Lexington County Hospital and tell the doctor or the
10 nurse that he had fallen at the Lexington County Jail
11 and to check him out?

12 A We told the paramedics and the paramedics
13 informed, told the hospital staff what happened.

14 Q Well now you're assuming that, aren't you?

15 A They came to pick him up for passing out.

16 Q Were you there when the paramedics supposedly
17 told the doctor and/or the nurse at Lexington County
18 Jail that he had fallen and to check him out?

19 A I was there when the paramedics arrived, yes.

20 Q Were you there at the hospital when anyone
21 talked to the doctor or the nurse about whether or
22 not he had fallen at the jail?

23 A ~~Whether or not they had communication in the~~
24 ~~ambulance, I have no clue.~~ You need to talk to EMS
25 about that.

1 Q So you don't know whether or not anyone gave
2 that communication to the doctor?

3 MR. JOHNSON: Objection, Your Honor. Asked
4 and answered several times.

5 THE COURT: I'm going to give you a little
6 latitude. Sir, you may answer the question.

7 Q (By Mr. Williams) You don't know the answer
8 to that question, do you?

9 A That would be a question for EMS.

10 Q Okay. You didn't tell the doctor or the nurse
11 that he had fallen and grabbed his chest?

12 A I told the paramedics which is a licensed
13 medical person.

14 Q All right. Now when you got to the hospital
15 where did you go?

16 A To your client's room in the ER.

17 Q Where -- do you know where it was?

18 A In the emergency room.

19 Q When you got there was he cuffed, was he
20 handcuffed?

21 A No.

22 Q Was he laying on the gurney?

23 A Yes. Actually they were putting him into the
24 hospital bed or whatever. He was in the hospital, in
25 a bed. Whether it was the gurney or not, I don't

1 know.

2 Q He was laying on the hospital bed?

3 A That's correct.

4 Q And who was present with him at that time?

5 A Nurses and other hospital staff. You'd have
6 to check with the hospital.

7 Q Did you talk to any of them?

8 A Yes. That's how I got the blood drawn from
9 your client.

10 Q What did you tell them?

11 A That he was under arrest for felony DUI, that
12 he had fallen, that he needed to be checked out.

13 Q So you did tell them that he had fallen and
14 needed to be checked out?

15 A I'm sure I did at some point.

16 Q Do you recall it or do you not recall it?

17 A It's been over a year ago. ~~I do not recall.~~
18 I know I told the EMS people that picked him up from
19 the detention center when he passed out, that he had
20 fallen. I'm quite certain I told the technician that
21 drew the blood from your client that he was under
22 arrest for felony DUI. I'm quite certain I talked to
23 the doctor and told him he was under arrest for
24 felony DUI.

25 Q But you just don't recall whether or not you

1 told them about any fall?

2 A ~~I told the licensed medical personnel that he,~~
3 ~~had fallen, yes,~~

4 Q ~~Meaning paramedic?~~

5 A ~~Meaning licensed medical personnel.~~

6 Q Did you check with the hospital to see whether
7 or not there was a video camera that would record the
8 events which occurred at the emergency room?

9 A I did not.

10 Q Do you know whether or not there is a video
11 camera showing what happened in the emergency room?

12 A I do not. That's something you need to talk
13 with Lexington security about.

14 Q Now, at some point in time you said you saw
15 the nurse that drew the blood; is that correct?

16 A She came into the room because I was with your
17 defendant the entire time.

18 Q What kind of shirt did my defendant have on?

19 A Like an olive green shirt, short sleeve,
20 collar as shown on the video yesterday, same shirt.

21 Q All right. And you told the nurse that you
22 wanted her to draw the blood; is that correct?

23 A The nurse or phlebotomist, or whatever it's
24 called.

25 Q But you told them that?

1 A That he was being charged with a felony DUI,
2 we were taking blood, I did.

3 Q Okay. And who all was present when the blood
4 was drawn?

5 A Myself and the technician. I'm not sure if
6 anybody else. Well, actually your defendant. I'm
7 not sure if anybody else was in the room.

8 Q But the doctor wasn't present when it was
9 drawn?

10 A He was right there. He signed the paperwork.

11 Q Was he present or not present when the blood
12 was drawn?

13 A I don't know how many people exactly were in
14 the room.

15 Q And you said that -- what did you do before
16 you were a trooper?

17 A Dispatched for the highway patrol. Several
18 other odd jobs.

19 Q Did you -- where did you work before you were
20 dispatcher for highway patrol?

21 A I mean do you want me to run down my job
22 history all the way back to what high school? I can
23 do that for you.

24 Q I just want to know if you have any medical
25 training.

1 A I have no medical training.

2 Q Okay.

3 A I'm not a licensed medical personnel.

4 Q Okay.

5 A That's why I had a licensed medical personnel
6 take the blood.

7 Q Okay. And after the blood was drawn it's your
8 testimony that she put the blood in two tubes, right?

9 A That's correct.

10 Q She did not do any testing of the blood for
11 the benefit of the defendant to see whether or not he
12 was ill or anything like that as far as you know?

13 A That's a question you need to ask the doctors
14 at Lexington.

15 Q You did not see another tube of blood being
16 taken, did you?

17 A There was two tubes taken for my purpose.
18 Whether they took blood before that, prior to that, I
19 have no knowledge. The blood that I know that I
20 needed was taken.

21 Q You were with him the entire time?

22 A I was sitting in the room the entire time.

23 Q ~~So you didn't see more than two tubes of~~
24 ~~blood, correct?~~

25 A They did a lot of stuff to your client.

1 You need to talk to Lexington medical personnel to
2 find out exactly what was done for him. He was there
3 from approximately 11:35 to 2:34 in the morning to
4 get him checked out from passing out. I'm sure
5 they'd done several things with him.

6 Q But you don't know what they did?

7 A As I alluded to, I'm not a medical licensed
8 person.

9 Q Now these two tubes of blood, she handed those
10 directly to you; is that correct?

11 A That is correct.

12 Q And you handed one of them to my client; is
13 that right or you put it in his shirt pocket?

14 A I placed it with your client. That is
15 correct.

16 Q Do you recall whether or not you put it in his
17 hand or put it in his shirt pocket?

18 A I gave it to your client.

19 Q Does that mean you put it in my client's hand
20 or does it mean you put it in his shirt pocket?

21 A I don't recall. I know your client got it.
22 kind of like this piece of paper, he wouldn't take it
23 from me at the B.A. room. I had to set it on his
24 chest. I would imagine the blood would have been the
25 same way because he refused it.

1 Q Was he handcuffed when you took him to the
2 Lexington County Jail?

3 A Second time?

4 Q Yes.

5 A From the hospital to the jail?

6 Q Yes.

7 A Of course.

8 Q And was he cuffed in front or behind?

9 A Always behind.

10 Q Now, going back to the Lexington County jail,
11 where was the blood that he supposedly had with him?

12 A With the paperwork that released him from the
13 hospital.

14 Q Did you have that in your possession?

15 A He had it in his possession.

16 Q And where was it located in his possession?

17 MR. JOHNSON: Objection, Your Honor. Asked
18 and answered.

19 THE COURT: Overruled. You may answer the
20 question. Move along.

21 Q (By Mr. Williams) Where was it?

22 A Sitting on his lap.

23 Q ~~Sitting on his lap?~~

24 A That's correct.

25 Q Okay. So now when you take him to the

1 Lexington County Jail, you pull in to -- there's a
2 desk there and you let them know who you are,
3 correct?

4 A That's correct.

5 Q You pull into the sally port, don't you?

6 A That's correct.

7 Q You come around and open the car door for the
8 defendant, right?

9 A That's correct.

10 Q Do you grab the paperwork and blood which has
11 been sitting on his lap the whole ride?

12 A I do.

13 Q What do you do with that?

14 A ~~Hand it to the intake officer.~~

15 Q Okay. So the defendant doesn't have the
16 paperwork or the blood at this point in time, right?

17 A I have no clue. It's something for intake
18 officer. All his property is logged.

19 Q What do they do with the defendant? You watch
20 him, is he still cuffed?

21 A At some point he gets uncuffed obviously
22 because he is uncuffed right now.

23 Q Did you uncuff him?

24 A I don't recall.

25 Q And --

1 A Because they always re-search everybody no
2 matter how many times he's been searched.

3 Q Then he's sent off to a cell, right?

4 A Again that's something you need to take up
5 with the detention center people.

6 Q You don't know whether or not he's sent to a
7 cell or not?

8 A I don't work in a detention center.

9 Q But all of his items that he is searched for
10 are kept by somebody at the jail?

11 A I would assume. They're logged to an inmate,
12 with a number. Just like all this evidence is
13 logged.

14 Q Who was the licensed owner of the vehicle that
15 my client was driving?

16 A I can't hear you. I'm sorry.

17 Q Who was the licensed owner of the vehicle that
18 my client was driving?

19 A Who was the licensed owner of the vehicle that
20 your client was driving?

21 Q Uh-hum.

22 A The vehicle your client was driving was
23 registered to Martin's Post String Building, same
24 address as your client, 400 Sweet Pea Lane, 29160
25 which happens to be right around the corner from the

1 accident.

2 Q When you say right around the corner, exactly
3 how close is it to this location?

4 A Again the MAIT team has that exact stuff. I'm
5 sure they can give that information to you.

6 Q A hundred yards?

7 A I'm not going to estimate. I have no clue. I
8 am not an expert in reconstruction.

9 Q And who was the licensed owner of the vehicle
10 that the alleged victim was in?

11 A The alleged victim or the person that
12 deceased? Mr. --

13 Q Are they different?

14 A You're asking alleged victim. There is a
15 victim in this case, she's dead.

16 Q Okay.

17 A Okay. The driver, which was TJ who testified,
18 I believe the vehicle was registered to Ms. Rugsy
19 Wilkes which was the deceased.

20 Q So it was registered to her?

21 A According to the information I have, yes, sir.

22 MR. WILLIAMS: That's all the questions I
23 have, Your Honor.

24 THE COURT: Any redirect of the witness?

25 MR. JOHNSON: Briefly, Your Honor.

1 THE COURT: You may proceed.

2 REDIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q Trooper, let me ask you about this exhibit,
5 state's 18, what are you swearing to on that
6 affidavit?

7 A I'm swearing that my camera was inoperable on
8 July 29, 2007.

9 Q And the notary is swearing to what?

10 A That I swore that that be true.

11 Q Is that your signature?

12 A That is correct.

13 Q All right. And if the camera, if the camera
14 wasn't back with you what does that mean?

15 A That it was inoperable.

16 Q All right. When you arrived on the scene in a
17 situation like this -- well, in response to Mr.
18 Williams' question, when you said why the defendant
19 was placed under arrest, tell me about some of the
20 evidence why you formed that opinion why he should be
21 placed under arrest.

22 A He admitted to being the driver, slurred
23 speech, alcoholic odor on his breath, found the open
24 container in close proximity of the vehicle which we
25 just went through. Did a field sobriety test which I

1 went over yesterday, he failed all three of the field
2 sobriety tests.

3 Based on the evidence I had I placed him under
4 arrest for driving under the influence.

5 Q All right. And how many minutes before the
6 blood draw did you give the implied consent?

7 A I believe implied consent was 11:55, blood
8 drawn was 11:59, four minutes prior.

9 Q And based on your time of arrival, is it
10 possible that less than an hour passed before you
11 grabbed that beer bottle from the time of the
12 accident?

13 MR. WILLIAMS: Objection, speculation.

14 THE COURT: Please restate your question.

15 Q (By Mr. Johnson) Can you tell me roughly how
16 much -- what would be the minimum possible time that
17 could have passed between the time of the accident
18 and the time you seized the beer bottle?

19 MR. WILLIAMS: Same objection.

20 THE COURT: Sustained.

21 Q (By Mr. Johnson) Do you have a responsibility
22 to allow the defendant to call anyone when he was in
23 the B.A. room?

24 A I do not.

25 Q And what did you request the hospital staff to

1 do, Ms. Adkins?

2 A Take blood to determine the alcohol
3 concentration because he was being charged with
4 felony DUI, he must submit.

5 Q How many times have you seen or heard of a
6 video from a bed in the ER at the hospital being
7 produced and used in any criminal cases?

8 A Never.

9 MR. WILLIAMS: Objection.

10 THE COURT: Basis.

11 MR. WILLIAMS: Speculation.

12 THE COURT: Overruled.

13 A Never.

14 Q (By Mr. Stumbo) And why didn't you need
15 fingerprints from the bottle?

16 A I've never gotten fingerprints from any other
17 container charge I ever made.

18 Q Why did you need -- what other -- did you have
19 any other evidence regarding who owned that bottle?

20 A Probable cause, located in the vicinity, cool
21 to the touch.

22 Q But based on your testimony earlier, was there
23 any other evidence about who could have owned that
24 bottle other than fingerprints?

25 A You mean besides the alcohol beverage on the

1 defendant's breath.

2 Q Did you talk to anybody about it?

3 A Charlie and Christy told me where the bottle
4 was approximately located.

5 Q Okay. And when you arrive on the scene of an
6 accident like this, do you have a notary that you go
7 get and bring down?

8 A No.

9 Q Do you have time to fill out all your
10 paperwork and finish your paperwork with the notary
11 standing there?

12 A No. My primary objective is to find the cause
13 of the accident and make the appropriate charges
14 against the defendant which was diving under the
15 influence until we found out it was a greater felony
16 DUI.

17 Q When you interviewed Mr. Shealy, the driver, a
18 week later, let me ask you, do you always have the
19 time at the scene of the accident to interview
20 somebody in an overturned vehicle and take a written
21 statement from them that night?

22 A No.

23 Q Now I'm going to show you State's Exhibit 14,
24 is that the photo referenced by Mr. Williams and the
25 trash on the ground?

1 A That was one of them, yes.

2 Q What could cause all that trash to be on the
3 ground in that location?

4 A Medical personnel.

5 Q And why would they be in that location?

6 MR. WILLIAMS: Objection.

7 A Attending to the injuries of the person.

8 THE COURT: How many more questions do you
9 have?

10 MR. JOHNSON: I believe that was it.

11 THE COURT: Are you done?

12 MR. JOHNSON: Yes.

13 THE COURT: Madam Forelady, Ladies and
14 Gentlemen, I'm going to give you a brief restroom
15 break. During this break do not discuss this case in
16 any manner. Please leave your notepads in your
17 seats.

18 (Whereupon, the jurors exit the courtroom.)

19 THE COURT: Mr. Williams, are you going to
20 have further questions for this witness?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Trooper, you may step down. I
23 just need you to stay here so that I can do that in
24 the presence of the jury. Okay.

25 We will be at ease for ten minutes.

1 (Whereupon, a recess was taken.)

2 THE COURT: Is the state ready to proceed?

3 MR. STUMBO: State's ready, Your Honor.

4 THE COURT: Is the defense ready to proceed?

5 MR. WILLIAMS: Defense is ready, Your Honor.

6 THE COURT: Please bring in the panel.

7 (Whereupon, the jurors enter the courtroom.)

8 THE COURT: You may be seated. Are there any

9 further questions of the witness from the state?

10 MR. STUMBO: Nothing from the state, Your
11 Honor.

12 THE COURT: Any further questions from the
13 defense?

14 MR. WILLIAMS: None from the defense.

15 THE COURT: Any exception with the witness
16 being excused from the state?

17 MR. JOHNSON: None from the state.

18 THE COURT: From the defense?

19 MR. WILLIAMS: None from the defense.

20 THE COURT: Officer, you are excused.

21 You may call your next witness.

22 MR. JOHNSON: Thank you, Your Honor. State
23 calls Ms. Jennifer Adkins.

24 ~~MS. JENNIFER BRICKEY-ADKINS,~~

25 after having first been duly sworn to state the

1 truth, the whole truth and nothing but the truth,
2 testified on her oath as follows:

3 THE COURT: You may proceed.

4 MR. JOHNSON: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q Ms. Adkins, where do you work?

8 A I work at the medical center.

9 Q How long have you worked there?

10 A Two years.

11 Q What do you do there?

12 A Phlebotomist.

13 Q What is that?

14 A ~~I take blood.~~

15 Q Where were you trained?

16 A I went to school in Midlands Tech in 1993 and
17 I have a diploma in ~~phlebotomy~~.

18 Q Okay. On July 29th, 2007 did you have an
19 occasion to take some blood?

20 A I did.

21 Q And who did you take blood from?

22 A William Conrad Martin.

23 Q All right. Did you keep a record of this?
24 Do you have record of this?

25 A Yes.

1 Q And what time do you have that you took the
2 blood? what time did you take the blood?

3 A 23:59.

4 Q Was that on the 29th?

5 A It was.

6 Q Okay. Where was that at?

7 A In the emergency room.

8 Q Where at?

9 A Lexington Medical Center.

10 Q Okay. And specifically why did you take the
11 blood?

12 A There was another request of the trooper, a
13 legal blood alcohol draw.

14 Q Okay. And when you take blood in that
15 situation, what do you do?

16 A We identify the patient, state name, date of
17 birth and we tie a tourniquet, palpate for a site.
18 This particular case since it's a blood alcohol draw
19 we do not use alcohol, we use betadine. We have two
20 vials, draw the blood, label it, secure it and give
21 it to the officer.

22 Q. Okay. And did you -- what was the purpose of
23 labeling it?

24 A We put his name, the time and the date on
25 there.

1 Q okay. Is it sealed?

2 A Yes, it is sealed.

3 Q Do you sign the label?

4 A Yes.

5 Q All right. Now when you did that, did you
6 ever unseal either one of the vials before you gave
7 it to the trooper?

8 A No.

9 Q Did anyone else hold them or tamper with them
10 before you gave them to the trooper?

11 A I was the only one.

12 Q Okay. And let me ask you briefly. Did you do
13 this under the supervision of a licensed medical
14 personnel?

15 A ~~Dr. Shannon is the attending physician in the~~
16 ~~emergency room but he was not in the room with me.~~

17 Q Okay. But you did it under supervision?

18 A Yes.

19 Q Did you record that as well?

20 A Yes.

21 Q And when you recorded it on the form did you
22 sign the form --

23 A I did.

24 Q -- consistent with all that information you
25 testified to.

1 Now the blood vials when you took them, as you
2 were giving them to the trooper, were they in your
3 care, custody and control the whole time before you
4 gave them to the trooper?

5 A Yes, they were.

6 Q Did you see the trooper tamper with them or
7 open them in any way?

8 A No.

9 Q And was he there when you took the blood?

10 A Absolutely.

11 Q Were these unused vials?

12 A Yes.

13 Q Do you -- now, what was the time of your test?

14 A 23:59.

15 Q Okay. On July 29th?

16 A Yes.

17 Q Is that when you gave the vials to the
18 trooper?

19 A I believe that's probably the time of
20 collection. I probably gave it to him within the
21 same minute or right afterwards.

22 Q Now you indicated some information was
23 recorded on Mr. Martin, can you tell me date of birth
24 that you recorded?

25 A I don't remember his date of birth.

1 Q Did you record it?

2 MR. WILLIAMS: Objection, Your Honor.

3 THE COURT: Basis.

4 MR. WILLIAMS: Doesn't remember, Your Honor.

5 THE COURT: Overruled. Goes to the
6 information collected if she knows it.

7 A It's on this sheet so I must have known it.

8 Q (By Mr. Johnson) Would it refresh your memory
9 to look at this sheet?

10 A Yes.

11 Q Sure. Go ahead and look at that sheet.
12 Is your memory refreshed?

13 A Well, can you ask me the question again?

14 Q Okay. Did you record the date of birth of the
15 defendant?

16 A Yes.

17 Q What did you record?

18 A 9/2/1968.

19 Q Okay. And what was his full name?

20 A William Conrad Martin.

21 Q And did you put down his address?

22 A I believe the trooper wrote that.

23 Q Okay.

24 MR. JOHNSON: No more questions, Your Honor.

25 THE COURT: Any questions of the witness?

1 MR. WILLIAMS: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. WILLIAMS:

4 Q Ms. Adkins, exactly what do you recall about
5 the night of -- I'm sorry, what date did you draw
6 blood?

7 A It was July 29th.

8 Q Exactly what do you recall about July 29th of
9 2007 in reference to my client?

10 A I vaguely recall his face, but I see a lot of
11 patients.

12 Q So you cannot testify under oath that you
13 actually recall this gentleman seated next to me as
14 being the individual who was in the room?

15 A I'm certain that was him. I don't recall a
16 whole lot else, but I'm certain that was him.

17 Q So you don't recall a whole lot else what does
18 that mean, you just recall seeing him in the room?

19 A ~~I don't remember his condition.~~ I remember
20 his face.

21 Q You don't remember his condition?

22 A I don't remember anything out of the ordinary.

23 Q So he appeared normal at that particular time?

24 A Yes.

25 Q Okay. Now besides seeing Mr. Martin and

1 seeing that he was normal at that point in time, did
2 anyone tell you that he had been injured in any way?

3 A No. That's not my job to do.

4 Q But in terms of what you --

5 A No.

6 Q Now you said that there was nobody else in the
7 room but the officer and you and Mr. Martin; is that
8 correct?

9 A Yes.

10 Q So, so you referenced a doctor, said you were
11 under his supervision. What was the doctor's name?

12 A Dr. James Shannon.

13 Q Okay. Now Dr. Shannon, was that an ER doctor
14 that works at the hospital?

15 A Yes.

16 Q And was Dr. Shannon there that night?

17 A Yes.

18 Q And did Dr. Shannon at any point in time come
19 into the room where the defendant was?

20 A Not while I was there.

21 Q And did you talk to Dr. Shannon before you
22 went into room where the defendant was?

23 A No.

24 Q So when you said you were under the
25 supervision of Dr. Shannon, what you mean to say,

1 correct me if I'm wrong, is that he's your boss but
2 you didn't talk about any particular items in regards
3 to Mr. Martin?

4 A Correct.

5 Q Now do you recall, if you don't that's fine,
6 I'm not trying to pick on you, do you recall what he
7 had on this night?

8 A I do not.

9 Q When you drew the blood, do you recall drawing
10 the blood from my client?

11 A It's the same procedure I do over and over
12 again. Specifically him, no. My name is on here
13 saying I followed protocol and that's what I did.

14 Q What you're testifying today is that you don't
15 actually recall drawing blood from my client, but you
16 are looking at this piece of paper that you signed so
17 it must mean that you drew the blood?

18 A Yes.

19 Q So by the same token you really can't recall
20 today whether or not you drew one tube or two tubes
21 from him?

22 A I drew two tubes.

23 Q Now, do you recall -- is that because that's
24 what you normally do?

25 A That is our procedure.

1 Q Okay. So your testimony here today to the
2 jury is that if you followed your normal procedure
3 that's what you would have done on that particular
4 night?

5 A That's correct.

6 Q And in that you don't remember actually
7 drawing the blood, you don't actually recall who you
8 gave the tubes to, do you?

9 A ~~I gave the tubes to Trooper Caldwell.~~

10 Q ~~Do you remember doing that?~~

11 A ~~I do.~~

12 Q And you certainly didn't give it to the
13 defendant, did you?

14 A No.

15 Q You were asked some questions about a form
16 that you were referring to to give your testimony.
17 Who filled out the form did you say?

18 A Trooper Caldwell.

19 Q So Trooper Caldwell filled out everything on
20 the form but what?

21 A This is my signature right here.

22 Q Okay. Was there anything else that Trooper
23 Caldwell did not fill out?

24 A I filled out the blood tube labels.

25 Q On the form?

1 A No.

2 Q So all the information about the date of
3 arrest, time of the test is stuff that Caldwell
4 filled out, correct?

5 A Yes.

6 Q So you just signed off where your name was
7 supposed to be put in, right?

8 A Yes, sir.

9 Q And Dr. Shannon was never in the room, as far
10 as you know, with my client?

11 A I'm not aware that he was.

12 Q And you don't remember, I think you've already
13 said he appeared to be normal to you.

14 MR. JOHNSON: Objection, Your Honor.

15 THE COURT: Basis.

16 MR. JOHNSON: Misstates the testimony and
17 asked and answered.

18 THE COURT: No speaking objections.
19 Overruled.

20 THE WITNESS: Say that question again.

21 Q (By Mr. Williams) He appeared to be normal
22 when he came in the ER room?

23 A Yes.

24 MR. WILLIAMS: That's all the questions I
25 have, Your Honor.

1 THE COURT: Any redirect of the witness?

2 MR. JOHNSON: Briefly, Your Honor.

3 THE COURT: You may proceed.

4 REDIRECT EXAMINATION

5 BY MR. JOHNSON:

6 Q Ms. Adkins, earlier you said you're not sure
7 about other things in the room but you knew his face.
8 Isn't it possible he could have been acting
9 abnormally, you don't remember that?

10 MR. WILLIAMS: Objection.

11 THE COURT: Basis.

12 MR. WILLIAMS: Withdraw the objection.

13 A He could have.

14 Q (By Mr. Johnson) Okay. And you followed the
15 procedure?

16 A Absolutely.

17 Q And do you remember his face?

18 A I do.

19 MR. JOHNSON: No more questions.

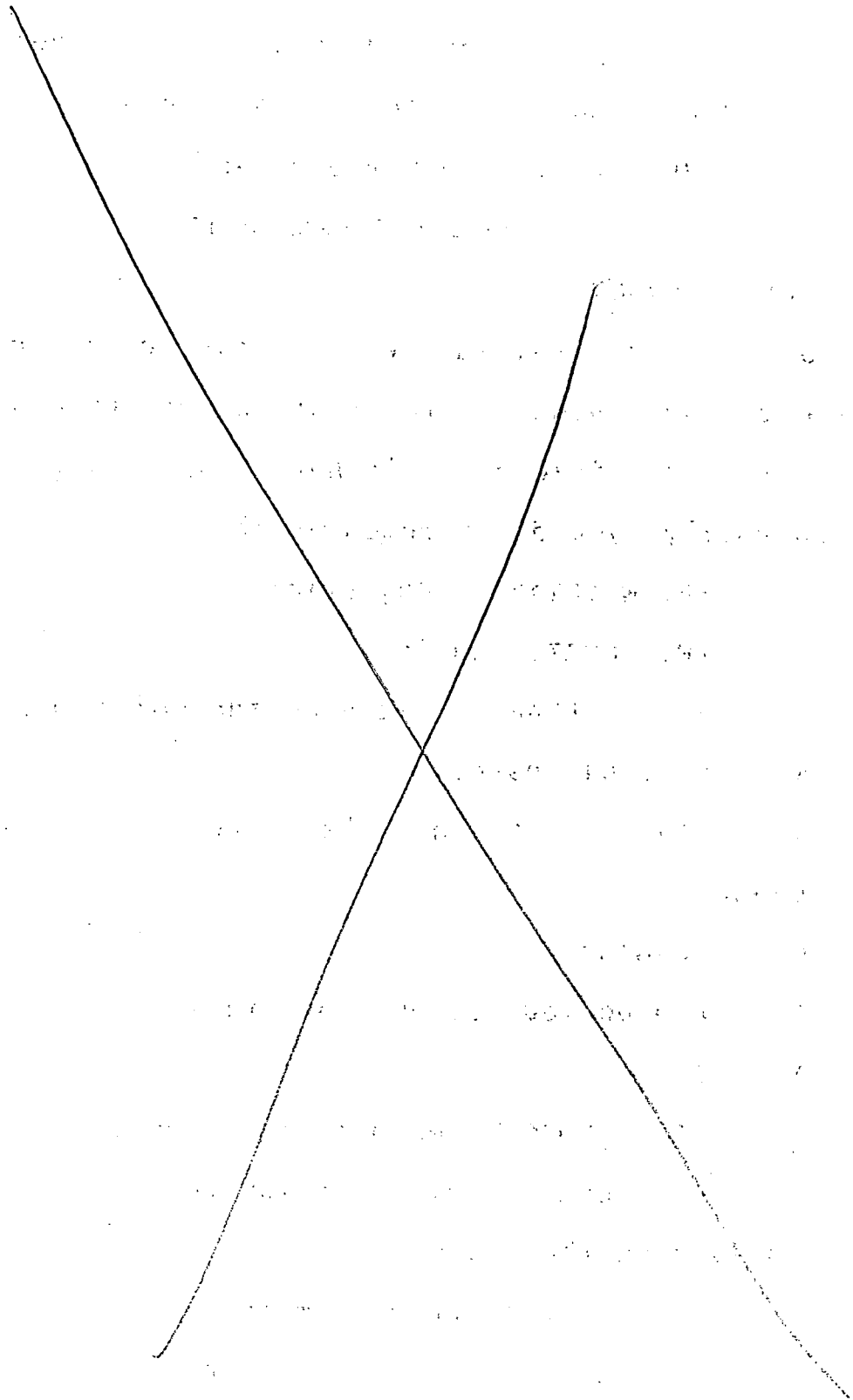
20 THE COURT: Any objection to the witness being
21 excused from the state?

22 MR. STUMBO: None from the State.

23 THE COURT: Any from the defense?

24 MR. WILLIAMS: None from the defense.

25 THE COURT: Ma'am, you are excused.



1 You may call your next witness.

2 MR. STUMBO: Thank you, Your Honor. State
3 calls Dr. Eric Brown.

4 DR. ERIC BROWN,
5 after having first been duly sworn to state the
6 truth, the whole truth and nothing but the truth,
7 testified on his oath as follows:

8 THE COURT: You may proceed.

9 MR. STUMBO: Thank you, Your Honor:

10 ~~DIRECT EXAMINATION~~

11 BY MR. STUMBO:

12 Q Good morning, Dr. Brown. Thank you for being
13 here.

14 A Good morning.

15 Q Can you give us, give the jury just a brief
16 synopsis of your education.

17 A Certainly.

18 Q And experience?

19 A Sure. I have an undergraduate degree in
20 chemistry followed by a four-year degree as a medical
21 doctor and three years of training in emergency
22 medicine. I'm a ~~board certified emergency medicine~~
23 physician.

24 Q Where did you attend medical school?

25 A I went to Boston University.

1 Q And where did you do your residency?

2 A At Palmetto Health Richland.

3 Q Is that why you moved here to the area?

4 A Yes, sir.

5 Q Where are you from originally?

6 A I'm from Cleveland, Ohio.

7 Q Have you lived here in the Columbia area since
8 your residency?

9 A For eight years, yes.

10 Q And that entire time have you been in the
11 emergency room at Richland?

12 A Correct.

13 Q Are there any other hospitals that you worked
14 in in the area?

15 A Yes. I have worked at Baptist and also did
16 some work at Kershaw County Medical Center in
17 Bamberg.

18 Q Are you board certified?

19 A Yes, sir.

20 Q Have you ever testified in court before?

21 A I have not.

22 Q We're going to just take you back to July 29.
23 Have you had a chance to review your records from
24 that night?

25 A I have.

1 Q And did you have an occasion to treat a lady
2 by the name of Rugsy Stone in the emergency room that
3 night?

4 A ~~I was the attending physician when she came~~
5 ~~in.~~

6 Q Dr. Brown, what can you tell us about, just
7 based on your review of your report and your records,
8 what her condition was generally when she came into
9 the emergency room that night?

10 A Sure. From review of the records when she
11 came in she was identified immediately as a trauma
12 patient, meaning that we knew she had been in an
13 automobile accident. And in this case we had -- had
14 been given some forewarning that she had been in a
15 significant car accident and that being a rollover
16 where her car rolled multiple times.

17 When she came in that means that she goes into
18 the trauma room which is the place where we treat
19 people who have been in accidents of different
20 varieties. And when she came into the trauma room
21 she was speaking to us. But had some significant
22 pain, complaints of pain at that time. Specifically
23 chest pain, upper abdominal pain and difficulty
24 breathing.

25 Q Okay. Based on -- was there any other

1 information you received from others, EMS, family
2 about what happened? Did you talk to any of those
3 folk?

4 A Yeah, there was no family available at the
5 time of her immediate arrival so oftentimes when
6 there is no one else to give an account of what
7 happened, the EMS crew is the group of people we get
8 the most information from. Specifically they said
9 that she was -- had a low blood pressure coming in
10 being transported into the hospital.

11 And when you identify someone who has been in
12 a significant car accident as she had and also has a
13 low blood pressure, that's a significant concern.

14 Beyond that we always ask them the state of
15 the damage to the vehicle and that was also basically
16 characterized as significant.

17 Q Did Ms. Stone have significant injury in your
18 mind?

19 A ~~she did.~~ After the evaluation we discovered
20 that she did have significant injuries, the low blood
21 pressure had come up a bit when she first got there.
22 But we did discover that she in fact had a chest full
23 of fluid which is presumed to be blood in the setting
24 of trauma. That in a lady of her age is a
25 significant injury. So immediately she was

1 classified as a critical patient.

2 Q Did she have any other abrasions on her skin?

3 A She did. She had significant soft tissue
4 injuries to her hand to the point where some of the
5 skin had been removed from her hand.

6 Q Okay. How was her breathing?

7 A She was what we classified as labored
8 breathing, meaning that she was breathing fast and
9 with significant work of breathing. She was short of
10 breath.

11 Q Based on your analysis of her breath and the
12 fluid in the chest, what treatment did you determine
13 needed to be done before she was transported out of
14 your care?

15 A So immediately at that moment once we
16 classified her as a ~~critical patient~~ in the setting
17 of trauma we talked to the trauma surgery team who we
18 work very closely with in these types of cases. And
19 we consulted, with which means you ask for basically
20 an additional team to come in.

21 The trauma team was consulted and immediately
22 brought into the case because ultimately she needed
23 to be further stabilized with more aggressive
24 measures.

25 Those two measures in this case were that we

1 needed to put her on a breathing machine, which is
2 called intubation. And we gave her a series of
3 medications and put her on a respirator to help her
4 breath better.

5 And then secondarily, the trauma team needed
6 to get the blood out of her chest so that her lung
7 could re-expand and that's done by way of a tube
8 through the chest wall to help her out. So both of
9 those measures were done in short order.

10 Q And you were treating physician for those
11 procedures?

12 A I was the treating physician for the
13 intubation, and the trauma team basically conducted
14 the tube thoracostomy which is the chest tube to
15 drain the chest cavity.

16 Q Pretty soon after you made your diagnosis,
17 what were the bases for your decision to transfer her
18 up the trauma unit?

19 Q Again, if you start to look at the
20 constellation involved in this case, she was an older
21 female. And for any given mechanism older people
22 have greater likelihood once they've been injured.
23 She already had identified herself as being critical
24 in the field by way of low blood pressure coming in
25 which is a warning sign. And she continued to get

1 worse in the initial evaluation period right after
2 she got into the trauma room, her blood pressure
3 dropped again. And she required aggressive measures
4 like intubation and evasive procedures like the chest
5 tube.

6 So that constellation and some of her lab
7 values substantiated what we knew, she was already
8 anemic which means her blood count was down which
9 substantiates that she was bleeding. And she had
10 some other lab abnormalities that were concerning.

11 So that constellation of symptoms would
12 classify her as a critical patient and in need of
13 trauma surgery evaluation.

14 Q Was there any other area of her body that had
15 tenderness or were significant to you?

16 A Yes. We, as part of the initial quick
17 overview, oftentimes need to roll the patient to
18 palpate the back. They come in with a C-collar in
19 place to immobilize their spine, they're on a long
20 rigid board to immobilize their spine, we have to
21 roll them off of that to palpate or touch the back to
22 find areas of tenderness.

23 And she did in fact have two levels of
24 tenderness in her midline which would suggest a
25 possible fracture of her spine.

1 We had not seen any x-rays at the time that
2 her care was passed off to trauma surgery, but she
3 was tender over two of her thoracic or to the chest
4 level vertebra by the spinal bones.

5 Q That area would be consistent with a broken
6 back?

7 A With her mechanisms and her age, yes. That
8 would be your major concern.

9 Q As far as her extremities, did she have some
10 movement in her extremities?

11 A Yes. By the neuro-exam as documented here,
12 she was moving all four of her extremities at the
13 time in her initial evaluation.

14 Q About how long was she in your care, Dr.
15 Brown, before she was initially referred to the
16 trauma unit?

17 A I don't have the exact times in the record, I
18 don't have direct recall of what happened a year ago.
19 But based on the actions that were taken when she
20 came in, the evaluation, I would say we have talked
21 to the trauma surgery team within 10 or 15 minutes.
22 And she probably was into the CATscan or in other
23 words outside the emergency room within 30 to 45
24 minutes. But I don't have an exact record of that.

25 Q And who was the lead trauma surgeon that you

1 referred Ms. Stone to?

2 A I believe it was ~~Raymond Bynoe~~.

3 MR. STUMBO: That's all the questions I have
4 at this time, Your Honor.

5 THE COURT: Any questions for the witness?

6 MR. WILLIAMS: Yes, Your Honor.

7 THE COURT: You may proceed.

8 CROSS-EXAMINATION

9 BY MR. WILLIAMS:

10 Q Dr. Brown, you are, as I understand it, you
11 are a board certified emergency room physician?

12 A I am.

13 Q Were you the only one on call that particular
14 night or do you know whether or not there were other
15 emergency room doctors on call that night?

16 A There are always more than one in our
17 emergency room. There are at least four on during
18 the day and at night there are two.

19 Q Do you have your notes for this particular
20 patient in front of you?

21 A I do have the encounter form here and the
22 dictation, yes, sir.

23 Q And I believe that you were telling the
24 solicitor that you take a lot of your information
25 from paramedics who transport the patient in. And

1 did you say whether or not you had actually talked to
2 any family members that particular night about her?

3 A I did not state that earlier but I don't
4 believe I did. I don't have any record of that.

5 Q So, as far as you know in terms of obviously
6 as a doctor, what's the most important thing in
7 formulating what you do with your patient? Would
8 that be maybe a history before you actually see them,
9 find out what had happened, what is alleged to have
10 happened?

11 A That's one part of it. There are many, many
12 variables to that that we have to take into account
13 to form a judgment.

14 Q I got you. Would it be a history of the event
15 as well as a history of the patient?

16 A Well, there are some factors that involved in
17 a chronic history that matter. But mostly in trauma
18 you really focus on what happened acutely.

19 Q Right. In this particular case, and correct
20 me if I'm wrong, she was alert so you were actually
21 able to talk with her?

22 A We were.

23 Q And in that regard you actually talked to her
24 about her social history, her past medical history?

25 A Uh-hum.

1 Q And did she indicate to you that she had had
2 ~~previous medical problems?~~

3 A I believe she did state that she had some.

4 Q What did she say that she had?

5 A She said, according to our records here, she
6 had diabetes; hypertension, which is ~~high blood~~
7 ~~pressure; and some -- some type of heart problem.~~

8 Q So you were presented with a 72-year-old woman
9 who has already told you that she has diabetes and a
10 heart problem.

11 What is hypertension for people who are not
12 doctors?

13 A High blood pressure.

14 Q Now when the physical exam was done, what was
15 her blood pressure?

16 A I think her arrival vital sign 115 over 67.

17 Q Is that considered high?

18 A That's considered borderline low. So in a
19 patient with a chronic history of hypertension that
20 would be significantly low.

21 Q If she were on medication for high blood
22 pressure would you expect her blood pressure to be
23 normal?

24 A It could be, but without having seen her
25 before I don't know where her baseline blood pressure

1 is.

2 Q So when you saw her that initial night you
3 really didn't know what her baseline blood pressure
4 was?

5 A We have no way knowing that.

6 Q Based on a reading of 115 over 67 would you be
7 overly concerned for someone who had a blood pressure
8 reading of that?

9 A In isolation not so much, but with the
10 knowledge of her being low in the field coming in I
11 would be.

12 Q But when you -- but when you recorded it, it
13 was 157 -- I'm sorry, 115 over 67?

14 A According to my records, yes, sir.

15 Q So based on that alone you would not be
16 concerned about her blood pressure without knowing
17 the other stuff that she said she had high blood
18 pressure?

19 A Yeah, if you -- if you could separate all the
20 other variables out and look at just that, I wouldn't
21 be able to make a judgment call either way with that
22 blood pressure.

23 Q Okay. Let me ask you about the history that
24 you took in reference to her injuries. You had
25 learned that she was in a rollover case. I think you

1 already talked about that, right?

2 A Uh-hum.

3 Q And your report indicates that she was the
4 driver of the case?

5 A Uh-hum.

6 Q Now where did you get the information that she
7 was the driver of the vehicle?

8 A It doesn't state specifically in here, but
9 normally that's given by EMS.

10 Q So the people who would have gotten her out of
11 the car would be the people who told you that she was
12 the driver of the other vehicle?

13 A Usually.

14 Q Why is that important being a driver versus a
15 passenger?

16 A Well, again it's sort of one variable in which
17 you're asking, basically what you're asking by the
18 details is, you know, how much damage was done to
19 that side of the car so if that car was significantly
20 damaged in which you were a passenger you'd would
21 want to know that.

22 So knowing what happened, if there were other
23 people in the car, where she was seated, did she have
24 a seatbelt on, those are all questions that we ask
25 and try to paint a picture of the mechanism.

1 Q And obviously if you're the driver you're
2 behind the steering wheel?

3 A I hope so.

4 Q And -- and the steering wheel would be another
5 impediment if you were -- that could be hit, could be
6 struck?

7 A In other words, you would be as a patient
8 could hit the steering wheel, whereas if you were on
9 the other side you would not. Yes, there is another
10 object to strike in a car accident, yes.

11 Q Okay. Now, you obviously knew that she was
12 allergic to codeine because you put that down there
13 as an allergy. She told you that?

14 A Either she did or EMS did. Those are the only
15 two sources of information that we had.

16 Q Now what is glucophage?

17 A It's a medication given for diabetes.

18 Q So when she told you the medications, that was
19 the only -- you knew exactly which medication she
20 took and that was for her diabetes?

21 A According to this that was the only one she
22 was able to remember of her list.

23 Q All right. If we could go through your
24 examination that you observed when you were there.
25 Was there any evidence of trauma to her head?

1 A The head is noted as atraumatic, which means
2 there is no signs of trauma to the head.

3 Q Now her eyes, was there any evidence of any
4 type of concussion or injury to her eyes?

5 A You would not determine concussion from the
6 way the eyes look, but the pupils were reactive.

7 Q What does that mean they were reactive?

8 A That means that when you shine light in them
9 they constrict down which is a normal neurologic
10 response. It's one of the findings that we look for
11 in someone who may have a head injury.

12 Q Did you make a notation in regards to her
13 mouth? Was there anything unusual about her mouth?

14 A No.

15 Q Now was there -- your records no mid-face
16 instability, what does that mean?

17 A If a patient has been in a significant trauma
18 and they have struck their face they can have broken
19 bones in their face and it literally will move when
20 you press on it if it's broken.

21 Q What about her neck? Was anything remarkable
22 about her neck?

23 A There was not by the exam noted, no.

24 Q Is there a difference between tachycardia and
25 rhythm?

1 A There is.

2 Q What is that difference?

3 A Tachycardia is the rate. Rhythm is regular or
4 irregular. So you can be fast but irregular, or slow
5 but regular.

6 Q And when you measured or when you listen to
7 her heart what did you determine about her heart?

8 A That it was going fast.

9 Q How was the rate?

10 A It was in the 140s by her arrival vital signs.

11 Q And you reference regularly rhythm, does that
12 mean that there are no interruption in the beat but
13 it was just fast?

14 A ~~That means it was a regular rhythm, yes.~~

15 Q ~~Regular rhythm, but it was just fast?~~

16 A Very fast.

17 Q ~~Now is that unusual to have tachycardia when~~
18 ~~in automobile accident when people have been in an~~
19 ~~automobile accident?~~

20 A ~~No.~~

21 Q Is that because of the adrenalin, stuff like
22 that?

23 A That will account for some type of elevated
24 rate. But 140 is outside the realm I would see in
25 just an excited person.

1 Q Now when you examined her abdomen, did you
2 determine whether or not there was any sign of trauma
3 to her abdomen?

4 A According to her report there were no signs of
5 trauma.

6 Q And I think you've all right hit upon this,
7 you referenced the musculoskeletal and you say there
8 is an abrasion on her left hand?

9 A Uh-hum.

10 Q Is that the top of her left hand?

11 A It looks like it was on the dorsum, which
12 would be here on the left hand.

13 Q She had a scratch on her left hand?

14 A It's classified as an avulsion which is a
15 deeper injury than a scratch. Means the skin has
16 been removed.

17 Q Was there a bandage on it at the time that you
18 looked at it?

19 A I don't remember.

20 Q And you reference whether or not the area is
21 tender or non-tender and what is your reference?
22 What do you say?

23 A The area was non-tender.

24 Q Now. In terms of her C-spine, you say that
25 her C-spine is non-tender; is that correct?

1 A Yes.

2 Q When you reference C-spine versus thoracic,
3 you are talking about the neck until it meets those
4 bones in the spine; is that correct?

5 A Cervical.

6 Q Cervical.

7 A Just until it gets to the upper back.

8 Q So you would have rolled her over and pressed
9 on her back to see if there was any pain in the area?

10 A Uh-hum.

11 Q And you referenced that she was tender at T9
12 and T10 which is the upper part of the spine,
13 correct?

14 A It's about the middle.

15 Q Between the shoulder blades?

16 A A little bit lower.

17 Q There was no other irregularities with the
18 skin was there, as far as you know?

19 A Yeah, what is noted in the musculoskeletal
20 scan of her hand there were none noted here.

21 Q And there was nothing to indicate that she had
22 any neurological problems, she was moving everything
23 and understanding what you were saying?

24 A We do a gross exam which is why it says
25 grossly intact. We do not do a detail neuro-exam.

1 Usually when people arrive initially we just focus on
2 gross abnormality, is the leg not working, is the arm
3 not moving. And then we go back after they're
4 stabilized and do a full exam.

5 Q So for the jury's edification, what you talk
6 about as a neuro, is that where you get the little
7 hammer out and tap on the knee to see how it reacts,
8 things like that?

9 A Reflex would be part of the comprehensive
10 neurologic exam.

11 Q What is metabolic -- you gave a clinical
12 impression when you got through with all of your
13 examinations and you say something about metabolic
14 acidosis secondary to number one?

15 A Uh-hum.

16 Q What does that mean?

17 A Number one was the hemothorax which is blood
18 in the chest which is acute bleeding or hemorrhage as
19 we call in trauma. When there is acute hemorrhage
20 and there is blood loss the body will go into a
21 different cellular respiration and basically it
22 creates acid in the blood.

23 So metabolic acidosis if you measure that is a
24 sign of not enough blood getting to the peripheral
25 tissues. So that is something that we look at when

1 we look at a trauma patient in terms of judging their
2 severity, metabolic acidosis would indicate severity.

3 Q And what would you do to treat that? Put them
4 on blood?

5 A You would start with IV fluids, saline and
6 then you would move to blood products.

7 Q The fluids would do what, give more fluid to
8 the body?

9 A Helps with the -- with the symptoms of low
10 blood pressure and starts compensation. But if
11 they've lost enough blood, you have to give more
12 blood products after two, three liters of saline.

13 Q Did you have any, and if you didn't have any
14 expectations or prognosis at that point in time,
15 that's fine, too, because you're an ER doctor.
16 You're just there for the short run.

17 Did you have any expectations that there would
18 be a long stay in the hospital at that time?

19 A Absolutely.

20 Q How long did you think it would be?

21 A I would not make a judgment call on that. But
22 I knew she was a sick lady.

23 Q And you weren't concerned about her -- let me
24 reword that. At that time all you knew was that she
25 was sick, she was elderly and she had a bruise that

1 was causing some blood loss; is that correct?

2 A No, sir. I don't think that would be a
3 correct way to characterize it.

4 Blood in the chest would be a lot more than a
5 bruise. She was actually hemorrhaging inside her
6 chest cavity. Her chance of this being a fatal
7 injury was high. In the first ten minutes we would
8 have assessed her as being at risk of dieing from
9 this.

10 Q And did you take care of that problem?

11 A We did. We consulted the trauma surgeons and
12 got the blood out with the tube.

13 Q So that it wasn't a problem after that?

14 A ~~No, I would say we stabilized her.~~ Our
15 specialty is stabilize critically ill people and we
16 stabilized her temporarily. But in terms of
17 long-term prognosis she still had a lot of risk of
18 being long term.

19 Q Did you ever see this patient again?

20 A Past my initial evaluation period?

21 Q Yes.

22 A ~~No, I did not.~~

23 Q So what you're telling me is that you saw this
24 patient on July 29, 2007, correct?

25 A (Affirmative head shake.)

1 Q And if she died two and a half months later,
2 you had no other contact with her?

3 A I did not.

4 Q So you didn't know how she progressed during
5 any of this timespan?

6 A No, I have no further knowledge of her.

7 Q You have no idea as to any surgery that she
8 might have had?

9 A (Negative head shake.)

10 Q Any possible overdosing of drugs that she
11 might have had?

12 MR. STUMBO: Asked and answered, Your Honor,
13 it calls for speculation.

14 THE COURT: Overruled. Repeat the question.

15 Q (By Mr. Williams): You don't have any
16 knowledge as to whether or not there might have been
17 possibility of drug overdoses during this timespan
18 before she died?

19 A I had no further contact with this patient
20 beyond that first date.

21 Q You have no knowledge in regards to any
22 bacterial infections or infection that she got while
23 she was in the hospital?

24 A I had no further contact with this patient or
25 knowledge of her care beyond the first day.

1 MR. WILLIAMS: That's all the questions I
2 have, Your Honor.

3 THE COURT: Any redirect of the witness?

4 MR. STUMBO: Just briefly, Your Honor.

5 THE COURT: You may proceed.

6 REDIRECT EXAMINATION

7 BY MR. STUMBO:

8 Q Dr. Brown, now this laundry list of things
9 that Mr. Williams went over with you on the specific
10 things that you looked at, is it your purpose as an
11 emergency room doctor to do a full workups on all
12 those areas of the body?

13 A No.

14 Q You are there, as you testified, to stabilize
15 her?

16 A Correct.

17 Q You are looking for major issues?

18 A You want to identify life-threatening injuries
19 and injuries that require acute intervention to
20 stabilize the patient. And then determine what level
21 of care, what other teams of doctors need to be
22 involved.

23 Q Ms. Stone had life-threatening injuries when
24 she came to the emergency room?

25 A Yes, sir, she did.

1 Q And you treated those and were able to
2 stabilize her to the greatest extent as possible?

3 A At least in that first 35 to 45 minutes, yes,
4 we did.

5 MR. STUMBO: No further questions at this
6 time, Your Honor.

7 THE COURT: Any objection to the witness being
8 excused from the state?

9 MR. STUMBO: None from the state.

10 THE COURT: From the defense?

11 MR. WILLIAMS: None from the defense, Your
12 Honor.

13 THE COURT: Doctor, you are excused.
14 Could counsel approach for me, please?

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 THE COURT: You may proceed. Call your next
18 witness.

19 MR. JOHNSON: State calls Lieutenant Day, Your
20 Honor.

21 MR. JAMES DEWITT DAY,
22 after having first been duly sworn to state the
23 truth, the whole truth and nothing but the truth,
24 testified on his oath as follows:

25 THE COURT: You may proceed.

1 MR. JOHNSON: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q Lieutenant Day, where do you work?

5 A I work for the South Carolina Highway Patrol.

6 Q How long have you worked there?

7 A Actually January -- I mean December 31st I'll
8 have 25 years in the system.

9 Q What do you do there now?

10 A I am the lieutenant over the Midlands MAIT
11 team, which is -- MAIT stands for Multidisciplinary
12 Accident Investigation Team.

13 Q What does that entail?

14 A Basically what that means is we are
15 reconstructionist. We are called into collisions
16 that need additional investigation. And we come in
17 and do a reconstruction of the collision.

18 Q Are you in charge of the team?

19 A Yes, sir. I'm actually -- excuse me, at this
20 point I'm in charge of two teams covering 19
21 counties. There's 11 of us on our unit.

22 Q All right. And how long have you been working
23 as part of the MAIT team?

24 A 13 years.

25 Q And during that time how many accidents or

1 collisions have you investigated and done
2 reconstruction on?

3 A We're averaging roughly 90 to 100 cases per
4 year, just the Midlands unit is. The Foothills unit
5 they're averaging about 75, 80 cases a year. They've
6 only been in existence for two years. Our unit has
7 been in existence for 13 years. So somewhere close
8 to 1,500.

9 Q That you have been involved with?

10 A Yes, sir.

11 Q All right. What types of special training, in
12 addition to your basic law enforcement training, have
13 you received to perform your duties?

14 A In 1995 when they decided to start the
15 reconstruction unit or MAIT team, we were trained, we
16 went through different facets of reconstruction
17 field. We were doing two weeks a month for the whole
18 year of 1995 and beginning of 1996 we started the
19 unit.

20 I've been to motorcycle school, pedestrian,
21 commercial business, collisions, advanced, heavy --
22 any law enforcement or any type of reconstruction
23 school that's available we've been through it.

24 MR. JOHNSON: Your Honor, at this time I move
25 to have this officer recognized as an expert in

1 collision reconstruction.

2 THE COURT: Any objections or questions?

3 MR. WILLIAMS: Can I ask a couple questions?

4 THE COURT: As far as qualification.

5 VOIR DIRE EXAMINATION

6 BY MR. WILLIAMS:

7 Q Lieutenant, have you ever been qualified in a
8 court of general sessions in South Carolina as an
9 expert in this area?

10 A Yes, sir, I have.

11 MR. WILLIAMS: I have no objection, Your
12 Honor.

13 THE COURT: Admitted without objection.

14 MR. JOHNSON: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 Q (By Mr. Johnson) Now, Lieutenant, on July 29,
17 2007 were you in charge of the MAIT team on that day
18 during that time?

19 A Yes, sir, I was.

20 Q And did you have cause to investigate a
21 collision on that day?

22 A On that date on the 29th we were notified, I
23 was notified later that night of a collision that had
24 occurred earlier. And due to the fact that the
25 collision itself had been -- the cars had been

1 removed and it was cleared at that time, we did what
2 we call a deferred response. In other words, we
3 respond the next business day because the cars had
4 been removed and the -- what I was told the evidence
5 had been marked, all the work had been done, prepped
6 beforehand.

7 So the next day, the 30th, was the first day
8 we started working on the collision.

9 Q All right. Who was involved in this
10 collision?

11 A Who was involved in the collision?

12 Q Who were the drivers?

13 A I don't know the exact names, I'm sorry. Mr.
14 William Terry Shealy, and William Conrad Martin.

15 Q Okay. And when did you proceed to the site of
16 the collision?

17 A ~~The 30th, the next afternoon. Actually the~~
18 ~~afternoon of the 30th was the first time I went to,~~
19 ~~the collision scene.~~

20 Q Okay. What did you do there?

21 A Since there was nobody else available but
22 myself at that time that date, so I went to the
23 collision scene to do several things. One was to
24 observe any evidence that was on the roadways or on
25 the shoulders that might not have been marked by the

1 investigating officer or the supervisor. And once I
2 noticed that, I looked at that, I put additional
3 paint down on the roadway, orange paint which is how
4 we mark the skid marks, the scuff marks, gouges,
5 anything of that magnitude.

6 Then -- I then proceeded to take photographs
7 of the evidence, the roadway, what we call roadway
8 evidence which is skid marks, stuff marks, gouges,
9 fluid. Took photographs of the roadway.

10 Took photographs of the direction of travel
11 which Mr. Martin would have been traveling. Location
12 where Mr. Shealy had pulled out from, the collision
13 impact location, the final rest locations of the
14 vehicles.

15 Q All right.

16 A That was just -- then I also did a what we
17 call an inventory or examination of the vehicles
18 where we go back and take photographs of all the
19 vehicles that were involved in the wreck. In this
20 case it was the Jimmy and the truck. And I
21 photographed both vehicles, damage areas to be able
22 to put the two vehicles back together.

23 Q Okay. 20 through 36.

24 (Whereupon, State's Exhibit Nos. 20 through 36
25 are marked for identification.)

1 MR. WILLIAMS: I have no objection to the
2 introduction of State's Exhibit Nos. 20 through 36.

3 THE COURT: Marked and admitted without
4 objection. You may proceed.

5 MR. JOHNSON: Thank you, Your Honor.

6 (Whereupon, State's Exhibit No. 20, 21, 22,
7 23, 24, 25, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35
8 and 36 are admitted into evidence.)

9 Q (By Mr. Johnson) Lieutenant Day, I'm going to
10 hand you those Exhibits 20 through 36. I'm going to
11 ask you what those are?

12 A These are photographs of the collision scene
13 and the two vehicles involved in the collision.

14 Q Okay. Do they fairly and accurately represent
15 the way the scene looked when you went down there?

16 A Absolutely yes, sir.

17 Q Did you take those photos?

18 A Yes, sir, I did.

19 MR. JOHNSON: Your Honor, at this time I'm
20 going to publish them on the overhead.

21 THE COURT: You may proceed.

22 Q (By Mr. Johnson) All right, Lieutenant,
23 State's 20. What does that show or what is the
24 importance of that photograph?

25 THE WITNESS: Your Honor, I'm having a hard

1 time seeing.

2 THE COURT: You can come down.

3 A This photograph depicts the scuff marks and
4 skid marks left by the truck skidding up to the point
5 of area of impact, and then the direction of travel
6 after impact.

7 Q (By Mr. Johnson) Okay. Using this laser
8 pointer, can you show what the scuff marks, skid
9 marks you're talking about?

10 A This one right here, skid mark you see there.
11 This one inside here, sort of inside, there is a
12 little orange paint. And as you see the travel -- I
13 can't remember the direction it's going up towards
14 the top, then all of the sudden you have an offset,
15 so the marks go off to the shoulder. These are the
16 offset scuff marks skid marks from the truck.

17 This area where the skid marks offset marks
18 come together is the area of impact.

19 Q All right. What are those little paint marks,
20 bright marks in the road?

21 A These are paint marks. This line right here
22 at the bottom of the picture indicates where that
23 skid mark begins. And the paint mark dots indicate
24 direction of travel or direction of the skid mark.

25 Each one of them have that within the mark

1 itself.

2 Q Lieutenant, I'm going to switch this out and
3 show you State's 21. And could you tell me what are
4 those marks on the roadway? What are the importance
5 of them?

6 A These marks right here are gouge marks and
7 that's indicative of the vehicle being flipped over
8 or rolling over and skidding on the side there on the
9 top of the vehicle.

10 Q All right. And State's 22, another one of the
11 scene?

12 A Yes, sir. Just another one of the scene from
13 the actual moving to the opposing lane taking the
14 photograph down the direction both vehicles were
15 traveling.

16 MR. JOHNSON: Your Honor, I wasn't sure if I
17 was blocking the jury.

18 THE COURT: Also there are monitors right
19 above you and monitors to the right

20 MR. JOHNSON: I just want to make sure they
21 could see clearly.

22 THE COURT: Let me know if you have any
23 difficulty. All right.

24 Q (By Mr. Johnson) Trooper, showing you
25 State's 23. Another view of the same scene?

1 A Yes, sir. This is just further back. This
2 one is coming back towards the driveway.

3 The way I photograph is you actually start up
4 the roadway and where the driveway came in goes --
5 there will be more pictures showing where the
6 driveway came in -- you take photographs as you are
7 coming towards it showing the distance and showing
8 how they come together.

9 Q All right. And on State's 24, what is this
10 area down here? What is all that? What could it
11 possibly be?

12 A This area right here you're referring to, this
13 is fluid from the vehicles after the impact which
14 come from the Jimmy as it went to the left over here
15 next to the mailbox. You can see the marks, scuff
16 marks that go off the roadway and that's where it
17 ended up.

18 Q All right. And State's 25, those markers on
19 the road, what are those light marks for again?

20 A We use orange paint to show us the direction
21 of travel. The reason we use the orange paint when
22 we are doing these markings is we don't always do
23 what we call a forensic mapping on the same day.
24 There might be days, we might be a couple days before
25 we get out there to map it.

1 So to preserve the marks, to know where they
2 are, we go and use orange paint and mark the scuff
3 marks and skid marks so that we can go back out at a
4 later date and forensically map a scene.

5 Q Now State's 26 and 27, with first this one,
6 and this one, what are the significance of those
7 photos?

8 A The one that's up here now, as you can see the
9 scuff marks or the skid marks going off the roadway
10 from the truck to the final rest. The picture you
11 had before this one is the actual final rest of the
12 truck itself where it came to the rest in the ditch.

13 Q The defendant's truck?

14 A The defendant's truck, that's right.

15 Q And State's 26, what are those bright markings
16 down there?

17 A Those are tire markings showing the location
18 where the front tires came to rest.

19 Q All right. State's 28 and 29 would be similar
20 mapping of the scene?

21 A Yes, sir. The difference between this one,
22 this is State's 29, they're taken where I'm further
23 back taking a wider view of the area. Also you can
24 see the orange paint, it's hard to see it in this up
25 here on the board, but there is an orange mark there,

1 and the other one is somewhere right in here, there
2 it is, is showing the beginning of the skid marks.
3 That's what that is.

4 Q And the same on 28?

5 A 28 as you can see this is the mark after
6 impact, the vehicles have already had impact and
7 they're traveling toward their final destination.
8 This mark came from the truck, from the defendant,
9 this fluid trail traveling across the roadway is from
10 the Jimmy headed to its location.

11 Q Lieutenant, I'm going to ask you about State's
12 30. What is all that? What is the importance of all
13 that on the side of the road?

14 A The important stuff is really not what I am
15 taking a photograph of. The photograph is showing me
16 the direction of the fluid trail and the direction
17 that the Jimmy was traveling to final rest is what
18 I'm looking at is this direction here of the Jimmy
19 itself to the final rest.

20 Q Okay. And once again Exhibit 31. Is that the
21 same area?

22 A Yes, sir. This is the same area looking at it
23 from the opposite direction. Picture before it did
24 not show the mailbox and the final rest location.
25 This actual photograph shows where the vehicle came

1 to rest behind this mailbox in this area here. And
2 it also shows you the trail of fluid heading in that
3 direction.

4 Q All right. And State's 32, what is that?

5 A This is the GMC Jimmy that was taken at the
6 wreckage yard showing the impact damage where the
7 vehicle was struck by the truck and the right rear
8 panel.

9 And the significant part of this is to
10 indicate, also help you understand why the vehicle
11 instead of going straight it went to the left because
12 with the force coming behind from the right side of
13 the Jimmy, it's going to knock the vehicle to the
14 left and the truck went to the right. That's the
15 significance in this photograph.

16 Q All right. And Exhibit 33, significance of
17 that?

18 A What we are showing here is the actually
19 stuffing or gouging, not gouging, but scraping on
20 this side here and scraping on the top which
21 indicates that the vehicle rolled over which is
22 consistent with the scraping on the roadway that we
23 found, and the information that we had obtained.

24 Q All right. And State's 34?

25 A This is the blown-out tire on the truck

1 itself. On the -- I can't remember would be the left
2 side, driver's side tire. That's just a close-up
3 photograph of that tire.

4 Q State's 35, is that the same?

5 A This photograph we are showing the damaged
6 area where the vehicle made impact with the rear of
7 the Jimmy.

8 Q Okay. And State's 36?

9 A This is just showing some of the damage. What
10 we were doing was -- what I was doing was taking
11 photographs not only of the knocked out window but
12 also showing the area within the vehicle where the
13 passenger and the driver were sitting.

14 Q Okay. Thank you, Lieutenant.

15 Lieutenant, what is the significance of
16 examining the vehicles?

17 A As I explained a while ago, the significance
18 of examining the vehicles is you look for the damaged
19 locations on the vehicles so you can put the two
20 vehicles back together.

21 One of the things we are looking for at the
22 impact location of the scene is the ways the vehicles
23 travel to final rest. We are looking at those
24 issues. And sometimes that comes from the actual
25 inspection of the vehicles.

1 Q Did you or did your team create a report with
2 all this information?

3 A Yes, we did.

4 Q What other troopers were assisting on that?

5 A The troopers involved in this investigation
6 was myself, Corporal Coffin, Sergeant Breland,
7 Corporal Farmer.

8 MR. JOHNSON: Your Honor, I have no more
9 questions at this time.

10 THE COURT: Any questions for the witness?

11 MR. WILLIAMS: Yes, Your Honor.

12 THE COURT: You may proceed.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q Lieutenant --

16 A Yes, sir.

17 Q -- as I understand your testimony, you didn't
18 go out to the scene until the following day after the
19 wreck occurred; is that correct?

20 A Yes, sir, that is correct.

21 Q And do you recall what day of the week that
22 would have been?

23 A I don't know the exact day of the week. I
24 know it was on the 30th. The collision happened on
25 the 29th. I talked to Lieutenant Collins that night.

1 A Yes, sir.

2 Q The braking ability of the vehicles involved?

3 A If that is an issue, that's correct. Now all
4 these things you are discussing sometimes are not
5 issues or not something that needs to be looked at.

6 Q Weight of the vehicles?

7 A Occasionally, yes, sir. You look at that if
8 you're -- if we were doing certain linear momentum
9 cases where you're doing speed analysis, you have to
10 look at the weight of the vehicle, that's correct.

11 Q And in this particular case one of the things
12 which you assessed was the speed of the vehicles?

13 A Yes, sir. We were -- there were several
14 things we were asked to do. One of them was to
15 document the scene, and the second issue we were
16 asked to determine the speed if we could of the
17 vehicle, that's correct.

18 Q And in this case when you went to the scene
19 the following day of the wreck, who was present at
20 the scene besides yourself?

21 A ~~I was the only officer there. I met a young~~
22 ~~gentleman but I don't remember who it was.~~ There was
23 a gentleman sitting on the steps at the trailer which
24 is the driveway where the -- Mr. Shealy came out of.
25 But I don't remember who the person was I talked to.

1 I couldn't answer that question.

2 Q Would you recognize him if he was in the
3 courtroom?

4 A I would not.

5 Q But he was sitting on the steps at the
6 trailer?

7 A He never came out to talk to me until after
8 I'd almost finished everything. Now my car was
9 parked right there at the driveway, and then he came
10 out and spoke to me. But I don't remember his name.

11 Q Okay. And in terms of picture taking that you
12 did and we have seen, in terms of the pictures of the
13 location and things like that, tell me, if you will,
14 what marks were on the roadway when you got there
15 that were imposed on the roadway by a police officer?

16 A I couldn't tell you. I can tell you the marks
17 that were already marked and then I added additional
18 orange paint to them.

19 Q Okay.

20 A So they were already marked. Only thing is
21 I'm a stickler for putting more paint down than
22 necessary because I don't want nothing to leave the
23 scene.

24 So I take it upon myself to use my orange
25 paint. I've got cases of it. It's not something

1 that I can't get a hand on. So I put additional
2 paint down. They were already marked, I just put
3 additional.

4 Q But you don't know who made any marks if there
5 were marks out there, do you?

6 A Skid marks or scuff marks?

7 Q I think we're talking about apples and
8 oranges.

9 A I think we must be.

10 Q When it comes to putting marks down there,
11 were there any marks that were painted on the roadway
12 when you got there?

13 A Yes. I'm sorry. Yes, sir.

14 Q That's what I'm asking.

15 A Yes, sir, there were.

16 Q And how many marks were there?

17 A I couldn't tell you. I don't go counting
18 marks, sir. I'm looking at evidence. And I am
19 putting additional paint. I am photographing. I'm
20 just looking. I'm doing the whole scene analysis
21 while I'm there. So I don't count each individual
22 mark.

23 Q That's fine. Who made the marks?

24 A ~~Who made the marks?~~ It would have been either
25 the trooper or his supervisor. One of the -- one of

1 the local troopers who was doing the investigation
2 that night or prior to us.

3 Q But you weren't out there with any particular
4 officer who was showing you areas that you needed to
5 be concerned about?

6 A No, sir.

7 Q And what you are saying in essence is that
8 when you arrived at the scene there were marks on the
9 roadway which you assume to have been made by the --
10 you call them the arresting officer or the first
11 officer on the scene?

12 A No because he's not always the one who makes
13 those marks. It could have been his supervisor, it
14 could have been somebody assisting him.

15 They are taught in patrol school and in other
16 training how to mark evidence on the scene. And
17 there are many times, and it still exists, there are
18 many cases we work today that we require them to mark
19 the scene evidence so that when we go back to look at
20 it it's already marked. We don't have to hunt and
21 try to find something.

22 So they're already taught how to mark the
23 evidence. And so they would have already started it
24 before we got there.

25 Q But there was nobody on the scene when you got

1 there so you don't know who marked it, do you?

2 A I have been doing this for 13 years and I have
3 been doing patrol 25 years, sir. I knew what I was
4 looking at. I didn't need nobody to come tell me
5 that's a scuff mark, or that's the offset mark there,
6 of this is where that vehicle came to rest. I have
7 been trained and I understand and I know exactly what
8 I am looking at.

9 Q Now it's true that you have a higher degree
10 training, don't you, since you are in charge of the
11 MAIT team, right?

12 A I'm trained like a lot of my people are
13 trained. I just happen to be their supervisor. I do
14 a lot more administrative work.

15 Q So you don't have any special qualifications
16 beyond what a normal patrolman would have?

17 A No, sir, that's not what I said.

18 Q Okay.

19 A The unit which I work with, we are highly
20 trained in the field of reconstruction.

21 Q Okay.

22 A I have guys that I work with that work under
23 me that are just as certified or have just as much
24 knowledge as I do in the field of reconstruction.
25 But the fact is I'm their supervisor, I run the unit

1 and I just keep everything going in the right
2 direction.

3 I send out troopers, the guys that work for me
4 I send them out in the middle night to go to work, to
5 go work a wreck, that's my job.

6 Q Which one of the members of the MAIT team had
7 you sent out to work this wreck?

8 A I think I've answered that, sir. We didn't
9 get involved until the next day.

10 Q So the marks that were placed out on the
11 roadway when you got there were placed by somebody
12 else other than somebody on the your MAIT team?

13 A Yes, sir. I have already said that also.

14 Q And you don't know who that was?

15 A I don't, sir. Like I said, could be the
16 trooper himself who worked the wreck, could have been
17 the supervisor, somebody who was assisting at the
18 scene. I don't know.

19 Q Now. Did you do any measurements in regard to
20 distance on the roadway?

21 A There were some measurements done, Corporal
22 Coffin went through the calculations and also
23 prepared the field -- the forensic mapping of the
24 scene itself.

25 Q So --

1 A That was his task.

2 Q So in answer to my question, you didn't do any
3 measurements?

4 A With a tape measure? No, sir. That's old
5 school.

6 Q Measurements are old school?

7 A That's the old school use of tape measures,
8 sir. I could take a tape measure, pull you a
9 baseline and block that road for three, four hours
10 and do exactly what you are asking me to do.

11 But we do what we call forensic mapping. We
12 use what they call like surveyor uses to survey a
13 property. Instead we do what is called forensic
14 mapping. We do an at-scene drawing, a scale drawing
15 of the roadway, the evidence as it appears that you
16 are looking at it.

17 Q Did you do that in this case?

18 A Yes, sir, that was done.

19 Q And in that pictures that we -- have been
20 introduced into evidence -- well, I guess let's go
21 through them. Can you step down here for me?

22 THE WITNESS: Your Honor?

23 THE COURT: Yes, sir, you may step down.

24 Q (By Mr. Williams) Let's start with State's
25 Exhibit Number 20. All right. And I believe you've

1 already testified, you've already testified that
2 these marks right here were made by the truck; is
3 that correct?

4 A After impact, yes, sir.

5 Q And is this area right here, the orange area,
6 that you say is the impact area?

7 A No, sir, that's not.

8 Q Where is the impact area on the picture?

9 A Would be, these are the skid marks leading up
10 to the impact area. Impact area is going to be where
11 the offset tires from the truck go to the right and
12 the vehicle it set go down the road here and proceeds
13 to the left. Offset of the skid marks right here is
14 going to be your impact area.

15 Q So what we are actually looking at is not skid
16 marks of the truck then?

17 A Yes, sir, we are. We are looking at these are
18 skid marks from the truck leading up to the impact.
19 And these are skid marks going off roadway from the
20 truck.

21 Q Okay. Then you said something about going off
22 to the left?

23 A Yeah, the Jimmy was knocked forward. Then as
24 you can see the fluid right there, it goes off to the
25 left and ended up over here.

1 Q Well then if that's true, what are all these
2 marks right here, coming up here?

3 A What marks?

4 Q Those are not marks, the darkened area right
5 through there?

6 A I don't see nothing that indicates those are
7 marks in the photograph that I'm looking at, sir.

8 Q There is a dark area there if this will help.

9 MR. WILLIAMS: Can we approach the jury, Your
10 Honor, with the lieutenant.

11 THE WITNESS: Your Honor, I can see.

12 MR. WILLIAMS: He cannot see it from here.

13 THE WITNESS: I can't be making up marks that
14 I don't see, sir.

15 THE COURT: Just answer the question to the
16 best of your ability, yes or no and you may explain
17 your answer.

18 THE WITNESS: Thank you, ma'am.

19 Q (By Mr. Williams) So it's your testimony that
20 there are no marks right through here?

21 A None that I can see in that picture, that's
22 correct.

23 MR. WILLIAMS: Your Honor, I'd like the right
24 to hand this to the jury so that they can review
25 that.

1 THE COURT: You cannot ask questions while you
2 do that. You can do it at the conclusion of your
3 questions.

4 MR. WILLIAMS: Okay.

5 Q (By Mr. Williams) Now if you would, would you
6 tell me what this picture shows?

7 A ~~This picture shows some fluid that was left~~
8 ~~here and has some scuff marks going off the area over~~
9 here. Also there is some gouging here showing where
10 the vehicle started to roll over.

11 Q Now if you will, can you tell me what those
12 marks are?

13 A No, sir, I cannot tell you. It looks like it
14 could have been where a vehicle traveled through some
15 fluid and tracked it up the roadway. In other words
16 if there is fluid on the road, oil, antifreeze, any
17 type fluid left on the roadway and you drive through
18 it, it will rotate and it can leave tracks. That's
19 possibly what that is, I don't know exactly what that
20 is.

21 It not a skid mark if that's what you are
22 asking me.

23 Q That's what I'm asking you.

24 A I don't see it as a skid mark, no, sir.

25 Q Did you measure the depth of the gouge in the

1 road?

2 A No, sir, I did not.

3 Q Would it be important to you as to how deep
4 this gouge is? Did you take a picture of it?

5 A Yes, sir. There is a photograph of it in
6 there, sir.

7 Q If you will find it for me.

8 A I call them gouges, they're actually scrapings
9 on the roadway.

10 Q What is the different?

11 A I'm sorry? Exhibit 31 has some scraping and
12 gouging on the edge of the roadway.

13 Q I'm particularly interested in the gouging
14 that you say is evidence of where the collision
15 occurred.

16 A I did not say there was gouging where the
17 collision occurred.

18 Q So there is no gouging on the roadway where
19 the collision supposedly occurred?

20 A I did not say there was. There was an offset
21 impact location which under reconstruction, when you
22 have been through reconstruction courses you
23 understand that offset is where the impact took place
24 because both vehicles are now moving in opposite
25 directions from that impact.

1 It's the area of impact, it's not the actual
2 gouge.

3 Q Was there any evidence of debris in the area
4 where the collision supposedly occurred?

5 A Not when I was there, sir, no, sir. You got
6 to remember I showed up the next day so if there
7 would be any --

8 Q Go ahead, I did not mean to cut you off.

9 A If there would have been, they would have had
10 to clean it off the roadway. Exhibit 21 with the
11 other one shows the scrapings on the roadway where
12 the vehicle begins to roll.

13 Q So, Lieutenant, what you're telling me is that
14 ~~there was no debris in the roadway whatsoever that~~
15 ~~would show you where the collision occurred?~~

16 A ~~Not when I was there, no, sir.~~

17 Q Okay. And that your determination is, in
18 regards to where the collision occurred, is based on
19 the fact that you see marks evidencing one vehicle
20 going off in one direction and marks indicating a
21 vehicle went off in another direction?

22 A Based on facts and training, sir, yes, sir.
23 In that point, that area of impact is an offset where
24 the truck is skidding in one direction, and because
25 of a impact with another vehicle it veered to the

1 right. Therefore your skidding goes straight and
2 then all of a sudden veers to the right means that it
3 had came in contact or came upon something that
4 created it to switch directions.

5 In this case it was the Jimmy that was in
6 front of it.

7 Q If you lost control of your vehicle by
8 stepping on the brakes would that cause you to
9 conceivably to go off in one direction off the road?

10 A No, sir. His tires were locked. He was going
11 to go straight down the road the way he had them
12 locked. What caused him to go off the roadway was
13 the impact with the back of that Jimmy.

14 Q Did you -- did you perform any type of
15 analysis to the items which you say are skid marks on
16 the road by way of measurement to the tires that were
17 involved on either one of the vehicles?

18 A No, sir.

19 Q So you did not measure the width of the tire
20 marks to the vehicles that were involved in the
21 collision?

22 A No, sir. I don't remember any measurements of
23 that, no, sir.

24 Q And you did not perform any measurements in
25 terms of distance from one location to another?

1 A Yes, that was done through the CAD drawing.
2 We did not pull a tape measure that time, we do it
3 through the CAD drawing itself. We do a forensic
4 mapping of the scene. We can come back, put it on a
5 computer and we can pull any measurement we want to
6 pull through that drawing. That's how we got our
7 measurements.

8 Q Now one of the items you reflected on was the
9 fact that there was evidence of a rollover of the
10 Jimmy because there were gouge marks on the side of
11 the road indicating there was a rollover of the
12 Jimmy; is that correct?

13 A Yes, sir, I feel like there was at least one
14 rollover.

15 Q All right. And at the time in which you went
16 out there did you -- well you did not know I guess.
17 Did you know whether or not the Jimmy was found
18 straight up or whether or not it was on its hood?

19 A No, sir. I had received information that it
20 was found on its hood. But actually what I did first
21 I actually went to the vehicles and photographed them
22 first before I went to the scene. Because it was on
23 the way there so it was much easier to stop there and
24 do it.

25 Q So it was your information that at the scene

1 when the vehicle was found it was on its hood?

2 A That's correct.

3 Q On its top?

4 A That's correct.

5 Q Now I think you've already said that the gouge
6 marks that are reflected on this picture are evidence
7 of sliding, if you will, of the Jimmy on its hood. I
8 think you pointed that out, didn't you?

9 A I don't know if I indicated it was sliding, I
10 indicated that it was scraping on the right corner of
11 the hood and fender. And there was some marks.

12 Q This is the one that you are talking about,
13 isn't it? Isn't that the one you were talking about
14 earlier when you were standing up here and you said
15 that that is evidence of the sliding of the vehicle
16 on top of its hood.

17 A No, sir, that's not the one.

18 Q Not the one?

19 A That's not the photograph I was looking at.

20 Q Can you come down and show me the photograph?

21 A I think it's Exhibit 21 if you want to look at
22 it.

23 THE WITNESS: Your Honor, can I come back
24 down.

25 THE COURT: Yes, sir.

1 Q (By Mr. Williams) And the difference between
2 this photograph --.

3 THE COURT: It's upside down, isn't it?

4 MR. WILLIAMS: Well, I will explain it to him,
5 Your Honor.

6 THE COURT: Okay.

7 A This photograph here, the direction the
8 vehicle was traveling would be from the top down in
9 this manner. This is the first sign of scraping that
10 would have came from the vehicle as it was rolling
11 over heading to the final resting place.

12 Q (By Mr. Williams) And the marks that you are
13 reflecting and that you are talking about would be
14 the gouge marks or the scrapes?

15 A They're scrapes. Gouge marks generally would
16 be anywhere from say quarter an inch, it could be an
17 inch deep, you can actually see, you've seen roadways
18 gouged out from metal and all that.

19 These are actually not that deep, these are
20 scrapings. In other words it's like metal pushing on
21 the top of the road which creates scraping.

22 Q That's the hood of the vehicle scraping --

23 A I did not say it was from the hood, I said
24 there was evidence that the hood did do some
25 scraping. I'm not saying that came from the hood,

1 no, sir.

2 Q what else would have made those marks?

3 A There were other places on the car that had
4 scrape marks on them.

5 Q Because if you look at State's Exhibit No. 31,
6 which is approximately the same location, isn't it?

7 A No, sir.

8 Q Where is that?

9 A It's further down.

10 Q Are the scrapings on State's Exhibit No. 31
11 from the top of the vehicle? Scrape right there on
12 the side of road?

13 A Sir, I cannot tell you where they came from on
14 the vehicle. There were numerous places on the Jimmy
15 where it had scraped. I told you in my opinion it
16 turned over at least once. That doesn't mean it
17 would not have rolled more than once.

18 Q And your determination of that is really based
19 on how the vehicle looked when you went and looked at
20 the vehicle?

21 A That's some of it, then the evidence found at
22 the scene. I put two and two together, that helped
23 me a little bit.

24 Q Now the driver's side of the Jimmy, was the
25 driver's side window knocked out?

1 A I don't remember, sir. I'd have to look at a
2 picture of that side to be able to tell you. I don't
3 remember.

4 Q Did you check the lights on the Jimmy to see
5 if the lights were working properly?

6 A Couldn't find, there was nothing -- found
7 nothing wrong with the vehicle. No, sir.

8 Q So you checked --

9 A We the -- the light never came up as an issue
10 because it was still daylight or it wasn't -- I don't
11 know how late it was. July. I mean we are talking
12 about July so we have long days. The light never
13 came up as an issue.

14 Q So the short answer to my question is you did
15 not check the lights?

16 A I don't have anything to indicate any problems
17 with them, sir.

18 Q Does that mean you did not check them?

19 A No, sir. That means I did not see any issue
20 with them, no problems. I can promise you if there
21 was a problem with those lights, that would be in my
22 notes.

23 Q Did you check the braking of the truck which
24 was involved in the collision?

25 A No, sir, I didn't see that as a necessary

1 thing because he had already left skid marks that
2 told me his brakes were working because he'd already
3 put on the brakes. So his brakes were working fine.

4 Q So in essence what you're telling me, and
5 correct me if I'm wrong, in terms of your involvement
6 with this case, it amounted to you taking some
7 photographs and painting some orange paint out on the
8 roadway where you thought that somebody else had
9 already marked?

10 Q No, sir that's not. That's the way you see
11 it. No, sir, I see my job as a overview to look at
12 the whole totality of the scene. And I go through
13 and look at the these marks. I don't just go down
14 and put paint on them, I actually look at them and
15 try to figure what they are and where they came from.

16 The photographs help me determine how this
17 collision occurred. So, no, sir, I don't call that
18 just photographing and marking, I call that
19 investigation.

20 MR. WILLIAMS: That's all the questions I
21 have, Your Honor.

22 THE COURT: Any redirect of the witness?

23 MR. JOHNSON: Briefly, Your Honor.

24 THE COURT: You may proceed.

25 Ladies and gentlemen, we appreciate your

1 indulgence. We'll break for lunch shortly.

2 REDIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q Lieutenant Day, what type of tool do they use
5 on the MAIT team to take those measurements that you
6 referred to?

7 A We use what's known as a sekia (phonetic)
8 total station. That's the device itself that is like
9 the surveyors use when they are surveying property.
10 Ours is called a sekia total station.

11 Q Is that like one of those things they had on a
12 tripod out there when you are surveying land?

13 A That's correct, it is. And we use our data
14 collector which is the information collector. In
15 this particular we use what is known as a Panasonic
16 information collector. In other words when we
17 collect those points or that information from the
18 roadway it goes into a Panasonic system and then we
19 download that into our computer.

20 Q There were other members of your team that did
21 that?

22 A Yes, sir, that's correct.

23 Q And did you have a -- did you receive
24 information regarding the exact location of this
25 wreck? Is that how you knew where to go?

1 A Yes, sir.

2 Q And did they just generalize where to go or do
3 they tell you exactly where to go?

4 A No, they told me I think it's called Irvin
5 Jumper Road, that the collision was right at Irvin
6 Jumper Road. I think with my vast knowledge I was
7 able to find it real simple with the marks in the
8 roadway and the paint lead me right to the location.

9 But that's not unnormal. That's very normal.
10 We don't always ask them to go to the scene with us.

11 Q All right. And showing you Exhibit 32.

12 THE WITNESS: Your Honor, may I step down
13 again?

14 THE COURT: Yes, you may.

15 Q (By Mr. Johnson) I was just going to ask you
16 a basic question. What type of impact does that look
17 like to you from what there is?

18 A That's a rear impact. Predominantly to the
19 right side of the Jimmy.

20 Q Okay. And on the State's Exhibit 35,
21 defendant's truck; did you see anything on the side
22 of the road or anything in the road, anything off the
23 shoulder that could have caused that damage?

24 A The only thing that caused that damage was
25 that Jimmy.

1 Q All right. Thank you, lieutenant. How many
2 years did you say you were highway patrol?

3 A I have 25 years on December 31st.

4 Q And you started -- when did you start going to
5 accident scenes?

6 A As soon as I -- right after I graduated from
7 the academy. I think I went to my first fatal wreck
8 within less than a month after I came on patrol,
9 worked my first fatal. So it's immediately.

10 Q And when Mr. Williams refer to your testimony
11 about that truck going off to the right, was that the
12 defendant's truck?

13 A Yes, sir. The defendant's truck which
14 actually showed the marks skidded up to the impact,
15 point of impact, area of impact; then it redirected
16 to the right after impact.

17 Q And what was the make of his truck?

18 A Dodge.

19 Q Was it a Dodge Ram?

20 A Yeah, Dodge Ram.

21 Q Was there a break or something in the skid
22 marks that -- what's the importance of that as far as
23 determining the area of impact? What do the cars do
24 to show that in the road?

25 A In this particular case the Dodge Ram, the

1 driver of Dodge Ram, Mr. Martin, applied the brakes
2 as he came up behind the Jimmy and began skidding.
3 And at that impact with the Jimmy, the impact from
4 the rear caused the Jimmy to go forward. And being
5 in that was to the right side of the Jimmy it would
6 cause the truck to go off to the right.

7 Therefore you have what is known as offset
8 skid marks. He still on the brakes, but at this
9 point now he has changes directions and he is
10 skidding off the roadway into the ditch.

11 Q Okay.

12 MR. JOHNSON: Your Honor, I have no further
13 questions for the witness.

14 THE COURT: Any objection to the witness being
15 excused from the state?

16 MR. JOHNSON: None from the state, Your Honor.

17 THE COURT: From the defense?

18 MR. WILLIAMS: None from the defense.

19 THE COURT: You're excused. Thank you.

20 THE WITNESS: Appreciate it.

21 THE COURT: Ladies and gentlemen, we are going
22 to take advantage of this break in testimony to take
23 our luncheon recess. We will break until 2:30 which
24 gives you about an hour and 15 minutes.

25 During this break please do not discuss the

1 case, please do not allow yourselves to be exposed to
2 any media coverage regarding this case. And again,
3 please don't have any contact with anyone in or about
4 the courthouse. And return directly to your jury
5 room after lunch.

6 We appreciate you allowing us to go a little
7 into your luncheon recess. We appreciate your
8 patience. Enjoy your lunch. We will see you at
9 2:30.

10 (Whereupon, the jurors exit the courtroom.)

11 THE COURT: We are at lunch until 2:30.

12 THE COURT: Anything from the state?

13 MR. STUMBO: No, ma'am.

14 THE COURT: From the defense?

15 MR. WILLIAMS: No, ma'am.

16 THE COURT: All right. Have a good lunch. I
17 will see you at 2:30.

18 (Whereupon, a recess was taken.)

19 THE COURT: Is the state ready to proceed?

20 MR. STUMBO: We're ready, Your Honor.

21 THE COURT: Defense ready?

22 MR. WILLIAMS: Your Honor, the solicitor and I
23 had a conversation while you were out.

24 THE COURT: All right.

25 MR. WILLIAMS: Two items we need to bring to

1 light.

2 THE COURT: Okay.

3 MR. WILLIAMS: The last witness who testified
4 was Lieutenant Day. He told the solicitor that one
5 of the jurors was a relation to his in-laws.

6 THE COURT: Okay. They might not be aware of
7 it.

8 MR. WILLIAMS: I understand. Out of an
9 abundance --

10 THE COURT: Could he tell me which one it was?

11 MR. WILLIAMS: He could.

12 MR. STUMBO: He could if he were here. Your
13 honor, by the time he told us back there I couldn't
14 remember which one it was on there. He said he
15 didn't even know her name. He noted he had seen her
16 at some function of the family.

17 MR. WILLIAMS: Can the Court just ask the
18 jurors --

19 THE COURT: You're going to have to let me
20 know who it is. I've already asked them that in voir
21 dire and I've read his name out, I've read
22 everybody's name out where they worked and that
23 person did not indicate that they knew him.

24 I don't know if it's a relationship that might
25 have been someone who's an acquaintance to a relative

1 who's simply at a social function. I need you to
2 identify the person for me and then I'll be glad to
3 voir dire that juror.

4 MR. WILLIAMS: I'm just reporting what the
5 solicitor told me.

6 THE COURT: If you all let me know who it is,
7 I'll be glad to voir dire that juror. I suspect if I
8 made a general inquiry does anybody know Lieutenant
9 Day they're going to respond the same.

10 MR. WILLIAMS: There is one other issue, Your
11 Honor. When I was leaving the courtroom I noticed
12 that Lieutenant Day was talking to the other MAIT
13 officers.

14 The COURT: Okay.

15 MR. WILLIAMS: My concern is this, that they
16 were all sequestered.

17 THE COURT: well, that doesn't mean they can't
18 say hello to one another.

19 MR. WILLIAMS: It does mean they can't talk
20 about what they testified about.

21 The COURT: Do you have a good-faith basis
22 that they were talking about the case?

23 MR. WILLIAMS: I didn't hear them.

24 MR. STUMBO: We don't know anything about
25 that.

1 THE COURT: You can always ask them that in
2 cross-examination. It's up to you. Unless you have
3 some good-faith basis that they actually were talking
4 about the case, there's nothing I can do about it.
5 And the remedy would be contempt, not excluding the
6 witness.

7 MR. WILLIAMS: Okay.

8 THE COURT: Is there anything else before we
9 proceed from the state?

10 MR. STUMBO: We're ready, Your Honor.

11 THE COURT: From the defense?

12 MR. WILLIAMS: We're ready, Your Honor.

13 THE COURT: And once you all get that juror's
14 name or a description, please let me know so that I
15 can conduct any additional voir dire.

16 Please bring in the panel.

17 And I told them that they were waiting because
18 I was dealing with some other cases before we got
19 started.

20 How many more witnesses does the state have?

21 MR. STUMBO: Your Honor, we have --

22 THE COURT: Why don't you just tell me who
23 you're not calling. Are you calling Dr. Love?

24 MR. STUMBO: We're calling Dr. Love next.

25 THE COURT: Are you calling Dr. Bynoe?

1 MR. STUMBO: We're calling Dr. Bynoe.

2 THE COURT: Lieutenant Kaufman?

3 MR. STUMBO: Yes.

4 THE COURT: Breland?

5 MR. STUMBO: Breland and Farmer we're not
6 calling.

7 THE COURT: Selena Kinard?

8 MR. STUMBO: Yes. Bannister, Kinard, Williams
9 and Landrum all from SLED, we intend to call all of
10 them.

11 THE COURT: And then of course the coroner,
12 correct? Or are you not calling the coroner?

13 MR. STUMBO: At this point, Your Honor, I'm
14 not planning to call the coroner.

15 THE COURT: Okay.

16 MR. STUMBO: But that may change. I don't
17 anticipate getting through all the witnesses we have
18 today, we can try.

19 THE COURT: Okay. Mr. Williams, tell me how
20 many witnesses do you have?

21 MR. WILLIAMS: Your Honor, the only one we
22 have is the defendant. I would ask the Court that we
23 stop sometime prior to around 6:30.

24 THE COURT: Oh, I'm not going that late.

25 MR. WILLIAMS: I have to take my wife to hear

1 the Irish Tenors. I'd hate to have to be here.

2 THE COURT: We're not -- we wouldn't go that
3 late. I find that the jury's attention span wanes
4 after about 5:30. I think that would be sort of
5 cruel and unusual to everybody involved. I wouldn't
6 do that.

7 MR. STUMBO: Our next witness is Dr. Love,
8 Your Honor.

9 THE COURT: Okay.

10 (Whereupon, the jurors enter the courtroom.)

11 THE COURT: You may be seated. Ladies and
12 gentlemen, we will now resume the trial. You may
13 call your next witness.

14 MR. STUMBO: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MR. STUMBO: State calls Dr. Daniel Love to
17 the stand.

18 DR. DANIEL LOVE,
19 after having first been duly sworn to state the
20 truth, the whole truth and nothing but the truth,
21 testified on his oath as follows:

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. STUMBO:

25 Q Good afternoon, Dr. Love.

1 A Hello.

2 Q Could you give the jury just a brief overview
3 of your education going back to undergrad?

4 A Raised in Columbia, and then went to undergrad
5 at Princeton in New Jersey. I did medical school at
6 the University of Virginia in Charlottesville and
7 then my training was in -- at the University of
8 California in San Francisco.

9 Q So you said you went to medical school at the
10 University of Virginia?

11 A Right.

12 Q Where did you do your residency?

13 A University of California, San Francisco.

14 Q And when did you come back to Columbia?

15 A I returned here in 1975 as a member of the
16 faculty at the new medical school here in Columbia.

17 Q Been here in Columbia ever since?

18 A I have.

19 Q Do you live here in town?

20 A I do, in Columbia.

21 Q And where are you currently -- where is your
22 practice currently located?

23 A It's at 1333 Taylor across from the Baptist
24 Hospital. It's ~~Carolina Pulmonary and Critical Care~~,
25 And we're involved currently in three of the four

1 major hospitals, Lexington, Baptist and Providence.

2 Q You have an office there at Baptist; is that a
3 complex there with the Baptist Hospital?

4 A It's across Taylor Street. It's the one that
5 is connected by the crosswalk.

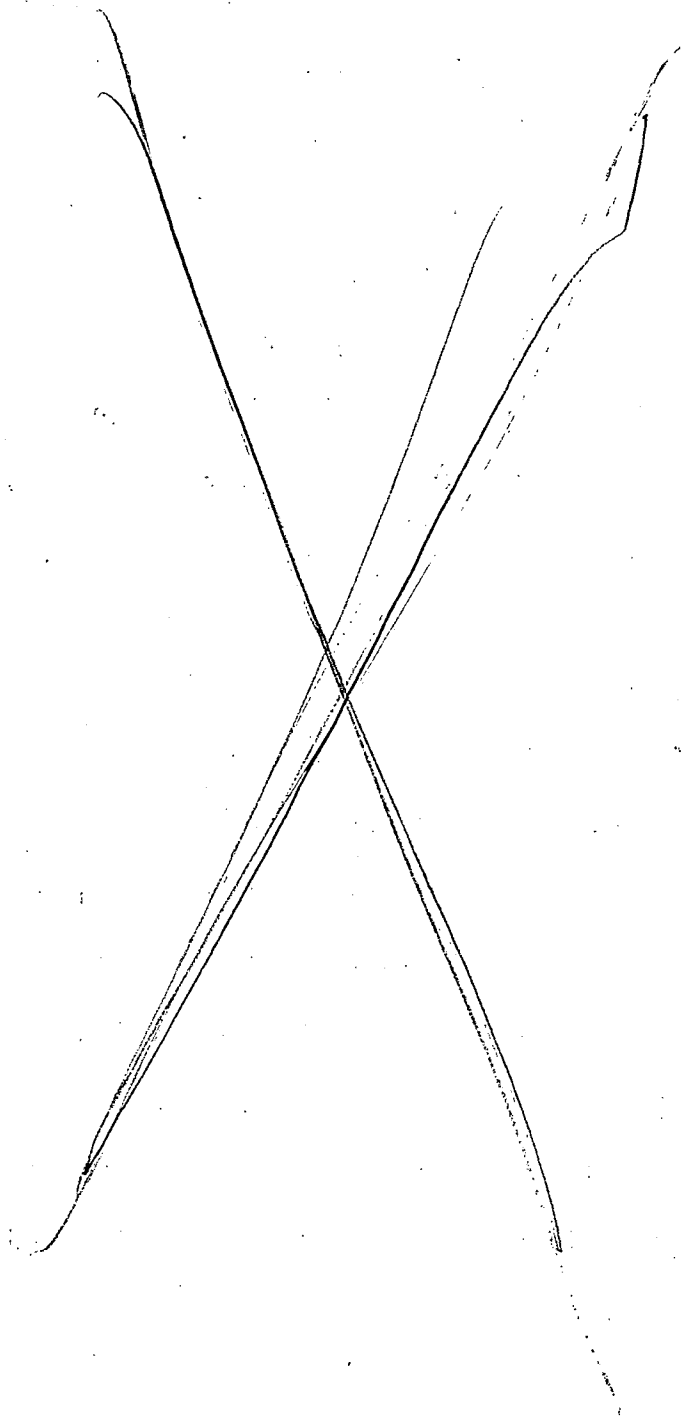
6 Q Okay. What kind of specialized training do
7 you have in the medical field?

8 A Well, my residency training was in internal
9 medicine. My early faculty time, from 1975 to 1979,
10 was in the emergency room where I was a director for
11 a short period, was in internal medicine where I
12 became the director of the residency program and in
13 pulmonary because along with one of my colleagues we
14 did the pulmonary care, the respiratory failure,
15 intensive care at Richland Memorial until '79.

16 Q Since that time have you been primarily
17 involved in internal medicine and pulmonary care?

18 A Primarily pulmonary, but a lot of that is
19 internal medicine with adults. Since '79 three of us
20 went together, two of us from the medical school, and
21 we practiced out of Richland, Providence and Baptist.

22 For a brief period in the mid '80s I went back
23 to Richland as the director of medical education, was
24 coaxed back there to head up the educational programs
25 at too young an age so I went back and practiced



1 after 16 months where I've really been since about
2 1986.

3 Q Are you board certified in anything?

4 A In internal medicine, yes.

5 Q And are you licensed to practice medicine here
6 in South Carolina?

7 A Right.

8 Q Since when? How long have you been a licensed
9 physician here in the state?

10 A '75.

11 Q Dr. Love, have you ever testified in courts
12 here in South Carolina as an expert?

13 A I have.

14 Q About how many times, just estimate?

15 A Half a dozen maybe.

16 MR. STUMBO: Your Honor, at this time the
17 state would offer Dr. Dan Love as an expert in the
18 field of pulmonary medicine.

19 THE COURT: Any questions or objections?

20 MR. WILLIAMS: Some questions, Your Honor.

21 THE COURT: You may proceed.

22 VOIR DIRE EXAMINATION

23 BY MR. WILLIAMS:

24 Q Doctor, you said you have been qualified
25 approximately six times as an expert in what area?

1 A I'm sorry. I thought the question was
2 testified in court. Was that not the question?

3 Q Correct.

4 A I have testified in court probably half a
5 dozen times, but I have actually been asked to review
6 cases more times than that.

7 Q Okay. Have you ever been qualified in a
8 general sessions court or a court of common pleas,
9 which is a large court versus magistrate court, as an
10 expert in any area?

11 A I think so.

12 Q Okay. Do you know what area you were
13 certified as an expert?

14 A In internal and pulmonary medicine. I mean
15 the cases I've been asked to testify in were either
16 cases that I've been involved in the care of somebody
17 with pulmonary problems or the issues were pulmonary.

18 Q Okay. I guess is that --

19 A Is that the question?

20 Q It's my understanding that you were board
21 certified in internal medicine?

22 A That's correct. But my practice since really
23 1975 has been more in pulmonary than in internal
24 medicine. Initially in a faculty status and then
25 subsequently private practice.

1 Q And those times that you testified in court
2 they were mostly concerning pulmonary?

3 A I think -- I don't remember anywhere, I think
4 they were all pulmonary problems, yes.

5 MR. WILLIAMS: We have no objection to him
6 being cited as an expert in that regard.

7 THE COURT: So admitted. You may proceed.

8 MR. STUMBO: Thank you, Your Honor.

9 Q (By Mr. Stumbo) Dr. Love, do you recall being
10 involved with the care of a Ms. Rugsy Stone?

11 A I do.

12 Q And have you been able to review all of your
13 records and your reports and summaries in relation to
14 Ms. Stone's care?

15 A Well, I haven't reviewed all of the records.
16 This was from last year when she was at Intermedical
17 Hospital where I am the medical director and we care
18 for people with prolonged respiratory failure.

19 ~~So preparing for today I did not review all of~~
20 ~~the records. Predominately the summaries of records~~
21 ~~from Richland where she was initially hospitalized~~
22 ~~and then our records at the Intermedical.~~

23 Q Do you have a recollection though of
24 physically treating Ms. Stone during the time she was
25 there at Intermedical?

1 A I do in general terms. I mean details I would
2 have to refer to the records. It has been over a
3 year ago.

4 Q Yes, sir. Who referred Ms. Stone to you?

5 A She was -- well Intermedical -- maybe I should
6 tell you very briefly. Intermedical is a hospital.
7 It's on the campus of Baptist, but it's a separate
8 hospital for people with serious and prolonged health
9 problems; either respiratory failure where you have
10 to be on a ventilator or artificial ventilator;
11 complex wound care; or prolonged intravenous
12 antibiotics where most of the hospitals won't give
13 six weeks of antibiotics. That's sort of the gamut
14 of what we provide.

15 And the referral in the case of Ms. Stone was
16 from the trauma service at Richland Memorial.

17 Q Which doctor referred her or transferred her
18 to you?

19 A I can't say specifically. She was on Dr.
20 Bynoe's service, but I'm not certain who made the
21 referral.

22 Q He is the one that drafted the transfer
23 summary that transferred her? You can feel free --

24 A I would have to --

25 MR. WILLIAMS: Your Honor, I object to the

1 leading.

2 THE COURT: I'm going to give him some
3 latitude.

4 A It was. It was Dr. Bynoe's service, yes. He
5 was the attending at the time of the transfer.

6 Q (By Mr. Stumbo) Can you tell us what date
7 that was that she came over to Intermedical?

8 A ~~August 14, 2007.~~

9 Q Okay. And when she came over on August
10 15th --

11 A 14th.

12 Q Or 14th, excuse me -- to Intermedical, feel
13 free at any time to refresh your memory with your
14 records, but what were her primary physical problems
15 at that time?

16 A ~~The main indication for transferring to our~~
17 ~~facility was the fact that she was still requiring~~
18 ~~ventilatory support.~~ Her initial injuries and need
19 for artificial ventilator had been approximately two
20 weeks. I think the motor vehicle crash was July
21 29th.

22 And so the decision was made in the days
23 leading up to August the 14th that she was not going
24 to be able to liberate or that is get off of the
25 artificial ventilator in the next week or so, and if

1 that was the case, if it appeared from the
2 multifaceted illness that she had as a result of the
3 injuries then she needed to be in a facility that
4 could attend to the artificial breathing until she
5 was strong enough to get off, along with management
6 of other issues.

7 So she was referred from the trauma service
8 with the expectation that she would need a ventilator
9 for longer than a week.

10 Q And so she was still on a ventilator when she
11 was transferred to Intermedical?

12 A That's correct. They had her on and off a
13 ventilator, but she had been too sick and too weak to
14 really be able to sustain herself off over that. I
15 think she had been extubated, meaning the tube
16 removed and off ventilator at least once and wasn't
17 strong enough to do it.

18 And then around August the 8th I think it was
19 a tracheostomy was placed because they knew that she
20 wasn't going to get off any time soon.

21 Q What is a tracheostomy?

22 A Well, it's a hole in the windpipe. The
23 trachea is our name for the windpipe, and the hole is
24 placed about where the knot of my tie is. And the
25 reason for that it's to permit a tube to be placed

1 either to bypass injuries that don't permit you to
2 breathe or to have a, if you will, a secure means of
3 having a tube for breathing for longer than just two
4 or three weeks.

5 If you leave a tube in the upper passages too
6 long then there are complications that can come from
7 that.

8 Q In other words, needs to be changed to come
9 from the tube and connect to the ventilator?

10 A Well, as an example if you had an episode of
11 pneumonia that makes you really sick and you had to
12 be on an artificial ventilator, but you got better
13 within three or four days, you wouldn't need a
14 tracheostomy under ordinary circumstances because you
15 would expect the machine to be removed and the tube
16 removed within four or five days.

17 But it's when it appears that it's going to be
18 more than two to three weeks that you need the
19 tracheostomy for the stability and to avoid the
20 complications of having it in the mouth and the nose.

21 Q So Ms. Stone's intubation was through a
22 tracheostomy not through the mouth or nose?

23 A No, no, her initial intubation was, I think
24 was oral and it was on the day of the crash was my
25 recollection from reading the records.

1 The tracheostomy was placed on August the 8th
2 or thereabouts because it was evident she was too
3 sick to be expected to breathe independently anytime
4 soon.

5 Q So when she came to you on the 14th --

6 A When she came to us she had had the
7 tracheostomy in for about six days.

8 Q Other than the respiratory failure and
9 injuries to the lungs, what other injuries,
10 significant injuries did you note upon her arrival at
11 Intermedical, long-term significant injuries?

12 A Well, I really need to go back to the original
13 crash, motor vehicle crash, if that's the terminology
14 you all are using, in which she had fractured ribs,
15 she had injury to the chest, she had major injuries
16 to the spine.

17 And the reason that's important is not because
18 of entirely the way she presented when she was
19 transferred to us two weeks into the illness, it's
20 the fact that these major injuries on day one, on the
21 day that she was in -- sent to the emergency room she
22 never bled to death. She had -- there are arteries
23 that go into the ribs that my fingers spread out look
24 like ribs to you, and the arteries under the ribs,
25 one of those from the trauma, from the severity of

1 the impact was lacerated. We don't see that very
2 often except with pretty serious injuries. So she
3 nearly bled to death from that.

4 So one of the reasons that they actually had
5 to put the breathing tube in urgently, emergently in
6 the emergency room was the fact that she was losing
7 blood rapidly. The good news is that they determined
8 fairly quickly that she was -- looked like she could
9 have been building blood up in the chest and
10 intubated her, put the tube into her airway,
11 ventilated her, and my understanding got her to
12 surgery fairly quickly.

13 Q Even after that fluid was drained out of the
14 chest cavity, can there be long-term effects from
15 that?

16 A Not from the fluid. If there's -- if you have
17 fluid around the lung and the chest cavity and you
18 drain that out, that -- that actually -- that part of
19 the problem is relatively minor. The major issue for
20 this lady was that it was blood, she was losing blood
21 and was in danger of bleeding to death from day one.

22 The part that was important for her, that was
23 a serious problem, was that the same impacts -- and I
24 can't tell you where they all emanated from -- but
25 the same impacts from the crash that lacerated the

1 artery; that hit the rib so hard that it tore the
2 artery; also broke ribs; bruised her lungs, bruised
3 lungs don't take up air as well as nice, fresh, soft
4 lungs; and broke a number of portions of her spine
5 which ultimately had a lot to do with the sad outcome
6 here.

7 Q And where were those fractures in her
8 vertebra, Dr. Love, if you can tell us which ones?

9 A Well, I have to refer to the records from
10 Richland where they did all the radiographic studies
11 that find this. What they found were that the 8th
12 thoracic vertebra, which would be about halfway down
13 the back, the body of that was fractured.

14 She had transverse processes. If -- if the
15 vertebra looks like my fist, it has wings on it, a
16 wing going this way and a wing that way, which are
17 there to hold muscles for muscles to latch onto. And
18 the transverse processes on several were broken at,
19 what did I say, L1 and 2.

20 She also had -- turns out she had a fractured
21 T9 as well. So there were multiple fractures, not
22 just in an isolated part of the spine but thoracic
23 spine and lumbar spine, sort of up and down the
24 spine.

25 Q When she came to Intermedical, were those

1 fractures still present? Had they healed or were
2 they in the process of healing?

3 A Well, two weeks into the illness you wouldn't
4 necessarily expect them to heal. So they actually,
5 neurosurgery had been consulted while she was at
6 Richland, and had recommended that she be braced.
7 That is, the back immobilized so it wouldn't move,
8 that would permit healing to begin.

9 So at the time we received her she had a brace
10 that with movement she needed to be in the brace.
11 The good news at that time, this is two weeks after
12 the injury, the good news is that she still had
13 movement. It wasn't normal, but at the time she was
14 so -- had been so sick and depleted, meaning had had
15 infections, diabetes had been out of control so
16 nutritionally she was suffering tremendously.

17 So some of the weakness that we saw when she
18 arrived could have just been -- didn't have to be
19 neurological, that is didn't have to be spinal cord
20 if you will, but could have been just because she was
21 so sick and profoundly muscularly weak.

22 Q Primarily talking about the respiratory
23 failure, talking about the broken spine, and you had
24 complications from those things that would cause
25 additional weakness to the body that could allow

1 other things to happen -- essentially, let me
2 rephrase the question, Dr. Love.

3 For example, would the body be more
4 susceptible to infections or other sicknesses if you
5 were weakened through respiratory failure and a
6 broken back?

7 A Potentially. I mean in this lady's case it
8 was the combination of the injuries and having to be
9 on a machine and resulted in diabetes which there is
10 no information to say wasn't adequately controlled
11 before the crash. Her diabetes was just up and down,
12 meaning poorly controlled. Well, you can't fight off
13 infections in that case.

14 When you've had injuries like this and have to
15 have surgery, have to have intravenous catheters to
16 provide blood and nutrition and fluid, feeding tubes
17 to try to provide nutrition then you're set up for a
18 number of infections.

19 Catheters to the bladder, if you leave them in
20 more than two or three days it's very likely to get
21 infected and this lady experienced all those
22 complications of the treatment that she had to have.

23 Q So she did develop some infection as a result?

24 A She did. She did. At Richland before she
25 arrived she came with a staph infection in the lung,

1 she had a urinary tract infection. She -- she had an
2 unusual bacterial infection after she came to us, but
3 it was -- that was a consequence of her immune status
4 being and nutritional status being so impaired from
5 the illness.

6 And to follow up on your question which I
7 didn't really answer about the healing, the back
8 injuries actually never healed. We had a
9 neurosurgeon come back to see her at Richland -- from
10 Richland, I'm sorry, neurosurgeons come from Richland
11 to the Intermedical facility to see her toward the
12 end of September.

13 She was transferred -- she had her crash July
14 29, was transferred to us on the 14th of August, and
15 we are still struggling, working through and actually
16 got her off the artificial ventilator but her
17 weakness worsened to the point that we were concerned
18 there had been a change in the back, and the change
19 was no healing.

20 Almost two months after the original injury
21 she wasn't able to have a healing response.

22 Q The fact that there is a lack of healing there
23 to the spine, would that weakness in her body make
24 her more susceptible to her diabetes, complications
25 from her diabetes?

1 A It's works both ways. The uncontrolled
2 diabetes contributed to her failure to heal, and
3 uncontrolled diabetes contributed to the
4 susceptibility to more infections and all of that.

5 The infections and the poor nutrition, or
6 inability to process food stuff I guess is the way to
7 put it, contributed to the poor healing.
8 Unfortunately all of it works in concert to create a
9 bad situation in this case.

10 Q In terms of the problems she had eating, did
11 you all take any affirmative steps to try to improve
12 that?

13 A Yeah, we were -- we were -- we were
14 supplementing her nutrition constantly. The issue
15 was that through much of the course with us her
16 intestinal tract wouldn't accept feedings in full
17 measure.

18 If any one of us here in the room had to have
19 these supplemental feedings, either through a tube or
20 if we were to drink Ensure as an example, we wouldn't
21 like it but we would put up with it and we would in
22 our current state would be able to maintain our
23 nutrition, probably even gain weight on it if we took
24 enough of the stuff.

25 But she couldn't process it for two reasons.

1 One she -- her intestinal tract wouldn't accept it.
2 She would constantly have distension, that is the
3 muscular motion in the intestinal tract would be
4 impaired and she would get distended. And the other
5 part was that her liver had -- it had some damage
6 from the initial crash that impacted on her ability
7 to manufacture proteins and to utilize the food
8 stuff.

9 Q ~~In your opinion to a reasonable degree of~~
10 ~~medical certainty, the complications that occurred~~
11 ~~through the course of her treatment, could they be~~
12 ~~tied directly back to the injury sustained in this~~
13 ~~accident?~~

14 A ~~Absolutely. This lady wouldn't have had any~~
15 ~~of the issues we've been talking about and the ones~~
16 ~~we haven't dealt with had it not been for the motor~~
17 ~~vehicle crash.~~

18 Q Let's talk a little bit more about the spinal
19 injuries. Did she have -- you said she had movement
20 when she first came, in her extremities, when she
21 first came to Intermedical, correct?

22 A That's correct. It wasn't normal but I think
23 the point I was making is that when we got her two
24 weeks into the -- into the illness where she had been
25 too weak to breathe independently, had to stay on the

1 artificial machine where she had been so sick -- and
2 by sick I mean her nutrition was impaired and she was
3 constantly getting infections, she had two or three
4 infections over there.

5 When we got her, the weakness, we couldn't be
6 certain whether that weakness was just from being so
7 sick and deconditioned, malnourished versus so called
8 anatomic, neurological problem. In other words,
9 pressure on the spinal cord.

10 Subsequently toward the end of September the
11 pressure on the spinal cord, for lack of a bony
12 healing, became a really, really big issue that she
13 couldn't overcome.

14 Q Was there a paralysis there as time went on?

15 A There was. Again, early on when we first
16 got her she was weak. Toward the end of September
17 she had a worsening. Initially we saw signs that
18 there was improvement in her strength with physical
19 therapy. But toward the end of September she was
20 worsening to the point that she became paralyzed, her
21 legs were paralyzed, that's when we had neurosurgeon
22 come from Richland to make sure she hadn't developed
23 an infection or bleeding or something that could
24 potentially be reversed or improved.

25 Q And ultimately is it your opinion that that

1 paralysis was caused by the spinal injuries?

2 A Correct.

3 Q Is it unusual at all for there to be movement
4 in the limbs initially and then for that to worsen as
5 time goes on?

6 A That's really not unusual at all.
7 Particularly if you don't have healing or if you have
8 infection or bleeding. If you think about a building
9 that has been jarred by an earthquake, they don't all
10 fall immediately.

11 And in this case, if that analogy makes sense
12 to you, it took a matter of weeks of not being able
13 to repair the building before it collapsed and
14 crushed the spinal cord so that she had total
15 paralysis of the legs.

16 Q To a reasonable degree of medical certainty,
17 Dr. Love, do you have an opinion as to Ms. Stone's
18 cause of death? If there are multiple causes you can
19 give them one at a time.

20 A Well, the immediate cause of death was
21 progressive respiratory failure, meaning that she
22 couldn't -- after we had -- let me refer to the
23 record just for a moment.

24 Q Take your time, Doctor.

25 A We actually pulled the tracheostomy tube out

1 September 25th, so the third week in September she
2 had improved to the point we had gotten her off the
3 artificial machine and actually pulled the tubes, the
4 tracheostomy tube out. And she was breathing
5 independently and adequately at that point.

6 If there were no dangers from artificial
7 machines and from tracheostomies you might leave them
8 in for months and month but there is so you try to
9 work towards somebody breathing independently and get
10 them out. At that point breathing independently, she
11 was still weak but we thought in some ways improving.

12 So subsequent to that, particularly when the
13 paralysis of the legs worsened, her breathing
14 worsened, not necessarily because of that alone, and
15 at that point she progressed to respiratory failure
16 that was not reversed with a mask kind of breathing
17 support, and she made the decision, as sick as she
18 had been, with problems that were not reversible,
19 that is were not going to get better, she made the
20 decision not to go back on the machine again for
21 prolongation.

22 Q Was that decision made by Ms. Stone and her
23 family?

24 A That is my recollection, yes, with our input
25 as to what we thought was achievable. Meaning, the

1 problems that she had struggled and tried to -- had
2 fought with, fought against for over two months,
3 almost two and a half months, and with her paralysis
4 becoming profound, and with her breathing not
5 supportable with a mask support, it was evident that
6 she was not going to be able to survive and she chose
7 not to go back through the machine, not back on the
8 machine again.

9 Q Is it your opinion that putting her back on
10 the ventilator would have prolonged --

11 A ~~It would have prolonged her misery. She would~~
12 ~~have suffered other complications of having been so~~
13 ~~sick. And actually the now being totally paralyzed~~
14 ~~in the legs, it would have -- she would have suffered~~
15 ~~for an uncertain period of time but would not have~~
16 ~~survived.~~

17 Q You testified those were things that could not
18 be reversed at that point?

19 A Well, the paralysis, the neurosurgeon who had
20 seen her did not think there was anything he could
21 do --

22 MR. WILLIAMS: Your Honor, I would object.

23 THE COURT: Basis?

24 MR. WILLIAMS: He is not qualified to give
25 that testimony.

1 THE COURT: No speaking objections. Please
2 approach.

3 A But, I guess I can report what our consultant
4 told us.

5 THE COURT: Sir, give us one moment. There is
6 an objection pending.

7 (Whereupon, there was a discussion held at the
8 bench off the record.)

9 THE COURT: Overruled. Sir, you may answer
10 the question.

11 THE WITNESS: Restate it for me if you would.

12 Q (By Mr. Stumbo) Yes, sir. I believe you were
13 going into the fact that the paralysis was not
14 reversible, and that was part of when you were
15 consulting with the family and Ms. Stone, was that --
16 what was the basis of that?

17 A Well, I mean the paralysis had become
18 complete. We had neurosurgery see her. We had
19 imaging studies and neurosurgery see her, and there
20 wasn't something reversible. There wasn't bleeding
21 that they could fix in the operating room or
22 infection or stabilization.

23 That coupled with the just overwhelming
24 nutritional issues, the intestinal tract not working,
25 diabetes difficult to control, repeated infections,

1 too weakened and as a consequence too weak to
2 maintain her breathing independently, they made the
3 decision in concert with us, she made the decision
4 not to go back on the machine.

5 Q Ultimately, to get back to a reasonable degree
6 of medical certainty, is it your opinion that the
7 spinal injury or the respiratory failure or both were
8 the primary causes of death here?

9 A Well, the respiratory failure was the
10 immediate cause of the death. But the respiratory
11 failure was a consequence of the original injuries
12 and all of the immune and nutritional and infectious
13 complications that followed.

14 Q So is it your opinion that all of those
15 complications resulted from the injuries from the
16 wreck?

17 A Well, they resulted -- if she hadn't been in
18 the crash she wouldn't have had any of the problems
19 that we are talking about. If she had not been in
20 the wreck and required intravenous lines and
21 ventilators and blood, and her liver hadn't been part
22 of -- its manufacturing capacity hadn't been
23 impaired, and her intestinal tract hadn't been
24 damaged to the point that it couldn't accept food
25 stubs, and on and on and on, she would be alive

1 today.

2 Everything that happened to this lady was a
3 direct or an indirect consequence of the crash.

4 Q The trauma she sustained in the crash, is it
5 your opinion that could have killed her at any time
6 between July 29th and the day she passed away?

7 A Well --

8 Q Or maybe I can rephrase the question. In your
9 opinion how substantial were those injuries?

10 A Well, I wasn't there on the day of the crash,
11 I wasn't at Richland, but I've reviewed those
12 records. And for this preceding I reviewed them
13 again today.

14 And she was fortunate to have survived the
15 initial day. I think I said that early on. She
16 could have bled to death, she was trying to bleed to
17 death right there in the emergency room. And she
18 could have either sustained enough blood loss to have
19 gone into shock that wasn't reversible, or if she'd
20 had silent coronary disease she could have had a
21 heart attack.

22 So it would not have taken much for her to
23 have succumbed within the first 24 or 48 hours from
24 the initial injuries. Then we have 10 weeks, 9, 10
25 weeks of all the ongoing illness that we have been

1 talking about that ultimately was more than she could
2 survive.

3 Q And to a reasonable degree of medical
4 certainty is it your opinion that she would be here
5 today but for these injuries?

6 A That's correct. As I think I said that, yeah.

7 Q And did you memorialize your opinions as to
8 the cause of Ms. Stone's death in any reports?

9 A Like a death certificate?

10 Q Any kind, death summary did you fill out?

11 A That's right. It was actually written and
12 dictated by one of my nurse practitioners. But yes,
13 we did. And then I signed the death certificate. I
14 don't have a copy of that with me.

15 Q You did sign the death certificate for Ms.
16 Stone?

17 A That's correct.

18 Q What was that date? You can look at your
19 notes and refresh your memory. What was the date of
20 Ms. Stone's passing away?

21 A October 12th, 2007 at 6:35 a.m. She was an
22 inpatient at Intermedical Hospital at that time.

23 Q October 12th, 2007?

24 MR. WILLIAMS: Objection, Your Honor, leading.

25 THE COURT: Basis?

1 MR. WILLIAMS: Leading.

2 THE COURT: I'm sorry. It is hard for me to
3 hear.

4 MR. WILLIAMS: Leading the witness.

5 THE COURT: Sustained. Rephrase.

6 THE WITNESS: October 12th, 2007, 6:35 a.m.

7 MR. STUMBO: Okay, no further questions at
8 this time, Your Honor.

9 THE COURT: Any questions of the witness?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION

13 BY MR. WILLIAMS:

14 Q Doctor, were you aware that the family was
15 entertaining a medical malpractice lawsuit against
16 the hospital?

17 A Which hospital?

18 Q Both your hospital and Richland Memorial?

19 A This is the first I know about that.

20 MR. STUMBO: I'm going to object to the
21 relevance of that, Your Honor.

22 THE COURT: Overruled. I'm going to give him
23 some latitude. There is proximate cause.

24 Q (By Mr. Williams) Were you aware there was
25 some allegations about overdosing of this patient?

1 A Not specifically. Tell me what you are --

2 Q Are you aware of any specifics in regards to
3 overdosing of this patient?

4 A Not that I recall.

5 Q The -- your hospital, as I understand it, is
6 kind of like a holding area, if you will?

7 A That's not true.

8 Q Well, let me finish with my question here,
9 correct me then if I'm wrong. You have like an
10 emergency area which does the initial treatment of
11 the person, correct, like Richland Memorial Hospital?

12 A Incorrect.

13 Q Well you describe what your hospital is like?

14 A Are you asking me about Richland or about
15 Intermedical?

16 Q I'm talking about Intermedical.

17 A Yeah. No, Intermedical is -- Intermedical is
18 a long-term acute care hospital. It's for people who
19 have major health issues that in the acute care
20 hospital like Richland, Baptist, Providence or
21 Lexington, it's evident that they're going to require
22 longer care than ordinarily is provided. So we don't
23 actually -- when someone has an emergency once
24 they're admitted to our facility then we deal with
25 the emergencies 24/7. But we don't have an emergency

1 room as such, or an emergency treatment area as
2 Richland or Baptist would.

3 Q So would it be akin, if you will, to someone
4 maybe who had knee surgery goes to some sort of
5 rehabilitation hospital where they can have physical
6 therapy done every day?

7 A The difference between rehab hospitals and our
8 facility is that we get sicker people. If the needs
9 are just for a rehab, even though we have all the
10 people we see need occupational physical therapy, and
11 we have had a great interest in providing the
12 strengthening, particularly on ventilators, they are
13 not going to get off the ventilators if you cannot
14 strengthen them.

15 But the difference is our people are sicker.
16 If you've had a knee surgery and it becomes infected,
17 then a rehab facility won't accept you to have six
18 weeks of antibiotics, we do.

19 Q When you reviewed your medical records dealing
20 with the patient from Richland Memorial Hospital, do
21 you distinctly recall there being some sort of liver
22 damage in your medical records?

23 A She had an elevated bilirubin at one point in
24 the -- I don't have in front of me, don't have all
25 the laboratory from that two-week hospitalization.

1 Q Well, an elevated bilirubin is not necessarily
2 injury to the liver, is it, aren't there certain
3 diseases certain syndromes that have elevated
4 bilirubin?

5 A There are. You mean that are not associated
6 with disease?

7 Q Yes.

8 A That's correct.

9 Q So the fact that a person has an elevated --
10 and that's what you're basing your statement on, that
11 she had something wrong with her liver is the fact
12 that she had an elevated bilirubin; is that correct?

13 A No, no, not at all.

14 Q Okay.

15 A The basis for her having something wrong with
16 her liver was a combination of, one, the initial
17 injuries, which included the right side of the chest,
18 the liver being under the ribs there. So it's very
19 likely the liver sustained damage. And secondly and
20 more importantly her inability to actually raise her
21 pro -- signs of adequately increasing her protein,
22 so-called paralbumin was an indication that the
23 liver, the factory from making protein, was
24 embarrassed or impaired or damaged or injured.

25 Q Was there any type of surgery in your medical

1 records to indicate that there was any surgery done
2 to the liver, or any scans done to the liver, which
3 would indicate that damage was actually done to the
4 liver?

5 A I'd have to look back.

6 Q Okay. Do you have that with you?

7 A I don't have that. I mean I don't have the --
8 and those are the Richland records that we are
9 talking about.

10 Q Okay. All right, now --

11 A But if you are asking me did she have a
12 laceration to the liver?

13 Q That's what I'm asking.

14 A You are?

15 Q I am asking.

16 A To my recollection there was nothing in the
17 records that we received nor in the studies of a
18 laceration. But you can bruise the dickens out of
19 your liver and have the kind of functional
20 embarrassment that we saw when she arrived with us so
21 without being lacerated.

22 Q Can you tell me, doctor, the name of the
23 syndrome where someone simply has elevated bilirubin?

24 A Gibert's disease. It's called Gibert's
25 disease.

1 Q And there is really no treatment for that, is
2 there?

3 A There is no treatment for that. That's not
4 what we are talking about here.

5 Q Okay. Now aside from -- she was in, what,
6 Richland Memorial Hospital for how long?

7 A I think it was either 16 or 17 days.

8 Q So she had several surgeries when she was in
9 Richland Memorial Hospital, correct?

10 A Right. Some minor, some major.

11 Q And when she presented to your hospital she
12 already had a urinary tract infection?

13 A Correct.

14 Q Mercer?

15 A ~~No. That's a --~~ she actually had a -- MRSA, is
16 a methicillin resistant staph aureus, you've probably
17 seen the so-called resistant staph. It actually was
18 a sensitive staph. That's not necessarily good, but
19 it was not the -- that wasn't what they were treating
20 her for, they were treating her with methicillin for
21 sensitive staph.

22 Q Did she develop MRSA when she was in your
23 hospital?

24 A I'd have to look.

25 Q Let me hand you some notes that may help you.

1 A Okay.

2 Q This is from your hospital. I believe the
3 highlighted portions there.

4 A You want me to quote the part that you're
5 interested in?

6 Q Yes.

7 A ~~She was also noted for methicillin resistant~~
8 ~~staph bacterium, it was a sensitive.~~ That's a
9 miscommunication, she had sensitive staph.

10 Q But these are your hospital records, correct?

11 A Correct.

12 Q From your hospital?

13 A Mis-dictation.

14 Q And in your hospital records you indicate that
15 she had MRSA is what you are saying. That's what
16 that stands for, doesn't it, that methicillin
17 resistant staph aureus bacterium, isn't that what
18 MRSA is?

19 A Methicillin resistant staph aureus.

20 Q Are there any other areas in her records that
21 you are aware of which are just wrong in your
22 hospital records, that you are aware of?

23 A Standing here without reviewing them I can't
24 say.

25 Q Let me ask you then about her diabetes. Now

1 as I understand it you did not have a history of what
2 her diabetic condition was?

3 A Well, you mean of how controlled or
4 uncontrolled it was?

5 Q Right.

6 A That's right. That was limited.

7 Q ~~So when you say that she had ups and downs,~~
8 ~~with her sugar, her diabetes problems,~~ then you were
9 assuming that the trauma she had, because normally it
10 would, would aggravate the diabetic problems that she
11 had?

12 A That's correct. It doesn't necessarily mean
13 that she was controlled prior to the crash, but she
14 could have been in good control. As a matter of fact
15 she could have developed the diabetes or the
16 worsening of it from the trauma to her pancreas
17 lining from the crash.

18 Q But having looked at the initial reports to
19 the emergency room at the Richland Memorial Hospital,
20 you were aware that she had already had a diabetic
21 condition before she went to the hospital?

22 A That was the history that was recorded in
23 those notes, yes.

24 Q You were aware the medicine she was on for
25 that?

1 A I cannot tell you that specifically without
2 going back to the record.

3 Q You were aware that she had heart problems at
4 the time that she was seen at the emergency room?

5 A She reported -- now you are talking about a
6 history of hypertension?

7 A Hypertension.

8 Q Is that what you're talking about?

9 A Maybe tachycardia?

10 A I would have to look at the record, I don't
11 recall that. And again you're talking about prior to
12 the crash?

13 Q Yes.

14 A Because subsequent to the crash she had lots
15 of tachycardia.

16 Q Talking about the before crack.

17 A I'd have to look at the record.

18 Q Do you not recall what her initial situation
19 was having reviewed the medical records prior to the
20 wreck? I mean you didn't look at her history or
21 anything like that?

22 A Well the history that was -- you are talking
23 about reviewing for the proceedings today?

24 Q Yes.

25 A The history available to me, because it was an

1 acute situation, did not have a lot of detail about
2 her past history.

3 Q You indicated that her -- she developed a
4 paralysis while she was in your hospital. But she
5 had movement to the legs prior to being in your
6 hospital; is that correct?

7 A She had movement to her legs when she arrived
8 at our hospital. It wasn't normal but she had
9 movement, that correct.

10 Q And you referenced a neurologist, who was the
11 neurologist that you brought in for consult?

12 A I cannot tell you that without looking at the
13 records. It was one of the neurosurgeons from
14 Richland, but I cannot recall who it was.

15 Q Well, she was in a full body cast; is that
16 what she was in?

17 A She had a restraining cast. It wasn't a full
18 body cast that she stayed in, it was one that can be
19 removed. It was to immobilize her, she was being
20 moved or being given physical therapy.

21 Q So at the time that she was actually brought
22 into the Richland Memorial Hospital the doctors there
23 realized that she had fractures at least on two
24 levels, correct?

25 A Once they had done the studies there in the

1 emergency room, yes.

2 Q Right.

3 A I don't think they knew that when she came in,
4 but within the immediate emergent care.

5 Q And instead of performing surgery at that
6 point in time because of her physical condition they
7 put her in some sort of cast, right?

8 A Restraining device or removable cast.

9 Q And other than the infection that she kept
10 getting, such as the urinary tract infection, the
11 MRSA which you say is bacteria resistant versus --

12 A MRSA means the staph germ is a staph germ that
13 is resistant to the ordinary antibiotics that used to
14 work. But it turns out that that information was
15 transmitted incorrectly. Because the treatment they
16 had her on and then the culture report indicate it
17 was a sensitive staph.

18 Q Well other than that --

19 A And sensitive just means it's sensitive to the
20 ordinary high-powered antibiotics. It turns out she
21 had to be on intravenous antibiotic called naphcillin
22 because of this.

23 Q Well when she passed she still had the
24 infection, didn't she?

25 A Which infection?

1 Q This staph-resistant infection, or resistant
2 infection that she had?

3 A I can't answer that specifically without
4 looking at the records.

5 Q well, when you prepared your testimony today
6 about saying if this wreck was the cause of her
7 death, if you will, then you reviewed that
8 information, didn't you, to say all these other
9 things that were wrong with her that might have
10 contributed to her death, didn't you?

11 A Yes, but there are specifics, I have to have
12 the record in front of me to be able to give you.

13 Q But you knew enough to say that obviously it
14 was the automobile accident that caused her to die or
15 created the problems?

16 A None of these problems that came up would have
17 occurred without that crash.

18 Q well, what if -- is this like the story of the
19 one of a nail? Is it like that?

20 A I don't think so. For want of an automobile
21 crash in which she sustained multiple documented
22 serious injury, then a 10-week course.

23 Q If she had received proper treatments for the
24 infections that she had then would she have healed?

25 A No. She did receive proper treatment. She

1 received treatment for all of those. The issue that
2 you don't just need the antibiotics, you need to have
3 your immune responsiveness needs to be intact.

4 Q If she had received correct insulin treatment
5 for her diabetic condition, would she have healed?

6 A If she had had readily controllable diabetes
7 that was not labile it would have -- in other words,
8 if you can keep the blood sugar in good control, the
9 healing would be enhanced.

10 Q And as I understand the tenor of your
11 testimony, that the problem lies with the wreck
12 versus the prescription of the medicines that were
13 given to treat the diabetic condition?

14 A Well you can always with 20/20 hindsight, in
15 hindsight you can always say, well, we could have
16 corrected the sugar a little better, or we could have
17 changed the antibiotic a day early in 20/20
18 hindsight.

19 But you're not making those decisions in
20 hindsight, you're making them on the ground. And on
21 the ground the blood sugar was being monitored and
22 the insulin adjusted if that's what you're asking.

23 Q I am asking that.

24 A Yeah. But if your expectation is that the
25 sugar always responds exactly the way you want it,

1 and you get total control every time, that isn't what
2 happens. You can ask a diabetic, they will be able
3 to tell you that.

4 Q There are a lot of things which you are
5 uncertain about in life, aren't there, doctor?

6 A Correct.

7 Q And physicians are not guaranty to good
8 health, are they?

9 A Absolutely not.

10 Q They are artisans, I want to use the word
11 mechanics, but they are persons who have learned
12 knowledge in the areas dealing with medicine. But
13 they're not Gods or anything?

14 A Absolutely not.

15 Q And they do the best they can?

16 A Right.

17 Q Sometimes when they even do the best they can
18 they don't get the same results that they think
19 they're going to get, do they?

20 A That happens all the time.

21 Q And sometimes things happen to individuals
22 that you don't expect?

23 A Correct.

24 Q You didn't expect this lady to have an
25 infection, a urinary tract infection which would add

1 to her problems, did you?

2 A I would have expected that. Anybody that has
3 to have a catheter in their bladder for an extended
4 period of time, they're going to get infected.

5 Q You certainly didn't expect this MRSA or
6 whatever, this staph resistant or whatever?

7 A ~~That wasn't in her bladder. She had I think~~
8 ~~it was E. Coli in the bladder.~~

9 Q Where was that other infection?

10 A It was in the bloodstream. And probably as a
11 consequence of having to have an intravenous line in
12 place. ~~You are talking about the infection from~~
13 ~~Richland?~~

14 A Yes.

15 Q Because we subsequently had other infections
16 at Intermedical as well. The bacteria that I didn't
17 name before, Assanita (phonetic) factor was one of
18 the things we grew out and it's unusual. You have to
19 be imune compromised for that to --

20 Q Did you all cause that?

21 A We didn't cause that.

22 Q What caused that?

23 A Having to be -- being sick, having impaired
24 imune status. As an example, if you are interested,
25 my mother who had altered imune status, who had

1 hypogammaglobinemia, meaning she did not make
2 gammaglobuline, was subject to a number of
3 infections, But as a consequence of a specific
4 impairment of her immunity.. That occurs in less
5 specific ways in people that are this sick.

6 Q I think you made my point. A lot of times
7 people just have illnesses, you try to treat them as
8 best you can, sometimes they get infections anyway?

9 A Absolutely, yeah. That's correct.

10 MR. WILLIAMS: That's all I have, Your Honor.

11 THE COURT: Any redirect of the witness?

12 MR. STUMBO: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. STUMBO:

15 Q Dr. Love, Mr. Williams asked you about a
16 number of infections, you actually volunteered some
17 other ones that we hadn't talked about yet. What's
18 the relevance of the impaired immune system to the
19 developing of those infections?

20 A Antibiotics alone don't cure bacterial
21 infection. You have to have a good nutrition, a good
22 immune status to clear them. And if you -- in the
23 case of what I see a lot, if you have damaged lungs,
24 either scarring from having cystic fibrosis if you're
25 a young person or bad COPD, emphysema, then

1 structural, in other words the structure of the
2 lungs, if it's impaired, even with an intact immune
3 status you can't recover.

4 so there is sort of an intricate interplay of
5 your immune system, your nutrition and of the
6 structure. Malnourished kids around the world die of
7 infections because of the malnutrition.

8 Q And what was the cause of Ms. Stone's
9 malnutrition and compromised immune status?

10 A Well, being injured and with the -- see if I
11 can make this simple. When you've either sustained
12 major injuries or had major surgery or had some major
13 infection, it makes it -- it puts a tremendous strain
14 on a number of body systems. And in some instances
15 it strains the ability of the liver to make enough
16 protein, of the intestinal tract to actually accept
17 food stuffs, you can pour feedings in and they won't
18 necessarily be utilized.

19 But it's this interplay of all these factors
20 that may set you up for infections. As the counselor
21 suggested, some of these infections occur with --
22 despite what you try to do to prevent them. And some
23 of them don't respond to treatment despite the
24 treatment you hope will make them better. And
25 sometimes you cannot explain why they don't respond.

1 And in this case, with the paralbumin being so
2 low, with the struggles to get her body to accept
3 nutrition, it's not really a surprise that she had
4 multiple infections.

5 Q Were these infections the primary cause of her
6 death?

7 A No. No, they were just a reflection of the
8 impairment that part and parcel of being so weak that
9 she couldn't heal the back and the building collapsed
10 and pressed on her spine and couldn't maintain enough
11 strength to breathe independently in the end.

12 Q Would she have had the catheter that caused
13 the urinary tract infection had she not been in the
14 hospital to start with?

15 A I don't think so.

16 Q Would she have had a tube going into her lungs
17 to help her breathe had she not been in the hospital?

18 A Oh no.

19 Q Would she have had the feeding tube in her
20 system had she not been in the hospital from these
21 injuries?

22 A No, sir.

23 Q So in your opinion to a reasonable degree of
24 medical certainty was it the injuries that caused her
25 death or the infections, or a combination of both?

1 A No, it was the injuries. Without the initial
2 injuries she wouldn't have had any of the subsequent
3 10 weeks of problems.

4 MR. STUMBO: No further questions, Your Honor.

5 MR. WILLIAMS: No questions, Your Honor.

6 THE COURT: Any objection to the witness being
7 excused from the state?

8 MR. STUMBO: None from the state.

9 THE COURT: From the defense?

10 MR. WILLIAMS: None from the defense.

11 THE COURT: Doctor, you are excused. You may
12 call your next witness.

13 Does anyone need a break? Speak now.

14 MR. JOHNSON: State calls Trooper Coffin.

15 MR. MATTHEW COFFIN,

16 after having first been duly sworn to state the
17 truth, the whole truth and nothing but the truth,
18 testified on his oath as follows:

19 DIRECT EXAMINATION

20 BY MR. JOHNSON:

21 Q Corporal Coffin, where do you work?

22 A South Carolina Highway Patrol.

23 Q How long have you worked there?

24 A I started the highway patrol in 1987. I left
25 at the end of 1988 to go work with the Richland

1 County Sheriff's Department which I stayed with for
2 six years. And I came back to the highway patrol in
3 1994 and I have been there since that time.

4 Q All right. And what do you do for the highway
5 patrol?

6 A Primarily we enforce traffic law as they
7 relate to the South Carolina code of laws and
8 investigate traffic collisions.

9 Q How many years have you been investigating
10 collisions or coming upon scenes of collisions to
11 investigate crimes or potential crimes?

12 A From '87 to '88 and '94 until now.

13 Q All right. And are you a member of MAIT team?

14 A That would be correct.

15 Q All right, tell me about that. What is that?

16 A It's a specialized unit within the South
17 Carolina Highway Patrol which investigates complex
18 motor collisions.

19 Q How long have you been on the MAIT team?

20 A Since January of 2006.

21 Q Do you have any specialized training to allow
22 you to be part of that team and do your job there?

23 A Yes, sir.

24 Q Tell me about that.

25 A In July of 1999 I attended the SCHP advanced

1 training, advanced investigation 24-hour course,
2 again in August of 1999, and again late August of
3 1999. Those are all 24-hour courses. End of October
4 1999 I attended another advanced traffic
5 investigation which was a 48-hour course.

6 November of 1999 I attended what the forensic
7 mapping technology which is a 40-hour course. In
8 July of 2006 I attended the University North Florida
9 IBTM institute of police technology management to
10 inspection of commercial vehicle crashes. August of
11 2006 again IBTM University of North Florida,
12 motorcycle crash investigation.

13 April of 2006 I took a course in digital
14 photography at the South Carolina Criminal Justice
15 Academy which was an 8-hour course. August of 2006,
16 digital photography and imaging for law enforcement,
17 Yorks County Forensic Service Unit, that was a
18 32-hour course.

19 October of 2006 fundamentals of crime scene
20 investigation that put on by the criminal justice
21 academy, 16-hour course. December of 2006 detective
22 level one, South Carolina -- again by the South
23 Carolina criminal justice academy which was a 40-hour
24 course. February of 2007, CDR system technician
25 training put on by the South Carolina Highway Patrol

1 which is an 8-hour course.

2 March 2007, advanced traffic collision
3 investigation, a 40-hour course put on by the South
4 Carolina Highway patrol at the South Carolina
5 criminal justice academy. March of 2007 another
6 traffic collision reconstructions put on by the South
7 Carolina Highway Patrol, 40-hour course again taken
8 at the South Carolina criminal justice academy.

9 August of 2008 DNA first responding officer's
10 course provided by the President's DNA initiative,
11 that was an online course, a 1-hour course. Again in
12 August of 2008 another DNA course, investigators and
13 evidence technicians, put on the President's DNA
14 initiative. It was a 1-hour course also.

15 Q All right. And strictly as a member of the
16 MAIT team, how many collisions have you investigated,
17 estimate?

18 A I would estimate in the neighborhood of 250.

19 Q All right.

20 MR. JOHNSON: Your Honor, at this time I would
21 officer this trooper as an expert in the collision
22 reconstruction.

23 THE COURT: Any objections or questions?

24 MR. WILLIAMS: Couple of questions.

25 THE COURT: You may proceed.

1 VOIR DIRE EXAMINATION

2 BY MR. WILLIAMS:

3 Q Lance corporal?

4 A Corporal.

5 Q Corporal?

6 A Yes, sir.

7 Q Corporal, have you ever been qualified as an
8 expert in a court of general sessions in traffic
9 reconstruction?

10 A collision reconstruction, no.

11 Q And you've testified you have had 200 --

12 A Correct.

13 Q Never been --

14 A Not in collision reconstruction, in traffic
15 enforcement and basic collision investigation. But
16 not in advanced reconstruction, no.

17 Q Not in advanced reconstruction?

18 A Yes. In collision reconstruction I have not
19 been qualified as an expert witness.20 Q Can you tell me what the difference is between
21 advanced and just collision?22 A Well advanced would be more as a complex motor
23 vehicle collisions. Whereas a basic fender-bender
24 reconstruction, you know, basic trooper roadwork
25 before I came on the MAIT unit.

1 Q You have been qualified as an expert in that
2 area?

3 A Right.

4 MR. WILLIAMS: Then, Your Honor, we have no
5 objection to his expertise in that area.

6 THE COURT: Is that the area that you are
7 offering the witness?

8 MR. JOHNSON: In what I stated, Your Honor.

9 THE COURT: Repeat it for me, please.

10 MR. JOHNSON: Collision reconstruction, Your
11 Honor.

12 THE COURT: Is that what you are agreeing to?

13 MR. WILLIAMS: As I understand what the
14 officer said, yes.

15 THE COURT: No speaking -- is that what you
16 agree to? Is that what you are consenting to his
17 admission?

18 MR. WILLIAMS: Can I ask one more follow-up
19 question?

20 THE COURT: Sure, go right ahead.

21 Q (By Mr. Williams) Officer, did you say that
22 you have qualified as an expert in that area?

23 A Not in collision reconstruction.

24 MR. WILLIAMS: I'm going to agree anyway, Your
25 Honor.

1 THE COURT: So admitted without objection.

2 MR. JOHNSON: Thank you, Your Honor.

3 Q (By Mr. Johnson) Corporal Coffin, let me ask
4 you now on July 29th, 2007 were you part of this MAIT
5 team?

6 A I was.

7 Q All right. Who was your boss?

8 A Lieutenant James Day.

9 Q All right. Were you called out in relation to
10 a collision that occurred on that day?

11 A Not on July 29th.

12 Q The collision that occurred on July 29th.

13 A Right. That would be correct.

14 Q Tell me about that.

15 A We were advised by Lieutenant Day of a
16 collision that occurred on July 29th, I believe this
17 was July 31st, that the scene was marked. Me and my
18 unit were to go out and document evidence at the
19 scene and forensically map the scene.

20 Q All right. What did you do?

21 A Myself and Sgt. Breland and Corporal Farmer
22 traveled the scene, I believe it was Mack Road in
23 Gadsden. We observed the marks that were in the
24 road, the paint that has been put down by the
25 investigating troopers and we had seen the

1 photographers taken by Lieutenant Day on the previous
2 day.

3 And based on that we forensically mapped the
4 scene using forensic mapping technology.

5 Q Tell me about some of that technology?

6 A It's a forensic mapping station, basically
7 what you see your surveyors using, they're measuring
8 up lots and building houses and whatnot. It's an
9 EDM I or Electronic Distance Measuring Issue.

10 They set it up on a tripod, it measures
11 distances. You've got one person on the station and
12 another person on the -- the architect, or the
13 person's drawings, and you have them on the poll, you
14 see a little mirror on the end.

15 And when he sets up on a point, in other words
16 if he's going to start a skid mark, he sets up on a
17 point and you fire, you shoot the EDM I, reflects off
18 the mirror and comes back to the station and gives a
19 distance in relation to the station. And that's how
20 you measure, you map the entire scene.

21 Q What else did you do? What else do you
22 measure to prepare your report and your
23 investigation? As far as measurements, what else do
24 you measure?

25 A As far as what we measure on the scene?

1 Q Right.

2 A I mean we will reconstruct the entire scene,
3 the roadways, the lanes, the lines, any evidence that
4 was marked by the troopers, the final rest of the
5 vehicles, any evidence we see in relation to the
6 collision.

7 Q All right. You helped created a report?

8 A That would be correct.

9 Q All right.

10 (Whereupon, State's Exhibit 37 is marked for
11 identification.)

12 Q (By Mr. Johnson) Corporal, I'm going to show
13 you what has been marked State's Exhibit 37 and ask
14 you if you recognize that?

15 A That appears to be Mack Street at the
16 collision location.

17 Q Okay. And are those two photos --

18 A Correct.

19 Q -- of that location? Was that part of your
20 report?

21 A Yes, sir.

22 Q Okay. And are those photos an accurate
23 representation of the way that street appeared on
24 that day?

25 A Yes, sir.

1 Q All right. On or about that day, the day
2 before or that day?

3 A Yes, sir.

4 Q Now the -- are there notations or anything on
5 the photos, any labels?

6 A There is an indication those are skid marks
7 prior to impact, skid marks after impact, fluid
8 trails indicated as well as scuff marks.

9 Q Now all the labels and everything placed on
10 there, are those accurate reflections of your
11 findings and your investigation on the MAIT team, and
12 do they accurately reflect all of your -- basically
13 all the information you collected?

14 A Yes, sir.

15 Q All right.

16 MR. JOHNSON: Your Honor, at this time I'd
17 move this exhibit into evidence.

18 THE COURT: Have you shown it to Mr. Williams?

19 MR. JOHNSON: Yes, ma'am.

20 THE COURT: Any objection?

21 MR. WILLIAMS: Yes, Your Honor, as to
22 foundation.

23 THE COURT: Please approach.

24 (Whereupon, a discussion was held at the bench
25 off the record.)

1 THE COURT: You may proceed.

2 Q (By Mr. Johnson) Corporal, I'm going to ask
3 you, referring to this exhibit, who actually prepared
4 the labels and information placed upon the photos?

5 A That would be Lieutenant. Day.

6 Q Was he your team leader?

7 A That would be correct.

8 Q And when did he go to the scene?

9 A He went to the scene I believe on July 30th,
10 the day after the collision.

11 Q Was that the day before you went out?

12 A That's correct.

13 Q Were you in constant communication with him as
14 part of the team?

15 A He was the one that sent me to the scene.
16 Advised me that I needed to respond to the scene.

17 Q Did you, along with your other MAIT team
18 members and the lieutenant, all combine your
19 information for the purpose of this report?

20 A That would be correct.

21 Q And that was the same report that these photos
22 that had labels on them were created as part of, that
23 was a part of that report, correct?

24 A Correct.

25 MR. JOHNSON: Your Honor, on that basis I

1 would move this into evidence.

2 THE COURT: Any objection?

3 MR. WILLIAMS: Same objection, Your Honor.

4 THE COURT: Sustained. He may use it to
5 testify as demonstrative.

6 MR. JOHNSON: Right.

7 Your Honor, at this time for demonstrative
8 purposes I'm going to proceed.

9 THE COURT: Certainly. For demonstrative
10 purposes it's marked for ID only.

11 MR. JOHNSON: Yes, ma'am.

12 Q (By Mr. Johnson) Corporal, can you see that
13 clearly on the big screen?

14 A I'm sorry, can you repeat that?

15 Q Can you see that clearly on the big screen?

16 A Yeah, somewhat.

17 Q Would you like to step down?

18 A I can actually see it better on the TV than I
19 can the big screen.

20 Q All right. I'm going to hand you a lazer
21 pointer. And explain to me with that where it says,
22 skid marks after impact, talk about that and show
23 that to the jury.

24 A These would be the skid marks indicating here
25 going off the right-hand shoulder of the road.

1 Q Okay. Based on your information, was that the
2 defendant's vehicle?

3 A That would be correct.

4 Q What about the other label for skid marks
5 prior to impact, tell me about that.

6 Q The skid mark -- see it coming in here on the
7 right-hand shoulder that the arrow is pointing to,
8 skid marks prior to impact, before that change in
9 direction the skid marks right through here.

10 Q All right. And can you do that again on the
11 big screen for any jury member that didn't see.

12 A This would be the skid marks prior to impact.

13 Q All right. What's that space in between the
14 skid marks?

15 A The open gap, that would be what I would
16 define as the area of impact.

17 Q Is there a reason we don't have skid marks
18 there?

19 A Well more than likely at impact the defendant,
20 or the driver of the Dodge pickup, it impacted and
21 either the rear wheels of the truck came off the
22 ground or he let his foot off the break due to impact
23 and then came out towards the right-hand shoulder
24 after impact.

25 Q Now I'm going to push it up and show you the

1 other photo. Could you indicate, tell me about that
2 fluid trail. Why was that important?

3 A The fluid trail here shows the direction of
4 travel of the Jimmy that the victim was a passenger
5 in as it traveled on to the final rest on the
6 opposing shoulder of the roadway.

7 Q Okay. Is that something for a vehicle, is it
8 usual for a vehicle to dump that much fluid unless
9 it's been in an impact?

10 A Not unless it's been in some type of trauma or
11 been in some type of impact.

12 Q Right. And tell me about the scuff marks
13 briefly, what are those?

14 A I'm having trouble seeing them on the big one,
15 but I can see them on the other one. The travel also
16 is the vehicle is rotating in a counter-clockwise
17 after being impacted, rotate out to the final rest on
18 the opposite shoulder of the road. The vehicle was
19 right there after impact.

20 Q All right. Thank you, Corporal.

21 Now tell me about what else you guys do on the
22 MAIT team to conduct your investigation besides
23 measuring on the scene and taking of the photos, what
24 else do you do? What about the vehicles?

25 A We do a vehicle exam of both vehicles. We

1 take the forensic mapping back to our office and
2 download it into a computer program and comprise the
3 scale diagram of the scene, the measurements for
4 court documentation.

5 Q Is that a CAD?

6 A CAD, computer system drawings, correct.

7 Q Tell me why you do that?

8 A To document the scene as stated. And also we
9 can make all our measurements from it because it is a
10 scale diagram. We can measure all the skid marks,
11 the point of impact, final rest, pre-skid marks,
12 width of the roadway. Whatever we need to do because
13 it's on a scale diagram, we can measure it on the
14 computer.

15 Q All right.

16 (Whereupon, State's Exhibit Number 38 is
17 marked for identification.)

18 Q (By Mr. Johnson) Corporal, I'm going to show
19 you what has been marked State's Exhibit 38. And
20 what is that?

21 A That is a layer of the computer system drawing
22 in relation to this collision.

23 Q Did you create that?

24 A Yes, I did.

25 Q Is that an accurate reflection of the way the

1 measurements and your visit to the scene relate to
2 you how that scene looked and where everything was
3 laid out, position of the vehicles?

4 A Correct. But the actual vehicles wouldn't
5 have been there, but all the marks are.

6 Q And is this a computer assisted diagram?

7 A That's right.

8 Q Type creation?

9 A Uh-hum.

10 Q And this is something you have been doing for
11 the MAIT team for a number of years?

12 A Correct.

13 Q And was this specific diagram, although it
14 wasn't this size when you created it, right?

15 A Right.

16 Q All right. When you created that, was that
17 part of the MAIT report that you put together?

18 A That would be correct.

19 Q Okay. And was that reviewed by your
20 supervisor?

21 A That would be correct.

22 Q And --

23 MR. JOHNSON: Your Honor, at this time I would
24 move this exhibit into evidence.

25 THE COURT: Any objection?

1 MR. WILLIAMS: No objection.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit No. 38 is admitted
5 without objection.)

6 MR. JOHNSON: Thank you, Your Honor. At this
7 time I'm going to prop it up here, put it in front of
8 the jury and publish it.

9 THE COURT: Don't block my view. You can
10 bring it out here but don't put it where you block
11 me.

12 MR. JOHNSON: Yes, ma'am.

13 Q (By Mr. Johnson) Corporal, could you step
14 down and kind of show us what this is all about. If
15 -- could you tell me what is -- what are these lines?
16 Obviously the yellow lines indicate what?

17 A Center of the roadway.

18 Q Okay. And what are the red lines that you got
19 drawn on there?

20 A The red lines are indicating the skid marks of
21 the defendant's vehicle at impact or close to impact.
22 The blue lines indicate the skid marks of the
23 defendant's vehicle, and the brown triangle is the
24 fluid trail.

25 Q Can you step back a little. Step back so all

1 the jurors can hear?

2 A This is the fluid trail as you indicated
3 before in the previous pictures. The small marks
4 here are small gouges left on the roadway by the
5 victim's vehicle.

6 Q Okay. And are these little drawings where you
7 decide or you determine the vehicles came to rest the
8 actual --

9 A That would be the final rest of the vehicles
10 as indicated by the investigating officers' marks
11 they left us.

12 Q All right. Is this the Dodge Ram of the
13 defendant?

14 A That would be correct.

15 Q Is that, on the left side, is that going to
16 indicate the overturned vehicle of the victim?

17 A That would be correct.

18 Q All right. Now tell me about the turn, the
19 street, the street and the driveway that the vehicle
20 came out, is that noted on here?

21 A This would be the north side, being northbound
22 in here. This would be the victim's driveway they
23 were coming from before the collision right here.

24 Q All right. Thank you. Corporal, tell me
25 about did you make any determination regarding the

1 speed of the vehicle?

2 A We did a speed analysis with the CAD drawing.

3 Q Tell me all about that.

4 A Okay. Well, in this particular collision,
5 since it was a rear end collision, we use what is
6 known as linear momentum, in other words the vehicle
7 wasn't angular momentum such as a 90-degree
8 collision, it was a rear end collision so we use what
9 is known as linear momentum.

10 And basically what we have to do, we determine
11 the point of impact where the area of impact where
12 the vehicles approximately collided. We then measure
13 their distances out to the final rest of each
14 vehicle. We determine which -- what amount of force
15 it would take to move that vehicle have the point of
16 impact to the point of final rest. You get what's
17 known as the speed loss equivalent across the skid
18 marks traveling from the point of impact or the area
19 of impact to the final rest.

20 You take those speed loss equivalents, along
21 with the weight of the vehicles with the passengers
22 added to get a more accurate weight, and you also --
23 when a linear momentum equation you have to assume or
24 assign one vehicle a speed. You're looking for the
25 speed of the other vehicle, which in this case it

1 would be the defendant's vehicle. So you have to
2 assign one of the vehicles a speed, this being the
3 victim's vehicle.

4 Now the way we did that is we used what's
5 known as auto status to get the published
6 acceleration factor for this vehicle. Because we
7 knew the Blazer started from a stop and it
8 accelerated out of a driveway to the point of impact.
9 So we got the published acceleration factor of this
10 vehicle, along with an average acceleration of all
11 vehicles, and we range what we thought the Blazer
12 would have been at at the point or area of impact
13 which I believe in this case was in the neighborhood
14 of 25 miles to 34 miles an hour if he started in the
15 driveway.

16 If he had done regular acceleration at the
17 area of impact, he would have been in the
18 neighborhood of 25 miles an hour, which is an average
19 acceleration for most vehicles. Now if you use the
20 published acceleration rate, it would have been a
21 little faster, that might have been a little harder
22 acceleration, he would have been in the neighborhood
23 of 34 miles an hour. So we ranged that. We plugged
24 that into the equation and it gave us the impact
25 speed of the Dodge pickup, or the approximate impact

1 speed of the Dodge pickup truck.

2 Q Tell me about the impact speed of the Dodge
3 Ram, what was that?

4 A We -- the impact speed of the Dodge Ram, we
5 estimated the impact speed of the Dodge Ram -- now
6 this is just the impact speed, between 49 and 54
7 miles an hour. Now we did see evidence of pre-impact
8 skidding which means there was additional speed.

9 Q Tell me about his speed right before the
10 impact.

11 A I'm sorry?

12 Q The pre-impact speed.

13 A Pre-impact speed. There was evidence of
14 pre-impact skidding or braking before the impact.
15 Now you have to account for this energy or this loss
16 of energy also. So you measure the length of the
17 skid marks and you see what the speed loss equivalent
18 would be.

19 This is just a minimum. In other words, if a
20 vehicle started at the beginning of that skid mark
21 and applied the brakes and stopped at the end of the
22 skid marks, how fast would he have been going. So
23 it's a minimum speed. So obviously he was going
24 greater than that.

25 So I believe the pre-impact speed loss for the

1 Dodge was calculated to be 42 miles an hour, which
2 then has to be combined with the impact speed of the
3 Dodge.

4 Q What was the speed then as he was approaching
5 the victim's vehicle, how fast was he going?

6 A The pre-skid speed that we determined was
7 between 64 and 68 miles an hour.

8 Q 64 and 68?

9 A Yes.

10 Q What was the speed limit on that road?

11 A I believe it was 55.

12 Q All right. Now did you consider or did you
13 take in as your information from the arresting
14 officer all other sources the weather conditions.
15 Did you factor that in?

16 A That's always a factor in collisions.

17 Q And you examined the scene, correct?

18 A Right.

19 Q And did you -- as the MAIT team, do they
20 interview anybody?

21 A I believe I interviewed the driver of the
22 Jimmy. And I believe Corporal Farmer interviewed
23 some other people that were involved.

24 Q All right. Now was weather a factor in the
25 collision?

1 A No, weather was not a factor in this
2 collision.

3 Q Did you collect any information showing that
4 any mechanical defects from the defendant's vehicle
5 was a factor in the collision?

6 A No.

7 Q And when you look at it, was speed a factor?

8 A I believe speed was a factor.

9 Q Whose speed?

10 A The defendant's speed.

11 Q And did you list in your report whether or not
12 he contributed to the collision?

13 A Yes, sir, he was indicated as being
14 contributing to the collision.

15 Q All right. Did you record any information
16 about whether or not the victim had already
17 established himself in the roadway going down the
18 road?

19 A Correct.

20 Q Okay. And did you address in your report
21 whether or not the defendant in his Dodge Ram had
22 sufficient distance to perceive the victim in the
23 roadway and time to stop? Did you ever --

24 A Correct, we did.

25 Q Okay. What did you list in your report

1 regarding that?

2 A Well, we were able to determine that the area
3 of impact was approximately -- his vehicle turns out
4 on an arc because it doesn't go straight from the
5 driveway in fact it turns out, it's 147 feet. Okay.

6 Again using the same method which I explained
7 to you a minute ago, the acceleration rates, an
8 average acceleration rate is .15, the published
9 acceleration for this vehicle is a .27. If you
10 use .15, it would have taken -- let me see. If you
11 use the -- if you use the average acceleration it
12 would have taken the Jimmy from the point where he
13 moved his foot from the accelerate to begin to
14 accelerate, it would have taken him 7.7 seconds to
15 reach the area of the impact. If you use the --
16 that's using the average acceleration rate of .15.

17 Now if you use the published for that vehicle
18 in a particular Jimmy, which is a .27, it would have
19 taken him 5.8 seconds from the minute he moved his
20 foot from the brake to the accelerator and
21 accelerated to the area of impact.

22 Q So how much time total did you estimate the
23 defendant had to stop, to see the victim and stop?

24 A Between 5.8 and 7.7 seconds.

25 Q Okay. So if I stood here and counted,

1 1-Mississippi, 2-Mississippi, 3-Mississippi,
2 4-Mississippi, 5-Mississippi, 6-Mississippi,
3 7-Mississippi and then half a second, that's the
4 amount of time that he had to stop?

5 A Yes, sir.

6 Q In his Dodge Ram?

7 A Yes, sir.

8 Q Now do you have a section -- well, let's just
9 talk about it. You made some conclusions, right, as
10 part of the MAIT team?

11 A Yes, sir.

12 Q And did you find anything about whether or not
13 the roadway was dry or wet as far as the contributing
14 factor?

15 A The weather at the time was clear, there were
16 -- the weather was not a determining factor of the
17 collision in my opinion.

18 Q Was the roadway determined to be dry at the
19 time?

20 A That would be correct.

21 Q And what about sight distance, obstructions?

22 A Sight distance, it was my opinion was not a
23 contributing factor in this collision.

24 Q So the defendant in your opinion could see the
25 victim?

1 A Should have been able to.

2 Q Nothing in his way?

3 A No, sir.

4 Q No curves, break in the line of sight?

5 A No, sir.

6 Q And you went out to the scene?

7 A Yes, sir.

8 MR. JOHNSON: Your Honor, I don't have anymore
9 questions for this witness at this time.

10 THE COURT: Any questions of the witness?

11 MR. WILLIAMS: Yes, Your Honor.

12 THE COURT: You may proceed.

13 ~~CROSS-EXAMINATION~~

14 BY MR. WILLIAMS:

15 Q Corporal, as I understand it you actually went
16 to the scene -- well, the wreck occurred on the 29th.
17 When did you go to the scene?

18 A On the 31st.

19 Q So you actually went two days later?

20 A That would be correct.

21 Q When you went to the scene who was with you?

22 A That would be Sergeant Breland and Corporal
23 Farmer.

24 Q All right. And in terms of what time of day
25 it was, what time of day was it?

1 A It was, I would assume, I don't have it with
2 me, to my recollection it was around 10:00 a.m.

3 Q So 10 o'clock in the morning?

4 A That would be correct.

5 Q Did you understand as to what time of day the
6 wreck occurred?

7 A It is my understanding it was at night.

8 Q All right. And some of the statements you had
9 made dealt with speed and factors that caused the
10 wreck. Obviously you were there at a particular time
11 of the day where light was a whole lot better than it
12 was at the time when the wreck occurred?

13 A That would be correct.

14 Q Now when you were referencing what you do with
15 the MAIT team, you said you check out the vehicles
16 involved also?

17 A As far as vehicles I did not do it on this
18 particular collision, but a vehicle examination is
19 part of the protocol.

20 Q So you didn't check out either one of the
21 vehicles that were involved in the wreck to see if
22 they had good tires, if they had good brakes, if they
23 had good -- what do you call it, when you need a
24 tune-up -- if they had good acceleration value?

25 A Uh-hum.

1 Q You did not do any of this checking out?

2 A That would have been Lieutenant Day.

3 Q But in terms of what you would testify to, you
4 did not do any of this?

5 A That would be correct.

6 Q So when you come down and you do this
7 testimony or this factoring in regards to what your
8 conclusions are, that's actually based on a book
9 which tells you that you have a Jimmy of a certain
10 year, and what the expectations are from the
11 manufacturer?

12 A Correct.

13 Q In regards to acceleration, in regards to
14 braking. The same thing in reference to the Dodge
15 Ram, you're looking at a book which gives you your
16 expectations for the Dodge Ram in terms of
17 acceleration, in terms of stopping ability.

18 So there was no independent research, as far
19 as you know, on the vehicles that were involved in
20 this wreck?

21 A That's correct.

22 Q Now in this chart or diagram, we'll call it a
23 diagram that you've drawn.

24 A Yes, sir.

25 Q This is not to scale, is it?

1 A It is to scale.

2 Q It's to scale meaning by feet?

3 A Correct.

4 Q What about in terms of angles?

5 A No, that's a two-dimensional drawing, not a
6 three-dimensional drawing so it doesn't -- it would
7 not indicate angles or grades.

8 Q So it doesn't show you how the road curves?

9 A It should show you how the road curves but not
10 how -- it's 2-D which would be on top of it, it's not
11 a 3-D so it wouldn't show you an angle or a hill.

12 Q Wouldn't show you how the road goes up and
13 down?

14 A That's correct.

15 Q Now obviously your ability to see -- some of
16 the questions that were asked dealt with the ability
17 of the defendant to see. So there is nothing on this
18 diagram which would indicate whether or not he could
19 see or not see, for instance the road coming up, road
20 coming down, curving to the left, curving to the
21 right. It doesn't show that, does it?

22 A No, that diagram does not show that.

23 Q And that diagram doesn't show that it was
24 nighttime versus daytime?

25 A That would be correct.

1 Q Now in terms of the markings, are you only as
2 good as the information that you have?

3 A That would be correct.

4 Q So if you got any bad information, that messes
5 up what your calculations are, doesn't it?

6 A Yes, sir.

7 Q Kind of like cooking?

8 A Yes, sir.

9 Q And in terms of those areas that you looked at
10 that were marked, that's where you got your figures
11 from, wasn't it?

12 A The areas that were marked and measured,
13 correct.

14 Q Because as we were talking or you were talking
15 about early on dealing with the land boundary line
16 deal that the guys would go out --

17 A Survey.

18 Q -- shoot surveying equipment. You shoot the
19 little ray that tells you the distance from one point
20 to another?

21 A Uh-hum.

22 Q Your beginning point and your ending point in
23 terms of your calculation are dictated based on where
24 somebody else told you to start that beginning point
25 and that ending point?

1 A That would be correct.

2 Q And that would be referenced by that orange
3 paint -- was it the orange paint?

4 A Yes, sir.

5 Q Now do you know who put the orange paint on
6 the road?

7 A It would have been the investigating officers.
8 Trooper Caldwell or one of his supervisors.

9 Q So if anyone other than Trooper Caldwell or
10 his supervisor placed the orange paint on the road,
11 you would not rely as much on that, would you?

12 A I'm not sure I understand your question.

13 Q You would want the person who was first on the
14 scene who saw the location of the vehicles on the
15 scene to be the person in charge of making the marks
16 on the scene, wouldn't you?

17 A Ideally, yes, sir.

18 Q I mean that's -- that's not just ideally,
19 that's what you have -- that's what you insist on to
20 have your calculations correct, don't you?

21 A Correct. I mean the markings, like you said,
22 trash in is trash out. You have to have correct
23 markings and the correct measurements.

24 Q And can you testify under oath that you know
25 the officer who placed those markings out there on

1 the road?

2 A No.

3 Q So when you do your measurements from these
4 points you clearly are going by the orange paint that
5 we've already talked about?

6 A Well, we go by the orange paint. But if it's
7 daylight and we see something that isn't marked, say
8 a skid mark may have been marked at night and in the
9 daylight you can see it actually begins further back,
10 we'll measure it from the point we actually
11 physically see the skid mark.

12 Q Can you tell me in this particular case if
13 there was any of that going on or if you measured
14 from the orange paint?

15 A Not to my recollection. Measured from the
16 orange paint.

17 Q You measured from the orange paint. You don't
18 know who put the orange paint down there?

19 A No, sir.

20 Q Like you say it's trash in, trash out?

21 A That's what they say.

22 MR. WILLIAMS: No further questions, Your
23 Honor.

24 THE COURT: Any redirect of the witness?

25 REDIRECT EXAMINATION

1 BY MR. JOHNSON:

2 Q How long have you worked on the MAIT team?

3 A It will be three years in January.

4 Q And the information you got, you got
5 information from the arresting officer and everyone
6 as far as the exact location of this collision,
7 correct?

8 A That's correct.

9 Q That's where you responded?

10 A Yes, sir.

11 Q To make your measurements?

12 A Yes, sir.

13 MR. JOHNSON: No more questions.

14 MR. WILLIAMS: Could I have one question
15 follow-up based on --

16 THE COURT: You may. Yes, sir.

17 RECROSS-EXAMINATION

18 BY MR. WILLIAMS:

19 Q When he asked you just now if you got this
20 information where the collision occurred, you're
21 talking about the street address, aren't you?

22 A Street address or location. There's also a
23 GPS location for law enforcement using the street
24 address.

25 Q But he wasn't there when you did this?

1 A The investigating officers?

2 Q Right.

3 A No, sir.

4 MR. WILLIAMS: That's all the questions I
5 have.

6 THE COURT: Any further questions?

7 MR. JOHNSON: None for this witness.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MR. JOHNSON: No, Your Honor.

11 THE COURT: From the defense?

12 MR. WILLIAMS: None, Your Honor.

13 THE COURT: Sir, you're excused.

14 Does anyone need a restroom break?

15 MR. STUMBO: No.

16 MR. WILLIAMS: No.

17 THE COURT: Please call your next witness.

18 MR. JOHNSON: Your Honor, at this time I
19 recall Trooper Caldwell regarding testimony --

20 THE COURT: No editorial. Are you recalling
21 the witness?

22 MR. JOHNSON: Call Trooper Caldwell at this
23 time.

24 THE COURT: Thank you. Sir, if you would come
25 to the witness stand and I'll remind you you are

1 still under oath.

2 MR. KEVIN MIDDLETON CALDWELL,
3 after having previously been duly sworn to state the
4 truth, the whole truth and nothing but the truth,
5 testified on his oath as follows:

6 DIRECT EXAMINATION

7 BY MR. JOHNSON:

8 Q Trooper Caldwell, who put down all those
9 orange paint marks on the road?

10 A Corporal Chris Shelton.

11 Q How do you know that?

12 A I was there when he did it.

13 Q Did you see him do it?

14 A I saw him do it.

15 Q That night?

16 A Yes.

17 Q July 29th?

18 A That is correct.

19 MR. JOHNSON: No further questions, Your
20 Honor.

21 THE COURT: Any questions?

22 MR. WILLIAMS: Two.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q Is that your immediate supervisor, correct?

1 A As I testified earlier, that is correct.

2 Q And is he coming to testify?

3 A I have no idea who anybody is calling for a
4 witness.

5 Q When did he leave that night?

6 A As I testified before I have no idea when he
7 left.

8 Q When did you see him placing though marks on
9 the road?

10 A When I was out there with your defendant.

11 Q Were you watching my defendant and watching
12 Chris Shelton walking around making marks with the
13 orange paint?

14 A I am very good at multitask.

15 MR. WILLIAMS: I don't have any other
16 questions, Your Honor.

17 THE COURT: Any redirect of the witness?

18 REDIRECT EXAMINATION

19 BY MR. JOHNSON:

20 Q Were the vehicles still on the scene there
21 when you saw him putting the paint down?

22 A Yes.

23 Q All right.

24 MR. JOHNSON: No more questions, Your Honor.

25 THE COURT: Any objection to the witness being

1 excused from the state?

2 MR. STUMBO: No objection.

3 THE COURT: From the defense?

4 MR. WILLIAMS: None from the defense, Your
5 Honor.

6 THE COURT: Sir, you're excused. You may call
7 your next witness.

8 MR. JOHNSON: Your Honor, at this time the
9 State calls Tammy Bannister.

10 MS. TAMMY BANNISTER,
11 after having first been duly sworn to state the
12 truth, the whole truth and nothing but the truth,
13 testified on her oath as follows:

14 DIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q Ms. Bannister, where do you work?

17 A South Carolina Law Enforcement Division.

18 Q What do you do there?

19 A I'm now a drug analyst. At the current time I
20 work in login.

21 Q Okay. And you say that in July 30th, 2007?

22 A Yes.

23 Q You were work where now?

24 A I work in login intake.

25 Q Okay. In that position what were your duties?

1 A My duties were to assist any law enforcement
2 agent that came in with evidence throughout the state
3 of South Carolina. What I did, I took it into my
4 custody, logged it into the system, and placed the
5 evidence in proper intake bins for the analysts to
6 receive.

7 Q Okay. And did you receive anything on that
8 day from Trooper Caldwell?

9 A Can I refer to my --

10 Q Please feel free.

11 A Yes, sir, I did.

12 Q Okay. And what did you receive?

13 A On 7/30 of '07 I received a heat-sealed pouch
14 containing blood.

15 Q Okay. And was it labeled, described in any
16 way?

17 A Yes, it was described as belonging to William
18 Martin Conrad.

19 Q Okay. And basically on that date what time
20 did you receive it?

21 A At 8:37 a.m.

22 Q All right. And who did you get it from?

23 A I received it from highway patrolman K.N.
24 Caldwell.

25 Q Okay. And what did you do with it?

1 A what we do, we have a procedure, I logged it
2 in, I had Caldwell to put it in a heat-sealed pouch
3 where he initialed the top of the label once we put
4 it in one of our kits. And then once I stamped it, I
5 put it in toxicology intake storage.

6 Q Okay. what is toxicology intake storage?

7 A It's a place, it's basically a refrigerator
8 where we keep any blood, urine samples that come in
9 and we put it there until the technicians from
10 toxicology come and pick it up.

11 Q Is it in a secure location?

12 A Yes, it is.

13 Q The people who have access to that, is that
14 restricted to --

15 A Yes, you have to have a SLED badge. No one
16 has access to that area but employees in login.

17 Q Okay. Was there a special -- did you have a
18 special number that get assigned to the pouch?

19 A Yes. Once we log it in, we print out labels
20 and it was L710937, that was the label that was given
21 to that evidence.

22 Q All right. And is there a forensic request
23 form that you have to sign off on when you get that?

24 A When we enter it in, we enter it into our
25 system that is called the beast. What the beast do

1 is actually put stamp a date and time. Once I finish
2 logging in a case it basically the computer stamps a
3 date and time. And then the chain that the officer
4 bring in, I then hand stamp it with our SLED sealed
5 and clock -- it has a clock on it. So it has the
6 date and time when the officer leaves.

7 Q Do you have a copy of that with you, the
8 forensic services request?

9 A I have a copy of the forensic service request.
10 Yes, I do.

11 Q Okay. And does that indicate a description of
12 evidence?

13 A Yes, sir.

14 Q What does that indicate?

15 A The first form basically where once I log it
16 in, I put all the number to the top and it has the
17 arresting officer or seizing officer's name. It has
18 where he works, what county he works in. And then
19 under that it has the subject name, first name, last
20 name, sex and information on the side.

21 Q What is the name of the subject under
22 description of evidence?

23 A Last name Martin, first name William, middle
24 name is Conrad.

25 Q Okay. And you signed that?

1 A I did not sign it but it's signed in the
2 system.

3 Q Okay. You indicated you approved it?

4 A Yes.

5 Q Information was accurate?

6 A Yes.

7 Q And when you got this pouch it was sealed?

8 A Yes. The officer bought it in a sealed pouch
9 from the hospital where he had taken blood evidence
10 that was taken at the hospital during the time. The
11 officer and the nurse sealed it and he brought it in
12 to us already in the sealed, highway patrol packet.

13 Q Okay. Did anybody tamper with it while you
14 had it?

15 A No, sir.

16 Q Did you tamper with it?

17 A No, sir.

18 Q Did the trooper tamper with it when he dropped
19 it off?

20 A No, sir.

21 Q Did anybody break the seal?

22 A No.

23 Q Was it in your care, custody, control the
24 whole time until you dropped it off?

25 A Yes, sir.

1 Q And where did you take it again?

2 A Once I take it from my desk, I put it in
3 toxicology intake storage.

4 Q Okay. And what is the temporary evidence
5 room?

6 A Temporary evidence room is where the
7 refrigerator is being located. It's with our badge
8 and lock and key where we store evidence until the
9 analyst or another forensic tech from upstairs come
10 down and receive the evidence.

11 Q Okay. Is that same as the intake storage?

12 A Yes, sir.

13 Q Okay. And how many years have you worked at
14 SLED?

15 A I have now been at SLED six years.

16 Q And what was the purpose of assigning that
17 number to the package?

18 A Well, once we enter it in the system the beast
19 assigns each case number its own lab number. It
20 basically means that at any time we can go back and
21 put in a lab number and trace the steps from the
22 evidence from the time I log it in to the time the
23 analyst receives it in toxicology.

24 Q Is that just for SLED that number?

25 A Yes.

1 Q And does SLED create a certified chain?

2 A Yes.

3 Q What is that?

4 A Certified chain is basically it tracks the
5 record from the time an officer brings in evidence
6 from the time of being logged in, it stamps a time
7 and a date. Whenever you take the evidence out of
8 the intake you have to scan it to yourself and then
9 scan the evidence and then take it upstairs and then
10 they have to re-scan it in.

11 It basically just shows a chain of where the
12 evidence has been.

13 Q So to move it you've got to scan your card?

14 A I have to scan my SLED badge, then scan the
15 evidence and then put in my pass code. Then when I'm
16 giving it to another analyst or another tech, I have
17 to scan their badge, they have to put in a pass code
18 and that's what we do to keep a chain going because I
19 don't know your pass word so it verifies that it's
20 now in your custody.

21 Q And when all that's completed then you prepare
22 a certified chain of custody, is there another
23 process you have to sign off on it?

24 A Once we do a certified chain, yes, it's
25 another step where we go back in the system and look

1 at everything to make sure it's correct, put our
2 password in.

3 Q Okay. And was that pouch in the same
4 condition from when you picked it up to when you
5 dropped it off?

6 A Yes.

7 Q Is that a secure location?

8 A Yes.

9 MR. JOHNSON: No more questions, Your Honor.

10 THE COURT: Any questions for the witness?

11 MR. WILLIAMS: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. WILLIAMS:

14 Q Ms. Bannister, do you have like a title with
15 SLED or should I call you Ms. Bannister or Sergeant?

16 A Just Miss would be fine. Thank you.

17 Q Okay, Miss. What you have testified to so
18 far, is that the procedure that you all use at SLED
19 in keeping up with evidence as a general rule?

20 A Yes.

21 Q Do you have any independent recollection about
22 the evidence which we are discussing today in trial?

23 A I have not seen it since '07. I haven't seen
24 the actual evidence since '07.

25 Q Essentially what you're testifying to is notes

1 that you have in reference to numbers?

2 A Yes.

3 Q Now from the notes that you have you indicated
4 that you received a heat-sealed package from Trooper
5 Caldwell on July 30th of 2007; is that correct?

6 A Yes.

7 Q So you didn't seal anything when you got it
8 from SLED, when you got it from the officer, it was
9 already sealed?

10 A It was already sealed in a highway patrol kit.
11 And what I did was took that same kit that he turned
12 in and then put it in one of our SLED evidence bags
13 and resealed it and the officer signed on.

14 Q So in essence what you are doing is you are
15 putting one bag inside of another bag?

16 A Correct.

17 Q When you did that did you look inside to see
18 if there were two vials of blood in there or one?

19 A I did look inside because we have to note what
20 was inside there. And at the time I noted on the
21 sheet that it was one tube of blood.

22 Q And do you know, if you don't that's fine, do
23 you know whether or not there were two vials of blood
24 at any point in time?

25 A No, sir.

1 Q And if there were two vials of blood you have
2 no knowledge with regards to what happened to the
3 other one?

4 A No, sir.

5 Q Now the vial of blood which you received at
6 SLED, you can see that the heat-seal was sealed,
7 could you see what condition the tube was in?

8 A No, sir.

9 Q So you couldn't really see inside the bag to
10 see what the condition was?

11 A Only policy and procedure that we are due to
12 follow is to make sure the heat-seal has the initial
13 label of the officer and the nurse and to make sure
14 that it's not leaking. And at that current time
15 there was no contamination to the plastic bag that I
16 received.

17 Q Do you have your notes right there?

18 A Yes, sir.

19 Q Could I look at them a second?

20 Do you know or do you have information that
21 would indicate when the blood was drawn?

22 A No, sir.

23 Q That's not something which you would be privy
24 to?

25 A Excuse me, yes, sir. It's on the sheet that

1 officer turned in. I'm sorry.

2 Q Okay. And when, according to the notes that
3 the officer turned in, is there evidence that it was
4 drawn?

5 A On the sheet I cannot see the test date and
6 time.

7 Q So you have a sheet where he's supposed to
8 fill out when it's drawn but you don't have that
9 information?

10 A I have it but due to a scanning error I can't
11 see it on this sheet.

12 Q Are you saying you have got it but you can't
13 read it?

14 A Yes, correct.

15 Q Can I look?

16 When you received this plastic bag, this
17 trooper bag that you put inside your bag and gave it
18 your own number for SLED, you took it at that point
19 in time to your intake area which is the refrigerated
20 area; is that correct?

21 A Yes.

22 Q Why do you take the blood to a refrigerated
23 area?

24 A We have as far as any fluids coming in, due to
25 our chain and procedures we have to follow due to the

1 lab, we have to keep it refrigerated.

2 Q why?

3 A It's just a policy and procedure that we have
4 to follow.

5 Q Do you know why that you have a policy that
6 says you have to keep it in the refrigerator?

7 A I'm not -- I'm not accurate on time and hours
8 of blood and urine because that's not my field. But
9 due to our policy and procedures once we take it in
10 we have to keep it refrigerated.

11 Q Obviously to prevent spoilage?

12 MR. JOHNSON: Objection, Your Honor, calls for
13 speculation.

14 THE WITNESS: I'm not sure, sir.

15 THE COURT: Ma'am, there is an objection
16 pending. Please approach.

17 (Whereupon, a discussion was held at the bench
18 off the record.)

19 THE COURT: Rephrase.

20 Q (By Mr. Williams) Ma'am, why do you put it in
21 the refrigerator? What policy that you have with
22 SLED requires you to put it in the refrigerator?

23 A Policies and procedure that we follow once we
24 get in any body fluid it requires to be refrigerated
25 until the analyst comes down. It is a timeframe, I'm

1 not sure of the timeframe, but we are just required
2 to keep it refrigerated.

3 Q Okay. And do your records indicate how long
4 that it remains in the -- did you deliver the --
5 never mind. Strike all that.

6 All you basically have told us today, correct
7 me if I'm wrong, basically you received it and put it
8 in the refrigerator?

9 A Yes.

10 Q One tube?

11 A Yes.

12 MR. WILLIAMS: That's all the questions I
13 have, Your Honor.

14 THE COURT: Any redirect?

15 MR. JOHNSON: No questions, Your Honor.

16 THE COURT: Any objection to the witness being
17 excused from the State?

18 MR. JOHNSON: No objection.

19 THE COURT: From the defense?

20 MR. WILLIAMS: No objection.

21 THE COURT: Ma'am, you are excused.

22 You may call your next witness.

23 MR. JOHNSON: Thank you, Your Honor. State
24 calls Selena Kinard.

25 MS. SELENA KINARD

1 after having first been duly sworn to state the
2 truth, the whole truth and nothing but the truth,
3 testified on her oath as follows:

4 DIRECT EXAMINATION

5 BY MR. JOHNSON:

6 Q Ms. Kinard, where do you work?

7 A SLED.

8 Q What do you do there?

9 A I'm a forensic technician in evidence control.

10 Q Okay. What do you do?

11 A I'm sorry?

12 Q What are your duties in that position?

13 A I log in evidence as officers bring it in and
14 store it in a locked evidence room.

15 Q Okay.

16 A And also give out evidence to our analyst.

17 Q Okay. July 30, 2007 did you have cause to
18 come in contact with some evidence?

19 A Yes, I did. On that date at 3:17 in the
20 afternoon I took the evidence out of the refrigerator
21 in our evidence room and gave it to Brandon Williams,
22 which is the technician in the toxicology department.

23 Q When did you give it to him?

24 A At 3:19.

25 Q On the same day?

1 A Yes.

2 Q Okay. And did you have to scan your badge
3 track it?

4 A Yes. I scan my badge and then I scan the
5 piece of evidence, save that. I scan Brandon
6 Williams badge, scanned the evidence again. He has a
7 password that he enters to take the evidence into his
8 custody.

9 Q Okay. Do you have a description of this
10 evidence?

11 A I do.

12 Q What is that?

13 A I have it's one heat-sealed pouch containing
14 blood described as labeled William Martin Conrad.

15 Q Okay. Is it in your care, custody and control
16 the whole time until you gave it to Mr. Williams?

17 A Yes, it was.

18 Q Did you tamper with it?

19 A No.

20 Q Anyone else tamper with it?

21 A No.

22 Q It was sealed?

23 A Yes. Signed and sealed, yes.

24 MR. JOHNSON: No more questions, Your Honor.

25 THE COURT: Any questions of the witness?

1 MR. WILLIAMS: Just a couple.

2 CROSS-EXAMINATION

3 BY MR. WILLIAMS:

4 Q Brandon Williams, you say he is a lab
5 technician?

6 A He is a forensic technician in the toxicology
7 department.

8 Q All right. Is his office in a different
9 location from your office?

10 A He is upstairs. He comes from upstairs down
11 to evidence control to pick up evidence each
12 afternoon.

13 Q And you would take the item that we referred
14 to out of the refrigerator and give it to this
15 particular person who would take it upstairs to where
16 he works?

17 A Yes.

18 Q And then you have no more control or no more
19 access to that as he has it in his possession?

20 A Right. Yes, sir, that's correct.

21 MR. WILLIAMS: That's all the questions I
22 have, Your Honor.

23 THE COURT: Any redirect?

24 MR. JOHNSON: No redirect.

25 THE COURT: Any exception to the witness being

1 excused from the State?

2 MR. JOHNSON: None from the State.

3 THE COURT: From the defense?

4 MR. WILLIAMS: None from the defense.

5 THE COURT: Ma'am, you are excused. You may
6 call your next witness.

7 MR. JOHNSON: Thank you, Your Honor. State
8 calls Brandon Williams.

9 MR. BRANDON WILLIAMS,
10 after having first been duly sworn to state the
11 truth, the whole truth and nothing but the truth,
12 testified on his oath as follows.

13 THE COURT: You may I proceed.

14 MR. JOHNSON: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q Mr. Williams, where do you work?

18 A SLED. South Carolina Law Enforcement
19 Division.

20 Q What do you do there?

21 A I'm a toxicology technician in toxicology.

22 Q Okay. And July 30, 2007 did you come into
23 contact with a sealed pouch item of evidence?

24 A Yes, sir.

25 Q Okay. Tell me about that.

1 A It was in an evidence pouch sealed and dated.

2 Q Okay. Do you have a description or can you
3 tell us about how it was labeled?

4 A Right here. I have a chain of custody.

5 Q Tell me what that is.

6 A I have a chain of custody.

7 Q Okay. Tell me what's the description on the
8 pouch.

9 A That it contains blood containing a label of
10 William Martin Conrad.

11 THE COURT: Sir, could you pull the microphone
12 down a little bit toward your mouth? Thank you.

13 Q (By Mr. Johnson) And did this item of
14 evidence have a lab number or SLED number assigned to
15 it?

16 A Yes, sir.

17 Q In order to -- well, that's an identifying
18 number for SLED, correct?

19 A Uh-hum.

20 Q Okay. And who did you get it from?

21 A From Selena Kinard.

22 Q When did you get it from her?

23 A 3:19.

24 Q Okay. 3:19, what date?

25 A July 30th of '07.

1 Q Okay. What did you do with it?

2 A I took it and put it into a toxicology
3 refrigerator.

4 Q Is that a secure refrigerator?

5 A Yes, sir.

6 Q Not everyone has access to it?

7 A No, sir.

8 Q Just certain employees of SLED?

9 A Uh-hum.

10 Q Do you have to scan your card to drop
11 something off and pick something up?

12 A We have to scan our card to get into the
13 refrigerator, yes.

14 Q That's to maintain your chain, chain of
15 custody?

16 A Uh-hum.

17 Q And when you got it from Ms. Kinard, was it
18 tampered with or broken open or anything?

19 A No, sir.

20 Q Okay. Was it sealed?

21 A Yes, sir.

22 Q And did you break it open, tamper with it?

23 A No, sir.

24 Q Did anybody else?

25 A No, sir.

1 Q It was in your care, custody and control the
2 whole time?

3 A That I had it, yes.

4 Q When you dropped it off in the fridge was it
5 still sealed?

6 A Yes, sir.

7 Q Okay.

8 MR. JOHNSON: No more questions, Your Honor.

9 THE COURT: Any cross-examination for the
10 witness?

11 MR. WILLIAMS: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. WILLIAMS:

14 Q What was the number that was assigned to the
15 blood when you placed it in the refrigerator?

16 A I have L0710937.

17 Q And do you recall whether or not there were
18 two vials or one vial?

19 A I don't recall.

20 Q Does your information indicate if there were
21 two vials or one vial?

22 A No, sir.

23 Q When you said that it didn't look like it had
24 been opened, or you said you did not open it, are you
25 referring to the bag, to the SLED bag?

1 A Yes, sir.

2 Q So you cannot tell us what was happening
3 inside of the bag, can you? You did not look inside
4 and see what was in it?

5 A No, sir.

6 Q And you put it in the refrigerator why?

7 A It's protocol.

8 Q Why is it protocol?

9 A SLED policy.

10 Q You're a toxicology technician; is that
11 correct?

12 A Yes, sir.

13 Q How old are you?

14 A 25.

15 Q Did you go to college?

16 A Yes, sir.

17 Q What was your major?

18 A Biology.

19 Q That's a science major, right?

20 A Yes, sir.

21 Q Now you indicated that was protocol?

22 A Uh-hum.

23 Q Is it your testimony you don't know why you
24 refrigerated it or are you just saying because it's
25 policy?

1 Do you know why you refrigerate it?

2 A I'm going to say no.

3 Q Are you saying no because you don't know or --

4 MR. JOHNSON: Your Honor, object, asked and
5 answered. He already explained his answer.

6 THE COURT: I am going to give him a little
7 latitude. Sir, you may answer the question.

8 Q (By Mr. Williams) Do you know why you put it
9 in the refrigerator?

10 A No. SLED policy.

11 Q Do you have a B.S. from the University of
12 South Carolina?

13 A I went to Costal Carolina.

14 Q Costal Carolina. You have a B.S. from Costal
15 Carolina?

16 A Yeah.

17 Q And your degree is in?

18 A Biology.

19 Q Biology. And it's still your answer that you
20 don't no why you put it in the refrigerator?

21 A Yes.

22 MR. WILLIAMS: I don't have any other
23 questions, Your Honor.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION

1 BY MR. JOHNSON:

2 Q What time did you get it from Ms. Kinard or,
3 excuse me, what time?

4 A 3:19.

5 Q Okay. What time did you drop it off in the
6 refrigerator?

7 A 3:44.

8 Q Same day?

9 A Yes.

10 Q July 30th?

11 A Yes, sir.

12 Q Okay.

13 MR. JOHNSON: No more questions, Your Honor.

14 THE COURT: Any objection to the witness being
15 excused from the State?

16 MR. JOHNSON: No objection.

17 THE COURT: From the defense?

18 MR. WILLIAMS: None by the defense.

19 THE COURT: Sir, you are excused.

20 Please call your next witness.

21 MR. JOHNSON: Your Honor, State calls Brandon
22 Lander.

23 THE COURT: Ladies and gentleman, I anticipate
24 this will be the last witness for the evening.

25 MR. WILLIAMS: Your Honor, we actually have a

1 matter of law to take up with the Court.

2 THE COURT: Madam Forelady, ladies and
3 gentlemen, I'm going to send you to the jury room for
4 a moment while I take up a matter of law with the
5 attorneys. It will be very brief.

6 During the break please do not discuss the
7 case. And please leave your notepads in your seats.
8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Yes, sir.

10 MR. WILLIAMS: Your Honor, it might be
11 beneficial to the Court to actually look at what he
12 is going to testify to which is --

13 THE COURT: I would imagine it's the blood
14 analysis.

15 MR. WILLIAMS: It is the blood analysis, Your
16 Honor. But if Your Honor could look at what I
17 envision him to testify to.

18 Your Honor, ~~we would move to suppress any~~
19 ~~testimony about the findings other than the alcohol.~~

20 THE COURT: Doesn't the statute say
21 impairment, it doesn't specify alcohol, does it?

22 MR. WILLIAMS: If I could give the basis for
23 that, Your Honor. If you look at the report which
24 was prepared, it does not have threshold levels.

25 THE COURT: You can ask him about that, can't

1 you?

2 MR. WILLIAMS: Well my concern is that the
3 probative value would be --

4 THE COURT: It has extreme probative value.
5 Your client is charged with driving his vehicle
6 impaired. It is not limited to alcohol; it could be
7 any substance. It could even be a legally prescribed
8 substance if it has been over-taken so to speak. If
9 somebody should have taken 1 tablet or took 10,
10 somebody is supposed to take 2 and took 5, it does
11 not have to be an illegal substance.

12 This reports reflects that he was positive not
13 only for ethanol but benzodiazepine, cannabinoid, and
14 I think that that's extremely probative on the issue
15 of whether he was impaired, or whether more
16 specifically
17 whether he was driving impaired.

18 MR. WILLIAMS: And, Your Honor, the basis of
19 the objection being since there is no threshold level
20 which is reflected in the report --

21 THE COURT: It says threshold 0.05. What are
22 you referring to?

23 MR. WILLIAMS: On the second page where it
24 talks about -- there is, I don't envision any way in
25 which --

1 THE COURT: Are you talking about the
2 tetrahydrocannabinol, the THC?

3 MR. WILLIAMS: Yes, ma'am.

4 THE COURT: That's a factual issue for the
5 jury.

6 MR. WILLIAMS: I understand that. But my
7 objection is circled around the fact that I don't
8 envision this witness to be capable of testifying as
9 to when these items were placed in the body, number
10 one. And number two, whether or not their effects
11 would have caused some sort of --

12 THE COURT: Those are all matters of weight
13 and you can argue to the jury and that you can
14 explore fully in cross-examination. The fact that
15 your client had the presence of these substances, and
16 ~~I probably have a little more knowledge since I have~~
17 ~~had to deal with this so much in family court, there~~
18 ~~is a certain amount of time that cannabinoid stays in~~
19 ~~your body. This is not a hair follicle sample.~~

20 It would not have been present in his body for
21 six months, not in his blood. It certainly would not
22 have been present for six weeks. It would have had
23 to have been close in time to this event at this
24 level.

25 Now these are matters that you can explore on

1 cross-examination. I'm not an expert, I don't
2 pretend to be. But I don't think it makes the
3 testimony inadmissible. The crucial issue in this
4 case or the gravamen of this case is whether your
5 client was driving a vehicle impaired.

6 MR. WILLIAMS: Correct.

7 THE COURT: And there are many ways a person
8 can be impaired. Does not have to be from alcohol,
9 does not have to be from an illegal substance. The
10 state has to prove the element of the offense that
11 your client, while driving a vehicle -- I'm just
12 summarizing it -- was impaired and then caused great
13 bodily injury or death.

14 So it is crucial to their case that they prove
15 he was impaired. And if he had some other substances
16 in his body that would have affected his ability to
17 drive the vehicle, it is relevant and its probative
18 value is substantially outweighed. I really don't --
19 I'm trying to figure out what the prejudice would be
20 in proving an element of the offense. I guess there
21 is always prejudice in proving an element.

22 MR. WILLIAMS: Lastly, Your Honor, it goes to
23 -- as I understand this witness is going to testify
24 as someone who analyzes blood, meaning he is a
25 toxicologist, that is a different expert than an

1 expert who would testify to the effects that the
2 drugs --

3 THE COURT: And I assume he would not be
4 testifying to that.

5 MR. WILLIAMS: Okay.

6 THE COURT: Unless he is qualified. Now if
7 they qualify him I'm going to let him testify to it
8 and you'll have to make a contemporaneous objection.

9 MR. STUMBO: Just for the record, Your
10 Honor --

11 THE COURT: And I think a toxicologist
12 probably is qualified to say what effects a substance
13 has on a person, and the level of impairment.

14 MR. STUMBO: Your Honor, just for the record
15 we do intend to offer Mr. Landrum as an expert in
16 toxicology, forensic toxicology specifically. And he
17 will testify to the synergistic effects of alcohol in
18 combination with other narcotics in the bloodstream.

19 In other words, if you just have alcohol
20 that's one thing. If you have alcohol in combination
21 with other substances, controlled substances there
22 could be somewhat of a tornado effect with that, that
23 it actually enhances.

24 THE COURT: And I would imagine he would be
25 able to tell you what the thresholds are as a

1 toxicologist. Even though it's not on this report
2 there are standards. There are ranges.

3 MR. WILLIAMS: Lastly my objection deals with
4 I don't feel that the State has laid sufficient
5 foundation, even if this particular witness can
6 identify the blood from the numbers which we have
7 heard from the last SLED witnesses, that there has
8 been insufficient foundation for him to publish any
9 testing that he may or may not have done to the
10 blood.

11 THE COURT: Well I don't know if they're going
12 to offer the report.

13 MR. WILLIAMS: I'm concerned about offering
14 the results.

15 THE COURT: I think they can. I will have to
16 take it up. I have not heard the testimony, I'm not
17 clairvoyant. I don't know what questions they're
18 going to ask, I don't know whether they're going to
19 meet their standard or not.

20 I have to take it up as it comes. I can't
21 rule in the blind on something that has not been
22 offered or presented. You're going to have to make a
23 contemporaneous objection if you feel they have not
24 met their burden of proof as it regards laying the
25 appropriate foundation as to the admissibility of the

1 evidence.

2 MR. STUMBO: Your Honor, if the argument is
3 chain, Mr. Landrum is the end of the chain on that.

4 THE COURT: I don't think that's the argument.

5 MR. STUMBO: I may be mishearing him.

6 THE COURT: I don't know, you haven't offered
7 it yet. So I don't know what the objection is and I
8 don't know what the response is going to be.

9 MR. STUMBO: The witnesses that have already
10 testified in this case --

11 THE COURT: There is no question about the
12 chain. I'm not going to waste your time. Offer your
13 documents, make a contemporaneous objection and I
14 will take it up at the appropriate time.

15 I assume the last witness state will be
16 calling after this witness is the doctor?

17 MR. STUMBO: Your Honor, I couldn't get the
18 doctor here today.

19 THE COURT: I'm not talking about today I'm
20 talking in the morning.

21 MR. STUMBO: Yes, ma'am.

22 THE COURT: Is that your last witness?

23 MR. STUMBO: He will be our last witness.

24 THE COURT: And you only have one witness; is
25 that correct?

1 MR. WILLIAMS: That's correct.

2 THE COURT: So we could finish this case by
3 lunch tomorrow; is that correct? How long will your
4 doctor be?

5 MR. STUMBO: I will have him up there maybe 15
6 minutes.

7 THE COURT: How long do you anticipate Dr.
8 Bynoe?

9 MR. WILLIAMS: I think we can finish by
10 lunchtime.

11 THE COURT: How long do you think your cross
12 of the doctor will be?

13 MR. WILLIAMS: 20 minutes.

14 THE COURT: And then how long do you
15 anticipate your witnesses to be?

16 MR. WILLIAMS: Maybe an hour and a half, hour.

17 THE COURT: I think we can finish this case by
18 lunch. Have the other panel come at 2:00.

19 Is the State ready to proceed?

20 MR. JOHNSON: Ready, Your Honor.

21 THE COURT: Is the defense ready?

22 MR. WILLIAMS: Defense is ready.

23 THE COURT: Please bring in the panel.

24 (Whereupon, the jurors enter the courtroom.)

25 THE COURT: You may be seated. Call your

1 witness, please.

2 MR. JOHNSON: Thank you, Your Honor. State
3 calls Brandon Landrum.

4 MR. BRANDON LANDRUM,

5 after having first been duly sworn to state the
6 truth, the whole truth and nothing but the truth,
7 testified on his oath as follows:

8 THE COURT: You may proceed.

9 MR. JOHNSON: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q Mr. Landrum, where do you work?

13 A SLED also known as the South Carolina Law
14 Enforcement Division.

15 Q What do you do there?

16 A I'm a forensic toxicologist.

17 Q What does that mean?

18 A A forensic toxicologist is basically a person
19 who analyzes blood, urine, biological and
20 non-biological samples for the presence or absence of
21 drugs, poisons, alcohol. And then we also take those
22 results and we provide interpretations for courts of
23 law, for coroners, for officers, for civil trials,
24 things like that, we provide interpretation of what
25 those results mean.

1 Q Do you also as part of your job provide
2 information regarding the effects of poisons or drugs
3 or alcohol on a person?

4 A Yes. Part of our job is to also, as part of
5 our training, to learn how different drugs and
6 alcohol things can affect the body and play a role in
7 the body. And as far as how they would cause someone
8 to act or respond.

9 Q Okay. What type of education have you had to
10 prepare for this job?

11 A I have my B.S. in biology with a minor in
12 chemistry from Winthrop University. I then went on
13 to Charlotte, back to Carolina College of Medical
14 Sciences where I got certified as a medical
15 technologist where you learn clinical chemistry,
16 hematology, pretty much when you go to the doctor and
17 you get blood work drawn, make sure that's sent to
18 the lab to be analyzed. That's what my
19 training involved there.

20 Then upon completion and getting certified,
21 board certified by the American Society of Clinical
22 Pathology as a medical technologist, I worked at
23 Palmetto Richland in their Corp Lab for about a year
24 prior to being hired on at SLED.

25 Once getting hired on at SLED we go through an

1 intensive training program, it's about a year long
2 program where I attended -- or where we have to
3 analyze 1,000 previously run blood-alcohol samples
4 and our results have to be within five percent of
5 what the certified analyst had already reported out.

6 Also upon completion of that we have oral
7 exams, written exams also. I have also attended the
8 -- at Indiana University the driving -- alcohol and
9 driving school at Indiana University.

10 Q Okay. Now tell me about how many areas -- how
11 many areas are you board certified by the American
12 Society of Medical Pathology, how many areas are you
13 certified in?

14 A As a medical technologist I'm certified in the
15 areas of blood bank and microbiology, clinical
16 chemistry which determines your urinalysis, your drug
17 screens. I'm also certified in the hematology which
18 would do your blood count, things like that. And
19 once again clinical chemistry side of it, where we
20 also do once again the drug screens.

21 Q Does that also include things like phlebotomy?

22 A Yes. Phlebotomy is one of the aspect that we
23 also have to get certified in, of actually going out
24 and drawing blood.

25 Q Okay. And how many times have you testified

1 in court?

2 A Right now it's going on it's nine times. It
3 has been three times I believe in general session and
4 the other six times have been in magistrate and
5 municipal courts.

6 Q How many times have you been recognized as an
7 expert by the court?

8 A Nine times.

9 Q Now specifically what types of training have
10 you had regarding the interaction of poisons and
11 drugs on people and how it affects them?

12 A Once again that goes back to the part of it
13 was the in-house training where my supervisor has a
14 Ph.D. in pharmacology. That's part of the program is
15 to learn about the interaction of alcohol and drugs
16 on the body and the human body.

17 Part of it I covered in my medical technology
18 training where we had a toxicology section during the
19 clinical chemistry rotation where we learned about
20 the impairing effects of drugs and things.

21 And from there I have also attending some
22 classes at the drug recognition evaluation school at
23 the police academy in Columbia where they went
24 through and we had studies on actually viewing people
25 on videotape that were under the influence of

1 different drugs and alcohol.

2 And doing -- also watching the field sobriety
3 tests and things like that to actually see how
4 different people at different levels respond. We
5 actually have what they call a wet lab which is
6 basically where you take people and you dose them.

7 You start them off at a zero alcohol level
8 concentration and then you dose them, you do
9 mathematical figuring that goes on, you dose them to
10 a certain levels and then you go through and you
11 watch them do the field sobriety tests, that way you
12 can actually see at these different levels how people
13 respond.

14 Q Okay. Now when you were qualified nine times
15 as an expert in court, did you testify about not just
16 the presence of drugs or alcohol but also their
17 effects?

18 A Yes, I did.

19 Q Every time?

20 A Every time, yes.

21 Q And you said the pharmacology certification,
22 that was something that involved that, correct, in
23 your training as far as the mix of drugs?

24 A Basically, when I mentioned pharmacology
25 that's my supervisor has a Ph.D in pharmacology and

1 he teaches us classes as far as the different effects
2 that drugs have on people as well as reading
3 different studies that have been performed over the
4 years with how people react under different drugs and
5 things like that.

6 MR. JOHNSON: Your Honor, at this time I would
7 offer this witness as an expert as a forensic
8 toxicologist, specifically to testify in the areas of
9 the presence of poisons, drugs and the affects that
10 they have, separately or together, on people.

11 THE COURT: Any objections or questions?

12 MR. WILLIAMS: Yes.

13 THE COURT: I think the area of expertise
14 would be forensic toxicologist. Any questions or
15 objections?

16 MR. WILLIAMS: Yes.

17 VOIR DIRE EXAMINATION

18 BY MR. WILLIAMS:

19 Q I'm sorry, your -- is it Dr. Landrum or Agent
20 Landrum?

21 A You can call me Agent Landrum is fine.

22 Q Agent Landrum, those nine times in which you
23 have been qualified as an expert, you were qualified
24 as an expert in what?

25 A Forensic toxicology.

1 Q And I believe your testimony in regards to the
2 pharmacology, was your boss who was a pharmacologist?

3 A Yes, our supervisor has a Ph.D in
4 pharmacology.

5 Q What is the difference between pharmacology
6 and forensic toxicology?

7 A Forensic toxicology basically takes the
8 presence or absence of drugs and we provide them to
9 the legal aspect. Whereas pharmacology basically is
10 looking just at the clinical -- just looking at the
11 clinical aspect of how the drugs interact and things
12 like that.

13 Forensic toxicology actually takes it a step
14 further and we implement into how it deals with law
15 and courts of law.

16 Q Courts of law?

17 A Well as far as how it might -- if you have to
18 determine impairment, that's where forensic
19 toxicology differs from pharmacology. We actually go
20 and apply it to the legal aspect of someone being
21 impaired or under the influence of a drug.

22 MR. WILLIAMS: I don't have any objection in
23 terms of expert in --

24 THE COURT: No speaking -- so admitted in --

25 MR. WILLIAMS: -- forensic toxicology

1 THE COURT: Forensic toxicology.

2 Thank you, you may proceed.

3 MR. JOHNSON: Thank you, Your Honor.

4 Q (By Mr. Johnson) Mr. Landrum, how many years
5 did you work at SLED?

6 A Four years.

7 Q Okay. Now tell me about the -- did you
8 receive a pouch from the refrigerator on July 31st,
9 2007?

10 A I'd have to see the chain of custody to verify
11 that.

12 Q To refresh your memory?

13 A Yes.

14 Q Fell free to refresh your memory with the
15 certified chain.

16 A I don't have a copy of the chain of custody.

17 Q Mr. Landrum, does that appear to be a copy of
18 the certified chain?

19 A Yes, it is.

20 Q Okay. Now is your memory refreshed?

21 A Yes, it shows that I took custody of the
22 evidence on 7/31 at 13:38.

23 Q Okay. And where did you get it from?

24 A It came out of our -- we have a walk-in
25 refrigerator that we -- that's a secure locked

1 refrigerator, that's where I went and accessed it
2 from my shelf which had, you know, where all my
3 evidence goes so that's where I received it from.

4 Q Okay. Did you have to swipe your badge to get
5 in and get it?

6 A Yes, I did.

7 Q So not everybody can get in there?

8 A No, just the people in our department, in the
9 toxicology department have access to that walk-in
10 refrigerator.

11 Q Was there a description of the pouch on your
12 certified chain?

13 A On the certified chain it says, one sealed
14 heat-sealed pouch containing blood described as
15 labeled William Martin Conrad.

16 Q Okay. And was it sealed when you got it?

17 A Yes, it was.

18 Q And what did you do with it? Where did you
19 take it after you got it?

20 A Basically once I received the package from the
21 refrigerator I take it and I cut into the tamper
22 resistant or heat-sealed pouch. And before I cut
23 into it I have to check it and make sure it hasn't
24 been tampered with, make sure there's no tears, holes
25 or looks like nobody has been trying to tamper with

1 the evidence.

2 So once I have done that I cut into it. I
3 break down the box and I take out the tube or tubes
4 of blood. And then I take -- I look at the name on
5 it and I type in how the tube of blood is labeled
6 into our computer system.

7 Q Okay. Is that what you did with this pouch?

8 A Yes, it is.

9 Q All right. And it was sealed when you got it?

10 A Yes.

11 Q And did -- basically when you picked it up was
12 it submitted to you standard SLED procedure, right?

13 A Yes, it was.

14 MR. WILLIAMS: Objection, leading.

15 THE COURT: Sustained, leading.

16 MR. JOHNSON: Okay.

17 (Whereupon, State's Exhibit No. 39 is marked
18 for identification.)

19 Q (By Mr. Johnson) Now, Mr. Landrum, I'm going
20 to show you what has been marked State's Exhibit No.
21 39 and ask you if you recognize that?

22 A Yes, that's a copy of the report.

23 Q What report?

24 A Of the SLED blood analysis report. Basically
25 my results from doing the analysis on this sample

1 that I received.

2 Q Okay. The one Mr. Martin that you just
3 mentioned?

4 A Yes.

5 MR. WILLIAMS: Objection, leading.

6 THE COURT: Sustained, leading.

7 Q (By Mr. Johnson) Okay. What kind of test
8 did you perform on that sample?

9 A On the sample I performed a blood-alcohol
10 analysis test which basically we look for the
11 presence of alcohol. In this case we would look for
12 the presence of ethanol which is the drinking
13 alcohol.

14 Then also performed a drug screen on it. And
15 then from there I -- to confirm I have two positive
16 results on that.

17 MR. WILLIAMS: Objection, Your Honor, no
18 foundation.

19 THE COURT: Basis?

20 MR. WILLIAMS: For the publication of
21 anything.

22 THE COURT: I don't believe he has done that.
23 He is answering the question.

24 MR. WILLIAMS: Can we approach?

25 THE COURT: Uh-hum, you can approach.

1 (Whereupon, a discussion was held at the bench
2 off the record.)

3 THE COURT: Overruled, you may proceed.

4 MR. JOHNSON: Thank you, Your Honor.

5 Q (By Mr. Johnson) Mr. Landrum, please
6 continue. What type of test did you perform?

7 A I performed, after the alcohol results I
8 performed a drug screen.

9 Q Let's slow down. You said the first test was
10 what?

11 A A blood-alcohol analysis test.

12 Q How do you do that?

13 A Basically we use what is called a head-space
14 gas chromatograph which is the golden standard used
15 amongst the forensic world, for lack of a better
16 word. It's how we identify or look for the presence
17 of the different alcohol.

18 Different alcohol includes methanol;
19 isopropyl, which is your rubbing alcohol; ethanol,
20 which is your drinking alcohol; and diethyl and
21 acetone. So then we look for the presence of the
22 those drugs. And then we -- and it gives us our
23 quantitation or our value of how much alcohol would
24 have been in a person's blood at the time of the
25 test.

1 From there, we do -- from there I did a drug
2 screen analysis on the sample, and I had two positive
3 results. And so from there I went and did a
4 confirmatory test to actually identify what drugs
5 screened positive.

6 Q I want to jump back to alcohol and keep
7 talking about that. Specifically you mention
8 ethanol, you said that's drinking alcohol?

9 A Yes.

10 Q Would that be found in beer?

11 A Yes.

12 Q Okay. Now do you have a test that is specific
13 to ethanol?

14 A Yes. Our gas -- head-space gas chromatograph
15 is our instrument that we use to test for the
16 different alcohols. And it's specific for each one
17 of those alcohols that can differentiate between
18 isopropyl, ethanol, methanol, it differentiates
19 between each one of those. And we also are able to
20 quantitate how much ethanol was in that sample. And
21 in this case we had 0.167 percent weight to volume
22 ethanol level.

23 Q Okay. Well, how does alcohol affect an
24 individual?

25 A Ethanol was a central nervous system

1 depressant. So basically what it does is as you get
2 -- what the central nervous system basically is as
3 you get in the higher levels as low as a .05 you can
4 start seeing --

5 MR. WILLIAMS: Object to his qualifications.

6 THE COURT: Overruled. You may proceed.

7 A As far as a level at .05 you can start to see
8 euphoria, people to start to feel good, start lose
9 some of their inhibitions.

10 Once you get a little bit higher to the .1 to
11 0.1 percent weight to volume, then that's when you
12 start seeing your increased -- increased reaction
13 time. Basically it's going to take you longer to
14 perceive something and then be able to react to it.

15 One of the other things you start seeing at a
16 .1 is your -- you can start having some double
17 vision. Once you get to .15, a little bit higher,
18 you start seeing not only those things, but those
19 things just increase. You can start seeing slurred
20 speech, you can start seeing people with stumbling
21 around.

22 At .2 to .25 is when you start people going
23 into the comas. At .3 possibly see people start to
24 die with those high enough levels.

25 Q So does it affect reaction time?

1 A Yes. Ethanol is going cause you to have a
2 delayed reaction time. It's also going to cause you
3 to have, with your divided attention tasks, you're
4 not going to -- it's going to inhibit your divided
5 attention task.

6 What I mean by that is if you're driving in
7 your car not only are you driving down the road, you
8 have to stay within the lines, you have to keep a
9 constant speed, and you also have to look for traffic
10 on both sides of you. Just pretty much watch the
11 rearview mirror.

12 So you're having to do more than just sit in
13 the seat and drive. So you are doing lots of
14 different things at one time. So it delays that.

15 Also, like I said, you start seeing some
16 drowsiness at higher levels also.

17 Q Does it affect hand-eye coordination?

18 A Yes. Those are one of the other things that
19 is actually start to see around the .1 level as you
20 are going to start having trouble just doing the
21 different -- one of the tests that you see is the --
22 that I observed with the field sobriety test is at
23 a .1 they ask the person to take their fingers and
24 touch their nose and they had trouble. Take one
25 finger and touching the nose without it hitting to

1 the left or to the right, that's going to be one of
2 the central nervous system affects that you have as a
3 result of the ethanol.

4 Q Okay. Does it affect judgment?

5 A Yes. It's going to impair your judgment.
6 Basically what ethanol does is it decreases your
7 inhibitions. Basically what your inhibitions are,
8 stuff that you normally might not do, it's going to
9 sort of alleviate that. That's why you hear some
10 people call it liquid courage, you do stuff that you
11 normally would not do.

12 Some of the other things that you might see is
13 that you might take risks that you normally would not
14 take just because ethanol will depress the brain's
15 ability to function.

16 Q All right. Now what will affect the level of
17 ethanol in a person's body. What are some of the
18 factors that affect that level, that reading?

19 A I'm not understanding your question.

20 Q What about the person or anything else could
21 affect your reading, other than simply the amount
22 consumed?

23 A The amount -- another thing that could affect
24 is the amount of time that you've been drinking. If
25 you drink, if you take a beer and you drink it real

1 quick and under 60 seconds then you could have a
2 higher alcohol level compared to if you -- you can
3 have a higher peak, means your peak will be at a
4 higher concentration then if you were to drink that
5 one beer over time due to the elimination.

6 We have a metabolism. Once you drink a beer
7 it goes into the body, you start to absorb it, and
8 then you metabolize it and then you start to
9 eliminate it. So once you -- if you drink that beer
10 real quick then it's going to get through the body
11 system a little bit quicker, it might actually start
12 metabolizing quicker and start to eliminate quicker.
13 So you could actually have a higher peak level.

14 But you also, what you see is once you start
15 getting to the elimination phase is where you can
16 actually -- well, on the absorption phase is what
17 they call the melody affect. As you start to absorb,
18 when you are on the upside of the curve, because
19 basically when you absorb -- when you are drinking
20 alcohol, as your alcohol level climbs, that's when
21 you start to have more pronounced affects of the
22 alcohol compared to on the elimination side. You
23 still have those affects but it's not as pronounced.

24 Q Okay. Now you said earlier .1 affected the
25 tests that you saw. In your opinion does that cause

1 impairment?

2 A Yes. From the consequence again if your
3 hand-eye coordination then pretty much you have to be
4 able to keep a car between the lines is one of the
5 things that you have to do while driving.

6 Q Okay. Now what was the reading from the
7 sample you tested labeled Mr. Martin's name?

8 A 0.167 percent weight per volume.

9 Q How much more is that?

10 A That's .067 (sic) is more than a point.

11 Q And you talked about elimination. If -- how
12 fast does the body, if you stop drinking, how fast
13 does the body eliminate ethanol per hour?

14 MR. WILLIAMS: Objection, again expertise.

15 THE COURT: Overruled.

16 A If you have a person -- elimination, to figure
17 out how much someone can eliminate alcohol on a
18 specific time period, it's sort of tricky. But the
19 thing you have to take into consideration is that the
20 person has to be on an empty stomach, and that they
21 would have had to stop drinking at least an hour
22 prior to the time that the sample was collected.
23 Just because it usually takes anywhere between 30
24 minutes to an hour for the body to fully get into the
25 elimination phase.

1 But once it starts in the elimination phase
2 then the average person eliminates 0.015 percent
3 alcohol per hour. You can have the range actually
4 goes from 0.01 to 0.02. But the majority of people
5 actually eliminate at 0.015 percent alcohol per hour
6 assuming that they don't have any food in their
7 stomach and they stopped drinking at least an hour
8 prior to the sample being drawn.

9 Q (By Mr. Johnson) What if the person hadn't
10 had any alcohol for four hours? What does the body
11 do after four hours?

12 A After four hours the body would be -- assuming
13 that there is no food on board, then the body would
14 definitely be in the elimination phase.

15 Q What if there was some food? You are talking
16 about in the stomach?

17 A Yes.

18 Q Okay, what if there was some food in the
19 stomach, would the body still be eliminating?

20 A The body would still be elimination. Might
21 not be eliminating as fast, but it would still be in
22 the elimination phase.

23 Q Now you testified that the sample tested at
24 .167. If it's .167, and what if that four hours had
25 passed up until the point the blood was drawn for the

1 sample you tested, if there was no drinking for that
2 four hours, the actual blood-weight, ethanol-weight
3 in that sample from Mr. Martin, the person labeled on
4 your sample, could that actually be much higher than
5 the .167?

6 A If you collected a sample four hours after the
7 -- I guess the time of the incident is what you are
8 saying?

9 Q The point where there was no more drinking.

10 MR. WILLIAMS: Objection, leading.

11 THE COURT: Sustained, leading.

12 Q (By Mr. Johnson) Go ahead and answer.

13 A Pretty much four hours, if you analyze the
14 sample four hours after the last time any alcohol was
15 consumed, that person would be in elimination.
16 Therefore their blood-alcohol level prior to that
17 would have been higher to the time the blood was
18 drawn.

19 Q All right. So Mr. Martin's sample that you
20 test, based on your experience and your training,
21 that .167 four hours before it was drawn, that could
22 have been higher than that --

23 MR. WILLIAMS: Objection, leading.

24 THE COURT: Sustained leading.

25 MR. JOHNSON: All right.

1 Q (By Mr. Johnson) Tell me about the drug
2 screen you mentioned?

3 A The drug screen is, what we do for our drug
4 screens is we look for benzodiazepines, cannabinoid,
5 amphetamine, methamphetamine, oxycodone, cocaine and
6 opiates are the panel that we look for the drugs in
7 our drug screens.

8 In this case we actually had a positive
9 benzodiazepine and a positive cannabinoid screen.
10 What cannabinoids are is cannabinoids are the
11 components of marijuana.

12 Q Okay, what was your reading on that?

13 A Basically when we do a drug screen we don't
14 stop at just the drug screen. So benzodiazepine is a
15 class of drugs. And there are several different
16 types of drugs that fall within that class such as
17 xanax, valium, diazepam, those are some of the drugs
18 that fall in that class.

19 And what we do is we actually take it another
20 step further and we do a confirmatory test. And what
21 that does is we actually look for which drug in that
22 class is actually causing our screen to be positive.
23 And then in this case alprazolam was the drug in the
24 benzodiazepine class that caused our screen to be
25 positive.

1 Q Okay, let me get back to amounts. Can you
2 tell me, you said marijuana you gave this long name,
3 I'm just going to say is it commonly referred to as
4 THC?

5 A THC is the active component of marijuana, yes.

6 Q Now do you have an amount that you found as a
7 result of your testing?

8 A In -- as a result of this test I found 1.6
9 micrograms per liter of marijuana in this sample.

10 Q Okay, was there another reading?

11 A And there was 9.8 micrograms per liter of 11
12 carboxy tetrahydrocannabinol. What's 11 carboxy
13 tetrahydrocannabinol is basically just a metabolite
14 of the THC.

15 When the body takes in the, I guess marijuana
16 into the blood, the body then starts to metabolize
17 it. So the carboxy THC is basically a metabolite of
18 the parent THC.

19 Q And does the report that I handed you, is that
20 your report created from these tests?

21 A Yes, it is.

22 Q Is it a fair and accurate representation of
23 the results of your tests?

24 A Yes, it is.

25 MR. JOHNSON: Your Honor, at this time I'd

1 move State's Exhibit 39 into evidence.

2 THE COURT: Any objection?

3 MR. WILLIAMS: Yes, Your Honor, hearsay.

4 THE COURT: His report, it's hearsay?

5 MR. WILLIAMS: (Affirmative head shake.)

6 THE COURT: Marked for ID at this moment until
7 I can hear argument. It will be marked for ID only
8 and take it under advisement.

9 MR. JOHNSON: Yes, ma'am.

10 Q (By Mr. Johnson) Mr. Landrum, let me ask you.
11 Now you had a measurement on the, what you call it,
12 alprazolam?

13 A Yes, sir.

14 Q Okay. Did you say that the common name is
15 xanax?

16 A Yes, sir.

17 Q What was -- do you have an amount for that?

18 A 0.03 milligrams per liter.

19 Q All right. What effect -- I'm just sort of
20 jumping back between the two results. We started out
21 with what you referred to THC. What effect does that
22 have on a person?

23 A THC, one of the effects that you see from THC,
24 is basically you are going to have a delayed -- or
25 your perception of time is going to be delayed. It's

1 going to slow down your perception of time.

2 One of the other expected, causes drowsiness.

3 Cause you to be -- it's an appetite -- it causes you
4 to I guess want to eat is one of the other effects
5 from it.

6 With driving it's going to cause your delayed
7 reaction time is going to be one of the main effects
8 that you are going see from marijuana use.

9 Q Does it affect judgment?

10 A Yes, that's one of the other.

11 Q And hand-eye coordination?

12 A It could affect some of your hand-eye
13 coordination.

14 Q Reaction time?

15 A Yes. That's when I said it's going to cause
16 your delayed reaction time.

17 Q What about xanax, what does that do to you?

18 A Xanax is also a central nervous system
19 depressant. It acts just like alcohol. For someone
20 whose on a benzodiazepine for an extended period of
21 time, you might not see, after they have been on it
22 for some years, you might not see any affect.

23 But when you put that in combination with
24 alcohol, then you are definitely going to see some
25 apparent affects. Actually could have some

1 synergistic effects basically meaning that instead of
2 one plus one equals two, one plus one can now equal
3 ten as far as your impairment affects.

4 Q You mentioned synergistic, what about the
5 combination? What if you have, as your report
6 reflects, all three; ethanal, THC, xanax and taken at
7 the same time? Can that have an effect, having all
8 three in your system at the same time?

9 A Yes. Seeing the 1.6 tetrahydrocannabinol,
10 that's actually the active component of marijuana.
11 So that's the part of the marijuana that's actually
12 going to be affecting your brain and your function
13 and things like that.

14 And then in combination with the alcohol,
15 marijuana and alcohol is an additive effect where one
16 plus one equals two. So you're going to have your
17 delayed reaction time is be going to be increased.

18 So then when you put a benzodiazepine, in this
19 case alprazolam on top on that, you're going to have
20 this synergistic affect where it's going to actually
21 cause you to have even more delayed reaction time.
22 Your divided attention tasks are going to be
23 diminished. And so those are pretty much your
24 affects that you would have from these drugs.

25 Q All right. And have you had in your training

1 any information or any source that you've studied
2 regarding ethanol that would indicate impairment in
3 levels as low as .05?

4 A Yes. Part of that goes back to when I went to
5 Indiana University to the alcohol and diving school,
6 Dr. Brookstein's school, we actually went over the
7 impairing effects of alcohol as low as .05.

8 Q All right. All right, Mr. Landrum, let me ask
9 you a question. Again about the ethanol, in order to
10 have an accurate reading as you've testified about in
11 your reading of the ethanol, do you have to have the
12 sample, blood sample refrigerated?

13 A For us we keep our samples refrigerated in our
14 refrigerators at four degrees plus or minus two
15 degrees. There has been studies, we actually had a
16 study performed back in 1997 where they actually
17 tried to -- from having some I guess some issues in
18 the past, they actually took some gray-top tubes
19 which have an anticoagulant and antimicrobial,
20 antimicrobial basically make sure there are no
21 bacteria going to be present in the blood tube, it
22 keeps any bacteria from growing in the tubes.

23 They took a gray-top tube and a red-top tube.
24 The red-top tube has no -- it's just a sterile tube,
25 it has no anticoagulants or no antimicrobials in it.

1 They took those samples and they actually had them
2 sitting out, they inject them with brewers yeast,
3 which is used to make alcohol in beers.

4 They actually put that into the samples that
5 had no alcohol level and they actually tried to
6 produce alcohol. They kept them in refrigerated
7 conditions, they kept some samples out on
8 countertops, just a regular everyday temperature, and
9 they actually tried to incubate a couple of samples
10 to try to produce ethanol in these tubes.

11 And from the conclusions of their report and
12 their study was that there was minimum alcohol
13 produced in the red-top tube which had no
14 antimicrobial, there was less than .01 percent
15 alcohol level. And then the gray-top tube there was
16 no production of alcohol.

17 So that study showed that any sample that's
18 not refrigerated would not, if it's kept in a sterile
19 tube or has antimicrobial in it, then the production
20 of ethanol is minimal and should not really have been
21 any significance.

22 Q But you said it could just be a sterile tube,
23 right?

24 A Yes.

25 Q Doesn't need the -- what did you say, anti --

1 MR. WILLIAMS: Objection, leading.

2 THE COURT: Sustained, leading.

3 MR. JOHNSON: Okay.

4 Q (By Mr. Johnson) At the level you found,
5 .167, what is your opinion as to a person's ability
6 to operate a motor vehicle?

7 A With someone with a 0.167 ethanol level by
8 themselves, that person would be under the influence
9 of ethanol and would be impaired to drive.

10 with the combination of these
11 tetrahydrocannabinol, the THC, along with the
12 alprazolam or the xanax, along with those in
13 combination they would definitely be under the
14 influence and would not be able to safely operate a
15 motor vehicle.

16 Q What if four hours had passed and at the time
17 the person was operating the vehicle that ethanol was
18 even higher?

19 A Then by no means they would definitely

20 MR. WILLIAMS: Object to the form of the
21 question.

22 THE COURT: Sustained. Well, he can do it in
23 the form of a hypothetical which is basically what he
24 did. Overruled, witness is an expert.

25 A Basically someone that would have -- a .167 is

1 a high enough level that would already be unsafe to
2 operate a vehicle. Any higher than that you
3 definitely would not be able to operate a motor
4 vehicle safely.

5 As your levels get higher, your -- the
6 different effects that the drug has on the body
7 doesn't diminish it just increases as the levels get
8 higher.

9 Q So what is your opinion about the defendant
10 and his ability to operate a vehicle on July 29th --

11 MR. WILLIAMS: Objection, asked and answered.

12 THE COURT: Sustained, move on.

13 MR. JOHNSON: Your Honor. At this time I
14 would just move the original report Mr. Landrum
15 testified --

16 THE COURT: I've already had that marked for
17 ID and I have taken that under advisement, haven't I.

18 MR. JOHNSON: Okay.

19 Q (By Mr. Johnson) Mr. Landrum, what did you do
20 after the tests? What did you do with the sample?

21 A Once I finished doing my analysis for the
22 sample and wrote up my report, the evidence was then
23 put into what we call our hold bin where we hold our
24 samples for 180 days, six months. Basically if there
25 is any further testing that is determined that needs

1 to be done then we hold it for six months.

2 After the six months it is taken out of the
3 hold bin and destroyed in our biohazard trash.

4 Q Okay. That's what you did?

5 A Yes.

6 Q Okay. All the movements of the sample from
7 where you picked it up and dropped it off, were those
8 tracked with a number?

9 A Yes, the lab number for this case is L0710937.

10 Q All right.

11 MR. JOHNSON: Your Honor, I don't have any
12 more questions.

13 THE COURT: Does anyone need to go to the
14 restroom? Everybody okay?

15 I appreciate you all being so patient. I
16 wanted to finish the examination of this witness. I
17 anticipate that we will finish the case by tomorrow
18 before lunch. So I just wanted to let you all know
19 that.

20 You may proceed in cross-examination, Mr.
21 Williams.

22 MR. WILLIAMS: Thank you.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q Agent Landrum, from your testimony in regards

1 to the effects of alcohol, drugs, would the nurse who
2 draws the blood that you are analyzing be in a
3 position to testify as to the effects of what you've
4 testified to just as anybody else?

5 would you expect her to see some effects from
6 the person she was drawing the blood from?

7 A It's possible that you could see some of these
8 effects from somebody, that is assuming that they are
9 not an experienced user. Sometimes experienced users
10 are able to actually mask some of the effects
11 outwardly.

12 But the effects are still taking place within
13 the brain or with inside the mind.

14 Q But what we are talking about when we talk
15 about effects is we are talking about outward effects
16 that we would show other people, aren't we, we are
17 not talking about inward effects, are we?

18 A No, sir. What I mean by this is you have what
19 you call -- with experienced drinkers versus naive or
20 new drinkers is what you have learned behavior.

21 Basically you can get someone at 0.1.
22 Experienced drinkers, like I said, some things that
23 you might see is the slurred speech. Well, or
24 someone might sway a little bit at a little bit
25 higher levels.

1 Experienced drinker, instead of swaying they
2 might lean up against the bar just to keep from
3 swaying or they might talk a little bit slower. With
4 a naive drinker, someone that's new at drinking, they
5 don't have those learned behaviors built up yet. So
6 they might be slurring their speech, they might be
7 falling down. That's the outward effects.

8 Inwardly is where you have your reaction time,
9 that's not outwardly, it's the ability for the mind
10 -- what the central nervous system depressant what
11 happens is your mind's ability to process information
12 is slowed down and that's an inward thing not an
13 outward.

14 Q The person that draws the blood, if she is
15 drawing the blood from the same blood that you are
16 looking at, would you expect her to see some sort of
17 overt evidence of intoxication?

18 A It is possible. Like I said sometimes you
19 have those learned behaviors that you can't quite see
20 outwardly with experienced drinkers.

21 Q Would that lead you to one of two conclusions,
22 meaning either the person can control their alcohol
23 to such a great extent that they're showing no overt
24 actions, or the testing results are wrong. Isn't
25 that what that would show you?

1 A No, sir.

2 Q Well, let me ask you this then. When we were
3 talking about what you have done in terms of your --
4 this blood that you analyzed, did you know anything
5 at all about the person you were analyzing the blood
6 on?

7 A No, sir, I did not.

8 Q Did you know whether or not they had a good
9 liver or a bad liver?

10 A No, sir, I did not.

11 Q Did you know whether or not the blood was kept
12 in a refrigerated area or not?

13 A No, sir, I did not.

14 Q Did you know how big the person was?

15 A No, sir.

16 Q Did you know how tall or how fat the person

17 was?

18 A No, sir.

19 Q Did you know the sex of the person involved?

20 A No, sir.

21 Q Did you know the age of the person involved?

22 A No, sir.

23 Q And aren't those all differing factors in
24 regards to how alcohol affects a person?

25 A No, sir.

1 Q They're not?

2 A No, sir.

3 Q So you are saying that a person with the same
4 level shows the same results regardless if it's male
5 or female?

6 A Yes. Basically a person -- with the exception
7 of experienced versus naive drinker, a person with --
8 take a two 200-pound male with a .1 blood-alcohol
9 level, and then you take 100-pound male with a .1
10 blood alcohol level. They're still going to have the
11 same impairments at those levels, the difference is
12 how much that person had to drink to get to that
13 level.

14 The 200-pound man would have had to drink more
15 beers or whatever he was drinking to get to that
16 level compared to the 100-pound man just because
17 there is less body mass for the alcohol to distribute
18 into the blood to get to that level.

19 So basically they're going to have the same
20 impairing effects at a .1, the thing is how many
21 beers did it take to get to that point?

22 Q Are you saying that they would exhibit the
23 same behavior?

24 A With the exception -- if they're both naive or
25 new drinkers, they would have the same experience.

1 Q What if they weren't both naive or new users?

2 A If they were both experienced drinkers then it
3 just depends on who has the most experience drinking.

4 Q So basically what you are testifying to is
5 whatever tube that you examined it was your
6 determination that there were alcohol levels in this
7 amount?

8 A Yes.

9 Q And that in a clinical position it should
10 affect someone and their ability to think and
11 operate?

12 A Yes.

13 Q Without considering who the person was,
14 correct?

15 A Correct.

16 Q Which without considering the quality of the
17 sample that you were analyzing?

18 A What do you mean by that?

19 Q How much blood did you analyze?

20 A For what we do is to analyze our sample we
21 take 200 microliters of the sample and that's how
22 much we use per vial to test it on our instrument.
23 Our instrument uses 200 microliters.

24 Q How much is 200 millimeters of blood?

25 A About 20 drops.

1 Q 20 drops of blood?

2 A Yes, sir.

3 Q So you take a small portion out of the tube,
4 correct?

5 A Correct.

6 Q Then you analyze 20 drops of it?

7 A Correct.

8 Q Now in your analysis -- is it also your
9 testimony that it doesn't matter in regards to what
10 the physical condition of the person involved is, in
11 regards to their outward appearance?

12 A As far as the impairment affect at that level?

13 Q Liver conditions?

14 A Well the liver condition is not going to have
15 an affect on how someone is impaired at that
16 condition. It might have an affect on how they
17 metabolize the drug or the alcohol. But it's not
18 going to have an affect on the actual impairing
19 effects of alcohol at that level.

20 Q It would not have an effect in regards to what
21 the readings are?

22 A It could if someone has a problem with
23 metabolizing alcohol then it could cause the levels
24 -- instead of the body being able to metabolize and
25 get rid of it faster, it might cause the levels to be

1 not to be metabolized as much or as quickly.

2 Basically if you have -- if you have .1, have
3 a BA of .1 in the blood and then your liver is not
4 functioning properly where you are not able to break
5 it down as quickly to get rid of it, then it might
6 still be -- and that's why I gave the range of a .01
7 to a .02 as to the elimination rate for how fast
8 someone's body gets rid of alcohol out of the body.

9 If they have liver problems then they might
10 consider getting rid of .02 alcohol per hour, they
11 might only get rid of .01 per hour. So it's taking
12 them longer to get rid of the alcohol, but that level
13 of alcohol is still going to be affecting their brain
14 and causing that central nervous system depressant so
15 you're still going to have those same affect.

16 It's not so much as far as, well the body is
17 not getting rid of it quicker, therefore they're not
18 going to be impaired the same amount.

19 Q What about diabetes?

20 A As far as?

21 Q In regards to your readings that you show in
22 your blood, would that reflect any changes in which
23 you are reading would be alcohol?

24 A No, sir.

25 Q All right. Are you able to testify under oath

1 as to when was the last time that whoever had this
2 blood reading would have had anything alcoholic to
3 drink?

4 A No.

5 Q Are you able to testify whoever had this blood
6 sample had last taken a xanax pill?

7 A Had last taken a xanax pill? No.

8 Q Are you able to testify from the blood samples
9 that you analyzed when was the last time that that
10 person had had any marijuana to smoke?

11 A I could give an estimation just because of the
12 way THC, the way it metabolizes it has a half-life of
13 pretty much 20 to 30 minutes. So it has a very fast
14 half-life, therefore you get rid of parent THC fairly
15 quickly.

16 So in this, with this level someone would have
17 had to smoke it within at least six hours prior to
18 the sample; six to eight hours prior to this testing
19 drawn.

20 Q Are you able to tell on your analysis as to
21 whether or not that marijuana was acquired through
22 secondhand smoke or from primary smoke?

23 A It is -- to get marijuana through secondary or
24 second-hand smoke, and for us to actually -- for it
25 to screen positive for us to analyze it, it's very

1 unlikely. And for us to actually -- for you to get
2 marijuana in your system from second-hand smoke,
3 you'd have to be shut up in a car for hours and hours
4 and hours and probably days on end to actually see
5 any amount of marijuana in someone's system.

6 And then even at that you would not see the
7 parent THC, you would see the metabolite, the carboxy
8 THC is what you would see in someone's blood or urine
9 from second-hand smoke and not the parent.

10 Q And what is the first thing that you would
11 detect about a person who was smoking marijuana when
12 you draw this conclusion that the person has had
13 marijuana.

14 Q What do you mean by that?

15 A Would it be how they react, or would it be a
16 smell about their person?

17 A Talking about what it be -- would I smell?

18 Q Would you smell it on them?

19 A It's possible that you could smell marijuana
20 on someone that has been smoking marijuana.

21 Q Have you ever been around people who smoke
22 marijuana?

23 A Back in the days I have, yes.

24 Q And how long would that smell linger on the
25 person?

1 A Well usually when I was around them they just
2 finished smoking. Usually when I went back with them
3 later on that day they weren't smell like marijuana.

4 Q How many hours are you talking about?

5 A Might be 10, 12 hours depending on what we
6 were doing that day.

7 Q Do you think a police officer would be alert
8 enough to notice the smell of marijuana about someone
9 he stopped?

10 A It's possible.

11 Q Probable?

12 A It's possible.

13 Q Do you think they would be noted on an HGN
14 test?

15 A It's possible.

16 Q So if the officer did not know --

17 A With the HGN test?

18 Q Yes.

19 A I'm not an expert expert in the HGN test, but
20 from what I do remember I don't believe the HGN test
21 picks up marijuana use. I believe that's
22 specifically for central nervous system -- for
23 ethanol mainly and then central nervous system
24 depressant.

25 But I don't believe the HGN test is used for

1 the detection of marijuana use.

2 Q In your studies at SLED you're not aware there
3 are actually two ways in which you can perform an HGN
4 test, one vertical and one horizontal?

5 A Yes, there is.

6 Q Are you aware they measure two different
7 things?

8 A Yes.

9 Q Where are the two different things they
10 measure?

11 A The horizontal I know measures the nystagmus.
12 But once again it has been a while since I have
13 actually done an HGN test or actually gone through
14 that training so I'm not an expert on the field of
15 HGN testing.

16 Q So it would be your testimony that one of the
17 measurements is not to measure drugs, but the other
18 is to measure alcohol.

19 MR. JOHNSON: Objection, Your Honor, he has
20 already testified he is not qualified.

21 THE COURT: Sustained, outside the area of his
22 expertise and asked and answered. Move along.

23 Q (By Mr. Williams) Based on what you've
24 testified to, whoever had this blood sample, then the
25 persons who either drew the blood should be able to

1 notice that the person had been drinking, shouldn't
2 they?

3 MR. JOHNSON: Objection, Your Honor, he didn't
4 say that.

5 THE COURT: Sustained. Asked and answered.
6 In addition, be very careful with pitting. Rephrase.

7 Q (By Mr. Williams) You have no knowledge about
8 the defendant involved in this case, do you?

9 A I don't know, I do not know the defendant, no,
10 I don't.

11 Q Your testimony has been solely related to
12 whatever chemical work that you've done on whatever
13 blood sample that you have received?

14 A The analysis was done on the blood work. And
15 then as far as comparing the effects that's based off
16 of going through training classes and studies based
17 off alcohol levels and drug levels.

18 Q The literature, if you will?

19 A Not just literature but also studies, like I
20 said the actual wet-lab that I participated in where
21 they actual dose people at different levels.

22 MR. WILLIAMS: I have no other question, Your
23 Honor.

24 THE COURT: Any redirect?

25 MR. JOHNSON: Briefly, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. JOHNSON:

3 Q Mr. Landrum, if a person has -- let me just
4 get this straight. If a person has a liver problem
5 you said it affects the elimination rate. But that
6 doesn't change the affects of the amount of ethanol,
7 that the amount of ethanol would have on their -- on
8 them as far as impairment, correct?

9 MR. WILLIAMS: Objection, leading.

10 THE COURT: Sustained, leading.

11 Q (By Mr. Johnson) Would that affect the
12 impairment?

13 A No. Basically what that might do is eliminate
14 how fast someone is able to get rid of that ethanol
15 out of the body. If they have a damaged liver than
16 it would possibly slow down the elimination rates,
17 it's going to take longer for them to get it out of
18 the body, get rid of it out of the body.

19 But at those level, it's still going to impair
20 that person in the body until those levels are out of
21 the body, Until the alcohol out of the body.

22 Q What is the legal limit South Carolina?

23 MR. WILLIAMS: Objection to that, Your Honor.

24 THE COURT: Basis?

25 MR. WILLIAMS: That's the Court's purview.

1 THE COURT: That's a matter of statute, isn't
2 it? Please approach.

3 (Whereupon, a discussion was held at the bench
4 off the record.)

5 THE COURT: Sustained outside the scope of
6 cross.

7 Q (By Mr. Johnson) Is it possible to eat
8 marijuana and get that reading?

9 A To eat marijuana and get that reading?

10 Q If you ate it in a brownie, can you get THC in
11 your system?

12 A Yes.

13 Q Is it possible to eliminate the odor of
14 marijuana on a person by changing their clothes or
15 masking it in some way?

16 A Yes. If you change clothes, if you spray
17 deodorant, I know people spray air freshener. It's
18 possible to mask the smell of marijuana.

19 MR. JOHNSON: No more questions, Your Honor.

20 THE COURT: Any objection to the witness being
21 excused from the state?

22 MR. JOHNSON: None from the state.

23 THE COURT: From the defense?

24 MR. WILLIAMS: None from the defense, Your
25 Honor.

1 THE COURT: Sir, you are excused.

2 Madam Forelady, ladies and gentlemen, we are
3 going to take advantage of this break in testimony to
4 take our evening recess. Again we appreciate your
5 patience in allowing us to complete that witness.

6 I anticipate, based on my preliminary
7 scheduling with the attorneys that we should finish
8 this case, that includes closing arguments and the
9 Court's instruction by lunch tomorrow. Which means
10 that I anticipate somewhere around the luncheon hour
11 that you will begin your deliberations in this case.

12 I have arranged to have lunch brought into you
13 on tomorrow. So when you arrive there will be a
14 sheet for you to order your lunch that the clerk's
15 office will provide to you. I ask that you fill that
16 out so that that will give me some flexibility in
17 terms of scheduling.

18 Have a wonderful evening. Please don't allow
19 yourselves to be exposed to any media coverage, and
20 again please don't have any contact with anyone in or
21 about the courthouse. Please leave your notepads in
22 your seats and return directly to your jury room in
23 the morning at 9:30. Have a wonderful evening.

24 And if any you need to be escorted to your car,
25 please let Dee know so that we can have a deputy take

1 you because I know it's getting darker earlier.

2 (Whereupon, the jurors exit the courtroom.).

3 THE COURT: All right. Anything else we need
4 to do before we break for the evening?

5 MR. STUMBO: Nothing from the state, Your
6 Honor.

7 THE COURT: Anything further from the defense
8 before we break for the evening?

9 MR. WILLIAMS: Nothing from the defense.

10 THE COURT: As I understand it you have your
11 client who you anticipate will testify?

12 MR. WILLIAMS: Yes, Your Honor.

13 THE COURT: What record, if any, would the
14 state be seeking to introduce against the defendant
15 to impeach his credibility?

16 MR. STUMBO: Your Honor, he has two prior
17 DUI's.

18 THE COURT: What year are they?

19 MR. STUMBO: 1986, 1991.

20 THE COURT: Is one of them in Magistrate's
21 Court?

22 MR. STUMBO: They appear to be both Magistrate
23 Court.

24 THE COURT: So neither of those would be
25 admissible then, correct?

1 MR. STUMBO: Correct. One was Batesburg,
2 which would be a municipal court. The other one was
3 in Georgia.

4 Then there are three other misdemeanors from
5 '96 for shoplifting. 1996 set of conviction that
6 were shoplifting, open container and public
7 disorderly.

8 THE COURT: Public disorderly would not be
9 admissible, neither would the open container.
10 Shoplifting is over 10 years old, but I think -- let
11 me make sure that I'm accurate.

12 You all would not be seeking to admit
13 shoplifting; is that correct?

14 MR. STUMBO: Your Honor, I had not obtained
15 certified convictions of any of those. All I have is
16 his rap sheet. I don't know that they're not -- I
17 would agree with Your Honor on that.

18 THE COURT: So the conviction is more than 10
19 years old, correct?

20 MR. STUMBO: Yes, ma'am.

21 THE COURT: Okay.

22 MR. STUMBO: Now obviously we would reserve
23 the right, of Mr. Williams opens the door on direct,
24 to anything involving any prior activity, prior
25 arrests. I'm sure he would not do that, Your Honor.

1 THE COURT: We have to cross that bridge when
2 we come to it. We'll have to see. I'll have to
3 weigh the probative value and all that other stuff.

4 Have a good evening.

5 (Whereupon, an evening recess was taken.)

6 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of
all the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal,
in the Circuit Court for Lexington County, South
Carolina, in the session starting December 1, 2008.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS
2007-GS-32-1374

3 STATE OF SOUTH CAROLINA)

4 Plaintiff)

5 V.)

6 WILLIAM CONRAD MARTIN,)

7 Defendant.)
8

TRANSCRIPT OF RECORD

9 DECEMBER 3, 2008

10 CHARLESTON, SOUTH CAROLINA
11 VOLUME 3

12
13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15

16
17
18 A P P E A R A N C E S:

19 MR. DAVID STUMBO, Assistant Solicitor
20 MR. OLA JOHNSON, Assistant Solicitor
REPRESENTING THE STATE

21 MR. ROBERT T. WILLIAMS, ESQUIRE
22 REPRESENTING THE DEFENDANT
23

24 ANNE BOULEY MEYER, RPR
25 CIRCUIT COURT REPORTER

1 MR. STUMBO: We are ready to proceed, Your
2 Honor.

3 THE COURT: Please bring in the panel. This
4 will be your last witness correct, Mr. Stumbo?

5 MR. STUMBO: That's correct, Your Honor
6 (Whereupon, the jurors enter the courtroom.)

7 THE COURT: You may be seated. Good morning
8 ladies and gentlemen, I hope you had a restful
9 evening. We will now proceed with the trial. Mr.
10 Stumbo, you may call your witness.

11 MR. STUMBO: Thank you, Your Honor. State
12 call Dr. Raymond Bynoe to the stand.

13 DR. RAYMOND PAUL BYNOE,
14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on his oath as follows:

17 THE COURT: You may proceed.

18 DIRECT EXAMINATION

19 BY MR. STUMBO:

20 Q Good morning, Dr. Bynoe. Thank you for being
21 here. If you could just give the jury a brief
22 overview of your education background?

23 A I went to undergraduate school in Lincoln
24 University in Lincoln University, Pennsylvania. From
25 there I went to the Medical University in South

1 Carolina for medical school.

2 Came up to Columbia and did my surgery
3 training for five years at Palmetto Health Richland
4 University of South Carolina in a joint program.
5 From there I stayed on as an attending for two years.
6 Subsequently left and went to the University of
7 Tennessee in Memphis and trained at the Elvis Presley
8 Trauma Center for two years and did trauma and
9 critical care.

10 And subsequently I have been back in Columbia
11 for the past 21 years working with the surgery/trauma
12 program. For the last 14 years I've been the
13 director of the trauma service at Palmetto Health
14 Richland.

15 Q Your licensed obviously to practice medicine
16 here in South Carolina?

17 A Correct.

18 Q How long have you been licensed in South
19 Carolina?

20 A Since 1980.

21 Q Okay. And are you board certified?

22 A Board certified, yes, sir.

23 Q And, Dr. Bynoe, how many times have you been
24 qualified as an expert in the courts of this state?

25 A Probably in excess of a hundred times.

1 Q That's an expert in the field of trauma
2 surgery?

3 A Trauma and general surgery, yes, sir.

4 MR. STUMBO: Your Honor, at this time the
5 State would offer Dr. Bynoe as an expert in the
6 trauma surgery.

7 THE COURT: Any questions or objections?

8 MR. WILLIAMS: None, Your Honor.

9 THE COURT: So admitted without objection.

10 You may proceed.

11 MR. STUMBO: Thank you.

12 Q (By Mr. Stumbo) Now, Dr. Bynoe, did you have
13 an occasion to treat the victim in this case, Ms.
14 Ruggy Stone?

15 A Yes, sir.

16 Q And have you had a chance to review your
17 records in regards to your treatment of her? Have
18 you recorded that?

19 A Yes, sir.

20 Q About what time did she come into your
21 treatment or your care?

22 A It was on 7/29/07 and the time documented on
23 our inpatient sheets as 22:45.

24 Q Was that a referral from the emergency room?

25 A That's when -- the system that we have, it's

1 generated that once the EMS, whenever the EMS service
2 within the state itself, when they pick up a crash
3 victim, trauma victim, they check, assess vital signs
4 and make a determination.

5 We have a standard process by which we have
6 them call and they give us -- we divided them up into
7 an 811 and a 911 which is just a determination for us
8 to give us an indication of the severity of the
9 injury.

10 And so we had called at that time prior to
11 their arrival to give us notification so we could
12 have a service available, trauma services available
13 waiting in the emergency room as well.

14 Q Was there an emergency room physician that was
15 able to see her right away when she came in?

16 A We all were there at the same time. Dr. Brown
17 and myself and the surgical team as well as the
18 emergency medicine team.

19 Q Okay. How quickly was the decision made to
20 put her -- get her into surgery?

21 A Ask that question again.

22 Q How quickly did it take you all to decide she
23 needed surgery when she came into the ER?

24 A The determination -- we were all there at the
25 same time. We all arrived, and make assessments of

1 individuals as they arrive. And the determination of
2 her injuries noted that she needed to have certain
3 things performed or done for her in order to maintain
4 sustained life at those points.

5 One of the initial things that occurred was
6 it's a basic sort of pneumonic that we use, it's call
7 the ABC's. The ABC's include airway, breathing,
8 circulation, and those are three basic things that we
9 try to establish with everyone we see whether or not
10 they need it. And you determine from the A part
11 whether or not they are able to sustain adequate
12 respiratory status, then we don't intubate.

13 In terms of her case, it was felt because of
14 the nature of her injuries, the way she was
15 breathing, her vital signs, the fact that she had
16 what we call a transient period of hypotension, that
17 her blood pressure dropped extremely low, that she
18 needed to be intubated in order to control her
19 respiratory effort because the brain is sensitive to
20 oxygen. You only have a three to five minute period
21 of not having appropriate oxygen levels before you
22 will die. So she was determined initially that she
23 needed to be intubated at that time.

24 Q So her respiratory issues were
25 life-threatening?

1 A Correct.

2 Q You just indicated that she was given
3 emergency intubation right away?

4 A Yes, sir. And intubation means putting a
5 breathing tube in the airway to sustain her ability
6 to breathe.

7 Q On the front end was this done through a
8 tracheotomy or through the mouth?

9 A Through the mouth.

10 Q Are there two different ways to do that?

11 A Yes, sir.

12 Q What other injuries did she have other than
13 the immediate respiratory issues? Did she have any
14 other life-threatening issues?

15 A One of the things that we would say in terms
16 of looking at her vital signs, the vital signs are
17 blood pressure, respiratory rate and mental status,
18 the three main things we use initially to make an
19 assessment.

20 Her blood pressure was low, extremely low
21 which initiated the fact that she needed to have some
22 way for us to give her IV fluids and potentially
23 blood which she got both at the initial time of her
24 resuscitation when she arrived there.

25 Q What was significant of the screen? You said

1 low blood pressure?

2 A well, it's up there, it's called shock. And
3 there are four different categories of shock which
4 you could potentially fall into. Most individuals
5 that are involved in traumatic events it's usually
6 what we call a hypovolemic shock or not enough fluid
7 in the blood vessels to maintain blood pressure.
8 That's the most common one.

9 You can have neurogenic shock which means that
10 you have a spinal cord injury that will contribute to
11 the shock that you don't have sensation enough for
12 feeling. When you're paralyzed you lose the ability
13 to close down on the blood vessels to maintain your
14 blood pressure. That's a neurogenic shock.

15 You can have septic shock which is an
16 infectious process. And then you can have cardiac
17 shock where your heart fails and you drop your blood
18 pressure because you don't have the ability to pump
19 blood through the system.

20 And she would be the initial one which was the
21 hypovolemic shock is what we call it.

22 Q Were you able to determine the cause of the
23 low blood pressure?

24 A Initially she had multiple rib fractures
25 clinically as by our examining her you could feel

1 that her ribs were moving around what we call
2 free-floating ribs which we felt as though may have
3 contributory to her chest, that was part of the
4 problem that she may be bleeding in her chest.

5 We had an x-ray that was done to show that it
6 was consistent with fluid, blood in the chest. She
7 got a chest tube initially that was placed in the
8 emergency department as well as well as starting
9 fluid.

10 And after we did that, that got her blood
11 pressure better, we took her over to the radiology
12 department and got a what we call a CT scan, a
13 computerized tomography scan of the chest. What we
14 do is the body is considered just like a loaf of
15 bread. And in the old days before they sliced them
16 we just had the whole body and that's what a chest
17 x-ray is.

18 The CT scan is a scan that gives us sliced,
19 it's just like a piece of a paper that every 7mm it
20 gives us a picture that we're able to see a slice of
21 the body to give us an indication of what sort of
22 things may be injured. And that demonstrated that
23 she had significant rib fractures with blood in her
24 chest.

25 And one of the films it showed that there was

1 active bleeding within the chest itself from the
2 ribs. There are little blood vessels that run along
3 the rib that we were appreciating that was bleeding.
4 So at that time rather than taking her up to the
5 operating room, we immediately did what we call a
6 thoracotomy to look inside. We had the blood being
7 evacuated by a tube. But we used a die study to put
8 little coils in it to block the blood vessel that was
9 bleeding.

10 Q So you evacuated the blood out of chest tube?

11 A Yes, sir.

12 Q What would have been the result had you not
13 been able to drain that chest cavity?

14 A She would have had to have undergone a
15 thoracotomy, which means you open up the chest and
16 try to find that particular bleeding site open. I
17 would have had to put sutures in and sew it, tie it,
18 those sort of things. We were able to not do that
19 initially with her in order to slow it down so we
20 could get a better idea of her overall status.

21 Q What kind of long-term effects could arise
22 from a major hemothorax where there's a lot of blood
23 in the chest cavity?

24 A You can impede blood flow. If that fluid will
25 build up it will stop blood from being able to get

1 out of the heart as well, so you can have problems
2 with the cardiac function. You can have problems
3 with the lung's ability to move carbon dioxide in and
4 out, oxygen in and out. As well as you can have,
5 with low blood pressure you can have problems with
6 the kidneys as well as in terms of being able to
7 refuse the rest of the body.

8 Q Okay. Did she have any significant fractures?

9 A Yes, sir, she had multiple fractures. One of
10 the things we did when they come in to help give us
11 an idea of the degree of shock, is we do a blood gas
12 where that's where you take arterial blood from an
13 artery and you analyze that.

14 By analyzing that we noted that she had a
15 significant what we call base deficit, which is a
16 drop in the amount of bicarbonate which is one of the
17 minerals that we measure that says hers was minus 10.
18 The more minus that number, the more shock in theory
19 is present. And that's one of the things we did.

20 And hers demonstrated there was a minus 10,
21 her hemoglobin was 7 on that, which says that
22 normally your hemoglobin is somewhere around 12 to
23 14. Her hemoglobin was 7.6 which means that there
24 was a 5 gram drop in hemoglobin as well.

25 So we continued to work to try to make that

1 better, gave her blood, fluids, those sort of things
2 as we went to look for that in terms of trying to
3 make that assessment.

4 Q So in your opinion do those numbers indicate a
5 significant level of shock?

6 A Yes, sir. Severe.

7 Q What did her spine look like?

8 A She also had multiple fractures of her spine.
9 Starting out in the thoracic area which is the chest
10 area, below your neck from your collar bone down to
11 the breast bone, the breast bone that is called the
12 thoracic spine. And then you drop down below that is
13 called the lumbar spine.

14 She had a compression fracture, which means
15 that it was squeezed down, like if you take a
16 coca-cola can and you squeezed it down, that gives
17 you the impression of what it looks like. She had a
18 fracture of her T8 vertebra which is fairly
19 significant in that regard.

20 And she also had multiple, the little wings
21 off the lumbar spine were broken at L2 and L3 which
22 is in the lower area.

23 Q So four different places?

24 A Yes, sir.

25 Q Of the spine?

1 A Yes, sir.

2 Q Fractures. To the best of your ability in
3 your opinion can you tell if these were injuries that
4 were recent that they just occurred?

5 A Yes, sir. They were all acute.

6 Q How about any abrasions, were there any
7 abrasions that you were able to -- take your time?

8 A She had abrasions on her chest wall as well as
9 her extremities. She had some abrasions on her
10 extremities as well.

11 Q You say extremity, you mean arms?

12 A Arms, yes, sir.

13 Q Were those treated as well?

14 A Repeat the question.

15 Q Were those injuries treated as well during the
16 course of surgery and treatment?

17 A Yes, sir. We put dressings on them and those
18 sort of things but required no significant
19 intervention per se.

20 Q Were you able to stabilize Ms. Stone?

21 A Yes, sir. It was over the next 24 to 36 hours
22 that we worked to get her blood pressure up to try to
23 improve her what we call hemodynamics or vital signs
24 so it would give us the opportunity for her body to
25 catch up with what was going on in terms of making

1 sure she had appropriate urinary output which gives
2 us an indication that the volume status within the
3 blood vessels was better.

4 And we saw improvement in her ability to
5 oxygenate and move carbon dioxide outside to get an
6 oxygen level. But it required her being on the
7 breathing machine extensively for that in order to
8 make those things happen.

9 Q At this point in time would she have been able
10 to survive without the ventilator?

11 A Say that again.

12 Q Could she have survived without the ventilator
13 in those first few days?

14 A No, sir, not at all.

15 Q Now was the -- what other procedures needed to
16 be done? Did you see her over the next couple of
17 weeks; is that correct?

18 A I took care of her for the initial period and
19 for the first week of her hospitalization. The way
20 the system works is that we spend a week in the ICU,
21 then we spend a week on the floor taking care of
22 individuals because if I spend more than a week I'd
23 probably go crazy trying to maintain that high level
24 of intensity all the time. So we kind of rotate on
25 and off. For the first week I was involved in her

1 care.

2 Q And at what point was she transferred from
3 Richland?

4 A It was 14, 15 days later.

5 Q On August 14th?

6 A Yes, sir. August 14th.

7 Q And what was your role in the transfer
8 process? Did you recommend that transfer?

9 A Yeah, there was some steps that took place
10 between that time period. We attempted to get her
11 off the breathing machine in which we were able to do
12 that for a short period of time. But because of the
13 intensity and the severity of her injuries she failed
14 being off the breathing machine. We took her off,
15 put the device on.

16 We use it -- a lot of folk we use that it's
17 called by-path. It's a machine that you put over
18 your face that helps to kind of a pressure device,
19 it's not the tube inside your lung, inside your
20 trachea and your airway, it's a device that you put
21 on your face. Some people use it for sleep apnea and
22 those sort of things, you may be aware of it. Some
23 folks may be aware of it.

24 We use that to help bridge the gap. Sometimes
25 that's a way that you can get folks off the breathing

1 machine and keep them off of it. She was on that for
2 48 hours and did not tolerate that very well. So she
3 got reintubated. After we put the tube back down her
4 airway she subsequently ended up getting a
5 tracheostomy for long-term respiratory management,
6 because we realized at that point that she was not
7 going to tolerate not being on the breathing machine,
8 and not have the ability to go on and off without it
9 being a major process, so she required a
10 tracheostomy.

11 During that process we repositioned and
12 replaced a tube in her chest in order to reevacuate
13 some additional blood that accumulated in her chest
14 during that time period as well.

15 Q These treatments, the tube intubation,
16 catheter, those sort of things, interventions, were
17 those necessary treatment based on her injuries?

18 A Correct. Yes, sir. Definitely so.

19 Q And did she develop any kind of infections as
20 a result of those?

21 A Yes, sir. Because of the fact that she
22 required a great deal of blood and she had the
23 bruising to her lungs she subsequently developed
24 pneumonia, it's not uncommon. Blood is a great thing
25 to have, a great thing to use, but it also has the

1 ability to suppress your ability to fight off
2 infections.

3 That's a known fact that's been published in
4 the literature and we try not to use blood unless
5 it's absolutely necessary in someone in a situation
6 in which they have bled acutely. And she did from
7 her crash initially and then subsequently to maintain
8 her blood pressure, those sort of things, she needed
9 to have it.

10 So she received blood products which
11 attributed to her pneumonia which subsequently lead
12 from the pneumonia that she acquired she got a what
13 we call a bloodstream infection from the fact that
14 pneumonia, the bacteria will -- it's in the lung and
15 as the blood goes through the lung to pick up oxygen,
16 it also picks up the blood, the bacteria that's in
17 the lung and that contributes to the process as well.

18 So she developed, as well as pneumonia, she
19 developed what we call a bloodstream infection as
20 well that required treatment.

21 Q Okay. Did she have any prior medical issues
22 that played into her treatment at this time?

23 A She was a diabetic, which individuals who are
24 diabetics it's very hard to control blood sugars with
25 that process. Mainly when you're trying to get them

1 some sort of nutritional support it's a difficult
2 process.

3 And the fact that she had an ongoing injuries
4 with her chest and received blood that became a major
5 issue in terms of trying to maintain blood levels in
6 -- sugar levels in her blood that were appropriate,
7 kind of in the lower level. And that became a major
8 problem and become -- I wouldn't say hypoglycemic
9 during the process, so that became a major factor
10 that was contributory as well.

11 Q To your knowledge was the diabetes under
12 control before she went in?

13 A Yes, sir.

14 Q And the injuries sustained in the accident,
15 what potential effect would they have on the
16 treatment for insulin levels?

17 A The body -- the body's first goal is to find a
18 way to give energy to cells for life. And as it does
19 that, it starts to free up more glucose sugar in the
20 body in order to help provide energy for someone who
21 has been injured. Therefore the blood levels are --
22 the glucose levels are a lot higher than they
23 normally would across the board of anyone who's been
24 injured.

25 with that process if you're a diabetic you

1 have a problem with producing enough insulin which is
2 what controls your blood levels, your blood sugar
3 levels. And with that, that was a constant problem
4 trying to match that back and forth and being able to
5 control that as well.

6 Q Was Ms. Stone malnourished at all at this
7 time?

8 A Yeah. I mean in spite of the fact that we
9 give folks nutrition, the body has its own way of
10 trying to secure that. A lot of times it's well
11 documented in the literature that as you -- you can
12 give folks food to feed, but the body says I want to
13 feed what I want, I'm going to eat what I want.

14 A lot of times you end up breaking down your
15 own protein to give your body muscle mass, muscle
16 protein because it's an easier way for the body to
17 convert protein to sugar and therefore you become
18 malnourished with that as well.

19 Q So these complications we've been talking
20 about related to the diabetes, malnutrition, blood
21 infections, in your opinion were those things caused
22 by the injuries?

23 A Correct. Yes, sir.

24 Q Now, Dr. Bynoe, you said August 14th she was
25 transferred out. Where was she transferred to?

1 A It's a -- we call it a hospital within a
2 hospital. It's for individuals who have chronic
3 problems that aren't necessarily as critical as they
4 were when she came in. But it still requires
5 intensive sort of therapy within the hospital.

6 It's called Intermedical, it's within the
7 Baptist complex. We utilize those for individuals
8 who have chronic sort of needs. And because of the
9 fact that it was difficult to maintain her off the
10 breathing machine, we felt as though that she would
11 benefit from a chronic ventilatory unit is what we --
12 it can serve as.

13 And therefore she was transferred to
14 Intermedical for continued sort of ventilatory
15 support, long-term care and in order to try to get
16 her stronger over the time period.

17 Q And you are familiar with Dr. Dan Love over at
18 the Intermedical?

19 A Yes.

20 Q To your knowledge does she go under his care
21 after she left your care at Richland?

22 A Yes, sir.

23 Q What would you define her status as being,
24 critical, or how would you classify her status when
25 she left your care to go to the Intermedical

1 facility? Was she still in critical?

2 A She was stable but not -- I would say that she
3 was still not necessarily critical but still required
4 intensive therapy and care. She would not be able to
5 survive on her own if they attempted to take her home
6 or to go to a nursing home or some sort of facility
7 such as that.

8 Q She still had life-threatening injuries when
9 she left your care?

10 A She still had ongoing injuries, yes, sir.

11 MR. STUMBO: No further questions at this
12 time, Your Honor.

13 THE COURT: Any cross-examination of the
14 witness?

15 MR. WILLIAMS: Yes, Your Honor.

16 ~~CROSS-EXAMINATION~~

17 BY MR. WILLIAMS:

18 Q To pick up with the last first, Doctor. The
19 solicitor just asked you if she still had
20 life-threatening injuries and when you responded, you
21 responded that she had injuries.

22 Did she have life-threatening injuries when
23 she left your care?

24 A These are injuries that were not healed,
25 therefore if you want to put it in the strictest

1 sense there still life-threatening but not to the
2 point compared to when she came in. Those injuries I
3 would consider life-threatening because those things
4 if they're not treated immediately means that you're
5 going to die.

6 Q But you would not have transferred her to the
7 hospital if she had life-threatening injuries?

8 A Correct.

9 Q That's just --

10 A She still had ongoing injuries that were not
11 resolved and potentially could develop into
12 life-threatening, but not at that moment.

13 Q Just like a lot of relatively minor problems
14 which could become life-threatening if you don't take
15 care of them?

16 A I'd say they were more than minor for her.

17 Q I'm not saying hers were, I'm saying --

18 A I'm just saying they were more than minor for
19 her.

20 Q And let me ask you this, in terms of your
21 day-to-day treatment with this client, patient, it's
22 my understanding that you were the surgeon involved
23 for her initial surgery; is that correct?

24 A I was involved in the first seven days of her
25 care.

1 Q Okay. And after the first seven days of her
2 care did you have any contact at all with her?

3 A Yes, sir. I was on call so I was there with
4 her care throughout the time and still involved with
5 the management process.

6 Q You were there for consult; is that correct?

7 A I had three other -- I have two other partners
8 that we work in conjunction with. So I wouldn't say
9 it was only consulting purposes only, it was involved
10 in her care, checking in on her, making sure that
11 what I started was completed.

12 Q Well, the reason I'm asking that is I've got
13 some notes which are basically operative notes of the
14 various little types of surgeries that she had; the
15 tracheotomy, she had some deals dealing with the
16 blood that was in the chest, things of that nature.
17 And I note that your name is not listed as the
18 surgeon on those various operations. I mean is that
19 a --

20 A Correct.

21 Q How many of the surgeries that were performed
22 did you actually participate in?

23 A How many of the surgeries did I? I was there
24 for the initial surgical procedure such as
25 intubation, chest tubes, those sort of things when

1 she came in.

2 Q Well, obviously since maybe your partners may
3 have dealt with her and maybe you had some other
4 doctors at the hospital who dealt with her, I note
5 that they send you copies of their operative reports?

6 A Yes, sir.

7 Q And that's common in the medical field when
8 you have more than one doctor to let the other
9 doctors know what's going on with the person; is that
10 correct?

11 A Yes, sir.

12 Q And I'm sure that you have reviewed those
13 operative notes prior to today because obviously if I
14 got a copy, they came from you. And have you
15 reviewed all the operative notes prior to today?

16 A I've looked at them.

17 Q Well, if I could ask you just about some of
18 them. It shows that there was a date of surgery of
19 July 29th of 2007. And I guess that would be --
20 lists you as being the authenticator. Says you are
21 the attending surgeon on that particular occasion?

22 A Yes, sir.

23 Q And obviously after you performed that surgery
24 you indicate, patient tolerated the procedure well.
25 What does that mean in medical terms for layman? The